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 […].

EUROPEAN COMMISSION

Brussels, 24.05.2011
C (2011) 3497 final

PUBLIC VERSION
WORKING LANGUAGE
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Sir,

The Commission wishes to inform Romania 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 letter of 30 September 2010, a competitor of Wizz Air on the European air transport market, namely Carpatair¹ (hereinafter: "Complainant"), submitted a complaint, alleging unlawful State aid provided by the Romanian authorities at Timisoara airport in favour of

---

¹ Carpatair is a privately owned regional airline established in 1999. In 2000 Carpatair set up its hub at Timisoara airport, providing hub and spoke services. Carpatair's fleet consists of 18 aircraft (i.e. 12 Saab 2000, 3 Fokker 70 and 3 Fokker 100 airplanes). The shareholders of Carpatair are Air Services SRL (39.7 %), Wilson Property (12.2 %), Lombard Odier, Darier, Hentch & Cie (6.8 %) and 8 private individuals (58.7 %).

Teodor Baconschi
Ministrul Afacerilor Externe
Alea Alexandru 31
RO-011822-BUCUREȘTI
the Wizz Air Hungarian Airlines Ltd.\(^2\) (hereafter: "Wizz Air"). This complaint was registered under the State aid case number CP 237/2010 (SA.31662).

(2) The Commission observed that the complaint at stake appeared to be connected with the notification of Romanian authorities dated 17 May 2010. The notification of 17 May 2010 concerns the plans of the Romanian authorities to provide public support in favour of regional airports, including Timisoara airport. The notification has been registered under case number N 185/2010. The Commission requested additional information on the notified measures on 23 June 2010, 7 October 2010, 3 December 2010 and 17 March 2011. The Romanian authorities provided the information requested on 22 July 2010, 27 October 2010, 20 January 2011 and 5 April 2011. On 15 September 2010 the Romanian authorities informed the Commission on certain changes to the notified scheme, in particular as regards the number of beneficiaries. The Romanian authorities in particular confirmed that Timisoara airport will be not eligible for the financing under the notified scheme. Nevertheless, as the Commission obtained information about annual financing granted to Timisoara airport by the Ministry of Transport, this measure is being analysed in the present case.

(3) By letter of 21 October 2010 the Commission has forwarded the complaint to Romania and requested information. The Romanian authorities responded by letter dated 15 December 2010.


(6) By letter dated 12 May 2011 the Complainant agreed to disclosed its identity and its financial situation and provided additional information in this regard.

---

\(^2\) Wizz Air is a Hungarian airline and Member of the European Low Fares Airlines Association. Wizz Air group consists of three operating companies, namely Wizz Air Hungary, Wizz Air Bulgaria and Wizz Air Ukraine. The business model of the airlines is linked with secondary, regional airports. The airline operates currently 150 European destinations. Wizz Air has a homogenous fleet with average age of less than 3 years, which consist of 34 Airbus A 320 aircrafts with 180 seats. Wizz Air plans to increase its fleet to 132 aircraft by 2017. For further details see [http://wizzair.com/about_us/company_information/?language=EN](http://wizzair.com/about_us/company_information/?language=EN) (status 13 April 2011).
2. DESCRIPTION OF THE FACTS

2.1. Timisoara airport

(7) Societatea Nationala Aeroportul International Timisoara – Traian Vuia – S. A. (hereinafter: "Timisoara airport" or the "Airport") is an international airport situated in the western part of Romania. The shareholders of Timisoara airport are currently the Ministry of Transport of Romania (80 %) and Fondul Proprietatea\(^3\) (hereafter: the "Property fund"; 20 %).

(8) According to the publicly available information, Timisoara airport has undertaken several infrastructure upgrades since 2004. Currently, the Airport has one runway, which is 3 500 metres long and 45 metres wide. The aprons provide for 22 parking positions. The capacity of the airport amounts to 800 international passengers/hour and 500 domestic passengers/hour.

(9) Timisoara airport is the third largest Romanian airport. The passenger traffic at the Airport increased from 250 000 in 2002 to 1.14 million in 2010. Besides Wizz Air Timisoara airport is currently served by Tarom, Carpatair, Lufthansa and Austrian Airlines. In 2007 to 2009, also other airlines such as Malev, Alitalia, Volare, Atlasjet, Blue Air, Myair, Jetran and Romania served the airport.

(10) The following table summarises the financial situation of Timisoara airport in 2007 to 2009\(^4\):

---

\(^3\) Fondul Proprietatea, the Property fund, was set up in December 2005 by the Romanian authorities to indemnify individuals who lost their properties during the communist regime and whose ownership claims could not be settled in-kind. The National Authority for Property Restitution issues Reimbursement Certificates to the eligible claimants as they solicit compensation for their lost properties, certificates that further on were transformed into Fondul Proprietatea shares. Fondul Proprietatea was listed on the 25 February 2011 at the Bucharest Stock Exchange. The current (March 2011) shareholders of Fondul Proprietatea are Ministry of Public Finance of Romania (36.79 %), Romanian private individuals (28.28 %), Foreign institutional shareholders (20.40 %), Foreign private individuals (8.66 %) and Romanian institutional shareholders (5.87 %). For detailed information see [http://www.fondulproprietatea.ro/index.php/pages/en/1/Homepage.html](http://www.fondulproprietatea.ro/index.php/pages/en/1/Homepage.html) (status 13 April 2011).

Table 1: Key financial indicators of Timisoara airport 2007 to 2009 (in RON million)

<table>
<thead>
<tr>
<th></th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>23,473</td>
<td>30,545</td>
<td>41,067</td>
</tr>
<tr>
<td>Sales growth</td>
<td>n. a.</td>
<td>+30.1%</td>
<td>+34.4%</td>
</tr>
<tr>
<td>EBITDA</td>
<td>7,318</td>
<td>10,646</td>
<td>12,212</td>
</tr>
<tr>
<td>EBITDA margin</td>
<td>31.2%</td>
<td>34.9%</td>
<td>29.7%</td>
</tr>
<tr>
<td>EBIT</td>
<td>3,249</td>
<td>5,809</td>
<td>5,655</td>
</tr>
<tr>
<td>Net Profit</td>
<td>2,417</td>
<td>4,874</td>
<td>3,508</td>
</tr>
<tr>
<td>Net Profit margin</td>
<td>10.3%</td>
<td>16.0%</td>
<td>8.5%</td>
</tr>
</tbody>
</table>

(11) The Romanian authorities have provided to the Commission information on the public financing made available to regional airports as from Romania's accession. According to that information the Timisoara airport received in years 2007 to 2009 the following funding:

Table 2: Public financing granted to Timisoara airport in 2007 – 2009 in thousand RON

<table>
<thead>
<tr>
<th>Airport</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Timisoara</td>
<td>9,104</td>
<td>19,516</td>
<td>8,769</td>
</tr>
</tbody>
</table>

(12) The Romanian authorities contend that the public financing granted to Timisoara airport does not constitute aid insofar as the measure complies with the market economy investor test. In this sense, the Romanian authorities have detailed the airport's profit and the corresponding dividends paid to the Ministry of Transport, as main shareholder of the airport, in the following table:

Table 3: Profits of Timisoara airport and dividends paid to the Ministry of Transport in 2007 – 2010 and forecast 2011 in RON

<table>
<thead>
<tr>
<th>Year</th>
<th>Profit in RON</th>
<th>Dividends in RON</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>2,417,564</td>
<td>1,015,110</td>
</tr>
<tr>
<td>2008</td>
<td>4,898,558</td>
<td>1,898,009</td>
</tr>
<tr>
<td>2009</td>
<td>3,508,288</td>
<td>1,413,315.20</td>
</tr>
<tr>
<td>2010 (forecast)</td>
<td>9,393,570</td>
<td>6,763,370.40</td>
</tr>
</tbody>
</table>
2.2. The 2007 airport charges at Timisoara airport

The applicable charges were published in the Aeronautical Information Publication (hereinafter: "2007 AIP") on 7 June 2007 under the reference GEN 4.1-17. The following table summarises the 2007 AIP:

Table 4: Applicable airport charges (2007 AIP) in EUR

<table>
<thead>
<tr>
<th>Charge</th>
<th>Minimum charge</th>
<th>Unit rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landing</td>
<td>50</td>
<td>7.00 / tonne</td>
</tr>
<tr>
<td>Lighting</td>
<td>50</td>
<td>2.10 / tonne</td>
</tr>
<tr>
<td>Parking</td>
<td>15</td>
<td>0.15 / tonne / hour</td>
</tr>
<tr>
<td>Passengers service</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- international flights</td>
<td></td>
<td>8 / passenger</td>
</tr>
<tr>
<td>- domestic flights</td>
<td></td>
<td>3 / passenger</td>
</tr>
<tr>
<td>- security</td>
<td></td>
<td>7 / passenger</td>
</tr>
<tr>
<td>- transit or transfer</td>
<td></td>
<td>5 / passenger</td>
</tr>
</tbody>
</table>

The 2007 AIP provides for the reductions on the landing charges based on the number of landings as summarised in the following table:

Table 5: Reductions of the airport charges (2007 AIP) at Timisoara airport in EUR

<table>
<thead>
<tr>
<th>International flights</th>
<th>Number of landings / year</th>
<th>Rebate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>250 - 500</td>
<td>10</td>
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<tr>
<td></td>
<td>501 – 1 200</td>
<td>20</td>
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<tr>
<td></td>
<td>1 201 - 2 000</td>
<td>30</td>
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<tr>
<td></td>
<td>2 001 – 2 500</td>
<td>40</td>
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<tr>
<td></td>
<td>2 501 – 3 000</td>
<td>50</td>
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<tr>
<td></td>
<td>3 001 – 3 500</td>
<td>60</td>
</tr>
<tr>
<td></td>
<td>3 501 – 4 000</td>
<td>70</td>
</tr>
<tr>
<td></td>
<td>&gt; 4 001</td>
<td>85</td>
</tr>
</tbody>
</table>

A 50 % discount on the landing charges for a period of 6 months is granted for new air operators at Timisoara airport which perform at least 2 flights per week and for new destinations that are not yet connected with Timisoara airport.
2.3. The 2008 Agreements between Timisoara airport and Wizz Air

(16) Mid 2008 the Airport and Wizz Air signed series of agreements determining the principles of their cooperation and terms and conditions of the use of the airport infrastructure and services by the airline. The signed agreements consisted of (i) a Memorandum of Understanding, (ii) a Marketing agreement, (iii) an Operation agreement, and (iv) a Ground Handling agreement. On the basis of the concluded agreements, detailed further below (see sections 2.3.1. -2.3.4.), Wizz Air started its operations from Timisoara airport at the end of 2008.

2.3.1. The Memorandum of Understanding of 25 June 2008

(17) The Memorandum of Understanding (hereafter: "2008 MoU") was signed on 25 June 2008 by the Airport and Wizz Air, determining the general principles of their cooperation as well as determining terms and conditions of the use of the airport infrastructure and services by Wizz Air.

(18) In the 2008 MoU, the Airport agreed in particular to expand the passenger terminal in order to allow it to handle up to 3 million passengers per year by 1 January 2011 at latest. The Airport also agreed to upgrade the landing and takeoff category of the runway to category III in both directions until the end of 2009 and to make available slots according to Wizz Air’s request.

(19) Wizz Air agreed to conduct marketing activities, in particular the promotion of flight destinations of Wizz Air from or to the Airport to increase the number of departing and arriving passengers at the Airport. In return the Airport should pay marketing fees, which are depending on the number of landings and delivered passenger numbers.

2.3.2. The Marketing agreement of 30 July 2008

(20) The Marketing agreement (hereafter: "2008 Marketing agreement") was signed by the parties on 30 July 2008 and concluded for an initial term of three years [...].

(21) The Marketing agreement determines the terms and conditions of the marketing activities carried out by Wizz Air advertising Timisoara as a destination with the aim to increase the number of departing and arriving passengers at the airport.

(22) Article 1 (7) of the 2008 Marketing agreement details the following marketing activities to be carried out by Wizz Air:

− the promotion of the Airport and Wizz Air flights to and/or from the Airport in its online and board magazine,
− advertisement of the Airport on its website,
− creation of a marketing strategy for the airport and Wizz Air,
− advertising promotions in relation to the air services on the Airport, and
– other activities promoting passenger growth at the Airport.

(23) The marketing activities of the airline shall be carried out in Romanian and foreign media (see Article 1 (5) of the 2008 Marketing agreement).

(24) In return for Wizz Air’s marketing activities, the Airport has to pay Wizz Air a marketing fee in dependence of the delivered departing passenger numbers according to the following formula:

**Figure 1: Formula for the calculation of the marketing fee**

```
[...]*
```

(25) […]

**Table 6 […]**

<table>
<thead>
<tr>
<th>[…]</th>
<th>[…]</th>
<th>[…]</th>
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</thead>
<tbody>
<tr>
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<td>[…]</td>
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<td>[…]</td>
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<tr>
<td>[…]</td>
<td>[…]</td>
<td>[…]</td>
</tr>
</tbody>
</table>

(26) The Marketing agreement stipulates that […].

(27) Additionally, the Airport has following further obligations towards Wizz Air:

– […];
– […];
– […];
– […];
– […]

(28) The Marketing agreement provides as well that Wizz Air shall issue an invoice for the marketing fee after the receipt of a “*pro-forma invoice*” from the Airport on the charges covered by the obligation of professional secrecy.
of the Operation agreement contract and the Ground Handling agreement. At the current stage, the Commission has no information at its disposal, why the invoices are considered to be only “pro-forma” invoices.

(29) According to Article 1 (3) of the 2008 Marketing agreement, Wizz Air is obliged to provide the airport at least on an annual basis with reports describing its marketing activities (i.e. description of marketing activities, target groups, advertising, frequency, choice of media, amounts spent on the marketing activities) performed in the preceding year.

2.3.3. The Operation agreement of 1 August 2008

(30) The Operation agreement was concluded on 1 August 2008 for period of […].

(31) The charges are essentially the same as set out below in section 2.4. Additionally, the airline receives a […] discount for […] months for an increase in frequencies.

(32) The payments for the services are due in 30 days after the receipt of the invoice “without any deduction by reason of any alleged counterclaim or otherwise howsoever”. Late payment interest is […] % per annum. Penalties shall be set out on the invoice.

(33) The breach of the confidentiality of the contract is sanctioned by a penalty in the amount of EUR […].

(34) On 25 June 2010 a new discount scheme was agreed with the same charges as set out below under section 2.5.

(35) At the current stage, the Romanian authorities have not informed the Commission, whether the Operation agreement has been modified or replaced by a new contract.

2.3.4. The Ground Handling agreement of 1 August 2008

(36) The Ground Handling agreement (hereinafter: “GHA”) constitutes an annex to the Standard Ground Handling Agreement (hereinafter “SGA”) of April 2004 and is effective from […] to […] with an automatic renewal for further […; one year].

(37) The GHA sets the handling charges for an Airbus A320 passenger aircraft at EUR […] for a single ground handling consisting of the arrival and the subsequent departure. Not included are services “on request” which are charged additionally.

(38) The invoices for the handling services shall not be issued later than the […] of the following month. The payments shall be made in 30 days from the date of the receipt of the invoice. After notice of the Handling Company a late payment interest is due at a rate of […] % per annum.

(39) On 1 February 2010 the GHA was extended for a period of one year […]. The provision in the Marketing agreement, which allows the immediate termination of the GHA and the Operation agreement without any damages when the Marketing agreement expires or is terminated, was declared void.

(40) On 25 June 2010 the GHA was amended by a new discount scheme applicable for the handling charges and the services on request starting with June 2010. The new discount
scheme had been introduced by a decision of the board of directors on 15 June 2010. This new discount scheme corresponds to the one described below under section 2.5.

(41) At the current stage, the Romanian authorities have not informed the Commission whether the GHA was modified or replaced by a new agreement.

2.4. The 2008 airport charges at Timisoara airport

(42) The applicable airport charges (hereinafter: “2008 AIP”) were published in the Aeronautical Information Publication on 23 October 2008 under the reference GEN 4.1-17. The following table summarises the 2008 AIP:

Table 7: Applicable airport charges (2008 AIP) in EUR

<table>
<thead>
<tr>
<th>Charge</th>
<th>Minimum charge</th>
<th>Unit rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landing</td>
<td>50</td>
<td>7.00 / tonne</td>
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<tr>
<td>Lighting</td>
<td>50</td>
<td>2.10 / tonne</td>
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<tr>
<td>Parking</td>
<td>15</td>
<td>0.15 / tonne / hour</td>
</tr>
<tr>
<td>Passengers service</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- international flights</td>
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<td>8 / passenger</td>
</tr>
<tr>
<td>- domestic flights</td>
<td></td>
<td>5 / passenger</td>
</tr>
<tr>
<td>- security</td>
<td></td>
<td>10 / passenger</td>
</tr>
<tr>
<td>- transit or transfer</td>
<td></td>
<td>1.50 / passenger</td>
</tr>
<tr>
<td>- persons with reduced mobility</td>
<td></td>
<td>0.20 / passenger</td>
</tr>
</tbody>
</table>

(43) The 2008 AIP increased the passenger security charges from 7 EUR in 2007 to 10 EUR per passenger. The passenger fee for transit or transfer passengers was reduced from 5 EUR per passenger to EUR 1.50. In addition, the Airport has introduced a charge amounting to EUR 0.20 for persons with reduced mobility.

(44) The 2008 AIP provides for reductions on the landing charges based on the number of landings of the previous year as summarised in the following table:
Table 8: Reductions in airport charges (2008 AIP) in EUR

<table>
<thead>
<tr>
<th>International flights</th>
<th>Rebate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of landings / year</td>
<td></td>
</tr>
<tr>
<td>250 – 500</td>
<td>10</td>
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<tr>
<td>501 – 1 200</td>
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<tr>
<td>1 201 – 2 000</td>
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<tr>
<td>2 501 – 3 000</td>
<td>50</td>
</tr>
<tr>
<td>3 001 – 3 500</td>
<td>60</td>
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<tr>
<td>&gt; 3 501</td>
<td>70</td>
</tr>
</tbody>
</table>

(45) The 2008 AIP provides also for a discount of 50 % on the landing charges for a period of 12 months for new air operators at Timisoara airport that perform at least 3 flights per week by an aircraft of at least 70 seats and for each new opened destination the applied discount on the landing charges is 50 % for a period of 6 months.

(46) In addition to the previous discounts and reductions, Timisoara airport grants also a partial reimbursement of the revenue originated by the embarkment charge (see table 5: passenger service EUR 8 / 5 per passenger).

Table 9: Reimbursement of revenue originated by the embarkment charge according to 2008 AIP

<table>
<thead>
<tr>
<th>Number of embarked passengers / year delivered by the user</th>
<th>Reimbursement</th>
</tr>
</thead>
<tbody>
<tr>
<td>150 001 – 300 000</td>
<td>10 %</td>
</tr>
<tr>
<td>300 001 – 500 000</td>
<td>20 %</td>
</tr>
<tr>
<td>&gt; 500 001</td>
<td>30 %</td>
</tr>
</tbody>
</table>

2.5. The 2010 airport charges at Timisoara airport and agreements between Timisoara airport and Wizz Air

2.5.1. The 2010 airport charges at Timisoara airport

(47) On 26 August 2010 an amendment to the airport charges (hereinafter: “2010 AIP”) at Timisoara airport was published in the Aeronautical Information Publication. The Airport
has introduced a new category of discounts for aircraft over 70 tonnes maximum takeover weight (hereinafter: “MTOW”) as summarised in the following table:

**Table 10: AIP 2010 discounts for aircrafts over 70 tonnes MTOW.**

<table>
<thead>
<tr>
<th>Number of embarked passengers / month delivered by the user</th>
<th>Discount (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 – 10 000</td>
<td>0</td>
</tr>
<tr>
<td>10 001 – 18 000</td>
<td>72</td>
</tr>
<tr>
<td>18 001 – 36 000</td>
<td>82</td>
</tr>
<tr>
<td>&gt; 36 000</td>
<td>85</td>
</tr>
</tbody>
</table>

(48) The Romanian authorities explained that in 2010 three airlines, namely Austrian Airlines, Lufthansa and Carpatair, have profited of discounts on the landing fees. They have also explained, that Wizz Air had profited of reductions on all fees (landing, lighting, parking, internal and external embarkment, security and transit/transfer according to Art. 7 paragraph 3 AIP) since June 2010, the entry into force of 2010 AIP. All other airlines have paid the charges as published in the AIP.

2.5.2. **Termination of the Marketing agreement and payment of marketing fees by the Airport**

(49) On 11 February 2010 the Airport decided to terminate immediately the Marketing agreement due to the following reasons:

− the lack of marketing activities carried out by Wizz Air,

− the order of the Romanian Ministry of Transport of 4 February 2010 not to undertake any advertising and promotional activities,

− the lack of meeting the payment deadlines of the Operation agreement and the termination of the Operation agreement on 10 December 2010.

(50) In addition, the Romanian authorities explained, that it was not possible to measure the benefits for the Airport provided by the airline under the Marketing agreement.

(51) With regard to public procurement rules the Romanian National Authority for Regulating and Monitoring Public Procurement (ANRMAP) concluded that the award of the Marketing agreement without applying any of the awarding procedures laid down in the national legislation constitutes an infringement of these rules and is punishable by a fine between RON 70 000 and 100 000.
(52) The Airport had received from Wizz Air invoices amounting to a total of EUR [...] for marketing services for the period October 2008 to January 2010. The Romanian authorities claim that the Airport did not pay this amount and that the payment obligation from the contract will be settled in accordance with business law.

(53) The invoices of Wizz Air to the Airport show that the marketing fees have been only invoiced with several months of delay:

<table>
<thead>
<tr>
<th>Date of the invoice</th>
<th>Date of the marketing service</th>
</tr>
</thead>
<tbody>
<tr>
<td>[...]</td>
<td>[...]</td>
</tr>
<tr>
<td>[...]</td>
<td>[...]</td>
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<td>[...]</td>
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<tr>
<td>[...]</td>
<td>[...]</td>
</tr>
</tbody>
</table>

(54) The Romanian authorities claim that on the basis of the Marketing agreement the passenger numbers were significantly increased from October 2008 to January 2010.

(55) At the current stage, the Commission has no information whether the Marketing agreement has been replaced by a new agreement as provided in Article 2 (5) of the terminated agreement.
2.6. Payment of airport charges by Wizz air

(56) On 28 April 2010 the Airport has sent Wizz Air a payment summon at the amount of EUR [... ] for invoices concerning the fees due under the Operation agreement and the GHA dated from October 2009 to February 2010.

(57) The Romanian authorities clarified that Wizz Air paid EUR [... ] in the first half of 2010. The Airport is looking for an appropriate solution for the rest of the payment. Until now no court proceedings have been initiated against Wizz Air.

3. THE COMPLAINT

(58) The Complainant alleges that since 2008 Timisoara airport is granting State aid in favour of Wizz Air on the basis of different measures.

3.1.1. 2008 Marketing agreement

(59) The complainant alleges that the Marketing agreement was concluded in order to provide for a “payback” arrangement. In his opinion, Wizz Air has not provided any marketing activities for the Airport. In particular, the calculation of the marketing fees on the basis of passenger numbers proofs that there is no relation to the marketing activity.

(60) The complainant claims that the Marketing agreement has been concluded without respecting the public procurement procedures and no other airline at the Airport has concluded a similar agreement with the airport.

(61) Furthermore, the complainant claims that due to the Marketing agreement, Wizz Air does not pay any airport charges except for the “retained amount” ranging from EUR [... ] to EUR [... ] per passenger. The complainant estimates that the Airport has paid to Wizz Air approximately EUR [... ] to [... ] (approximately 20 % of the final ticket price) per departing passenger and a total of EUR [... ] million in 2009 only. He estimates that the overall marketing fee paid by the Airport to Wizz Air in 2009 and 2010 amounts to EUR [... ] million.

3.1.2. Discount Scheme of 26 August 2010

(62) The complainant alleges that Timisoara airport is granting State aid in favour of Wizz Air through the discount scheme introduced on 26 August 2010 (see above section 2.5). The complainant claims that the discount scheme was designed for Wizz Air as it is the only airline fulfilling the double criteria (i.e. more than 10 000 passengers and aircraft over 70 tonnes). He further clarifies that economies of scale for the airport derive only from the increase in passengers and not from the tonnage of aircraft.

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9 This is the balance between the amount of the payment summon of EUR [... ] (see point (56) above) and [... ] (see point (52) further above).
The complainant explains that the discount scheme would not have been introduced by a private investor as the discount price does not cover the costs of the services as Wizz Air pays only [ . . . ] % of the airport charges.

The complainant further submits that Wizz Air and the Airport have concluded a series of new agreements, which entered into force as from March 2011. He alleges that the new agreements take into account additional discounts and incentives in favour of Wizz air. At the current stage, the Romanian authorities have not informed the Commission whether a new scheme is already being applied.

3.1.3. Request for a recovery and a suspension injunction

The complainant claims that according to the 2005 Aviation Guidelines and the Commission decision practice, there are no doubts about the aid character of the measure concerned. It furthermore argues that it suffers a serious risk of substantial and irreparable damage, namely insolvency, from the disbursement of the alleged unlawful and incompatible aid in favour of Wizz Air. The complainant also claims that without the immediate recovery and suspension of the aid, it is in serious risk of insolvency in the near future, and therefore, there is urgency. Therefore, the complainant requests the Commission to recover immediately the aid already granted in order that Wizz Air would no longer benefit from the aid already received, and to suspend any further aid payments.

4. ASSESSMENT

The Commission has analysed whether the following measures may qualify as State aid granted by Timisoara airport in favour of Wizz Air and other airlines using the airport:

(a) Annual operating financing granted to the Timisoara airport;
(b) The airport charges contained in the 2007 AIP, 2008 AIP, and 2010 AIP
(c) Discounts and Rebates according to the 2007 AIP introduced on 7 June 2007;
(d) 2008 Agreements between Wizz Air and Timisoara airport;
(e) Discounts and Rebates according to the 2008 AIP introduced on 23 October 2008;
(f) Discounts and Rebates according to the 2010 AIP introduced on 26 August 2010; and
(g) Forbearance of invoiced airport charges to Wizz Air for the period October 2009 - February 2010.

4.1. Existence of Aid

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."

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

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

4.1.1. The aid nature of the public financing granted to Timisoara airport

State resources and imputability to the State

(69) Romanian authorities indicated that the operating losses, if any, of Timisoara airport are covered by the State on an annual basis. The subsidies are paid to the airport at the beginning of the year, on the basis of cost forecasts and any surplus is returned to the State at the end of the financial year.

(70) Accordingly, the Commission can conclude that the annual operating financing provided to Timisoara airport involve State resources in form of direct grants from the State budget and is thus imputable to the State.

Economic activity and notion of undertaking

(71) According to settled case law, the Commission must first establish whether Timisoara airport is an undertaking within the meaning of Article 107 (1) TFEU. It must first be noted that, according to settled case-law, 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\(^\text{10}\) and that any activity consisting in offering goods and services on a given market is an economic activity.\(^\text{11}\)

(72) In its "Leipzig-Halle airport" judgement the General Court confirmed that the operation of an airport is an economic activity, of which the construction of airport infrastructure is an inseparable part.\(^\text{12}\) Once an airport operator engages in economic activities, regardless


\(^{12}\) 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,
of its legal status or the way in which it is financed, it constitutes an undertaking within the meaning of Article 107 (1) TFEU, and the Treaty rules on State aid therefore apply.\(^\text{13}\)

(73) In this regard the Commission notes that the airport, which is the subject of the present decision, is operated on a commercial basis. The airport operator charges users rates for the use of the airport infrastructure rather than infrastructure being made available without charge to users in the common interest. It therefore is an undertaking in the sense of EU competition law.

\textit{Economic advantage}

(74) According to the case-law of the Court, an airport operator must bear the costs of the operation of the airport, including infrastructure costs.\(^\text{14}\) Thus, the annual financing granted to the Timisoara airport appears to constitute an advantage granted to this airport operator.

(75) The Romanian authorities argue that the public funding granted annually to Timisoara airport does not constitute State aid as in their opinion the market economy investor test is complied with. The Romanian authorities claim that the State acted rationally when granting annual subsidies to the airport, insofar as it has received dividend payments.

(76) On the basis of information at its disposal the Commission takes the preliminary view that Timisoara airport would not be profitable without the annual operating subsidies, as it is clear from the information transmitted by the Romanian authorities that the amount of annual operating subsidies exceeds the annual profit of the airport, as calculated in the table below.

\textbf{Table 11: The difference between the annual grants and profits of Timisoara airport in 2007 -2009}

<table>
<thead>
<tr>
<th>Year</th>
<th>Profit ((a))</th>
<th>Annual grants ((b))</th>
<th>Difference ((a) – (b))</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>[…]</td>
<td>[…]</td>
<td>- […]</td>
</tr>
<tr>
<td>2008</td>
<td>[…]</td>
<td>[…]</td>
<td>- […]</td>
</tr>
<tr>
<td>2009</td>
<td>[…]</td>
<td>[…]</td>
<td>- […]</td>
</tr>
</tbody>
</table>

(77) Accordingly, the dividend payments of the airport to the Ministry appear only partially to pay back the annual grants to the airport.

(78) Furthermore, the Court has clarified that it should be determined \textit{“whether in similar circumstances a private shareholder, having regard to the foreseeability of obtaining a return and leaving aside all social, regional-policy and sectoral considerations, would...”}, (hereafter: "Leipzig-Halle airport case"), [2011], not yet published in ECR, see also \cite{case_t-128_99_aeroport_de_paris_v_commission}, [2008] ECR II-3929, confirmed by the ECJ, Case C-82/01P, ECR 2002 Page I-9257, and Case T-196/04 Ryanair v Commission [2008], ECR II-3643, paragraph 88.


have subscribed the capital in question". The conduct of such private investor must at least be the conduct of a private holding company or a private group of undertakings pursuing a structural policy and guided by prospects of profitability in the longer term.

(79) In the Stardust Marine Judgment the Court held that, "in order to examine whether or not the State has adopted the conduct of a prudent investor operating in a market economy, it is necessary to place oneself in the context of the period during which the financial support measures were taken in order to assess the economic rationality of the State's conduct, and thus to refrain from any assessment based on a later situation".  

(80) On the basis of the information currently at its disposal, the Commission takes the preliminary view that the State's funding of the Timisoara airport intervention was not similar to one which would have pursued by a market investor.

(81) First, no business plan or profitability estimations have been provided to the Commission by the Romanian authorities, which would show that when deciding to cover annual losses, the State was in fact guided by profitability projections.

(82) Second, the shareholders of Timisoara airport are currently the Ministry of Transport of Romania (80%) and Fondul Proprietatea (20%). There is currently no indication that the minority shareholder, Fondul Proprietatea, concomitantly provided financing to the airport under the same conditions. Moreover, a private shareholder would not have provided resources to its company unless this would be reflected in an increase in its share of the equity compared to the share of other shareholders.

(83) Third, according to publicly available information, in 2009 the Transport Ministry issued an Ordinance by which it forewent dividends owed by Timisoara airport for the 2008 financial year, amounting to RON 1 898 008. This amount would have had to be used by the airport itself for certain upgrading works of the runway.

(84) Consequently, the Commission cannot at this stage conclude that the corresponding dividends have been consistently paid to the shareholders.

(85) Based on the considerations above, the Commission takes the preliminary view that public funding of Timisoara airport would not have been granted by a private investor. It therefore takes the preliminary view that the annual subsidies received by Timisoara airport provide the latter with an economic advantage.

Selectivity

(86) 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". In the case at issue, the Commission notes that the advantages in question were granted to Timisoara airport only. As the public funding was directed at a single undertaking, it is a selective within the meaning of Article 107 (1) TFEU.

Distortion of competition and affectation of trade

(87) 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 law, for a measure to distort competition it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition.

(88) As previously explained, the operation of an airport is an economic activity. Competition takes place between airport operators. Timisoara airport serves currently approximately 1.1 million passengers per year. Thus, Timisoara airport is a “large regional airport” (so-called “category C” airport), for the purposes of the Community guidelines on financing of airports and start-up aid to airlines departing from regional airports (hereinafter “2005 Airport Guidelines”).

(89) However, regional airports, even in category C, “large regional airports”, compete to attract carriers. As mentioned in paragraph 40 of the 2005 Guidelines, it is not possible to exclude airports in category C from the scope of application of Article 107 (1) TFEU. The traffic at Timisoara airport does not allow to consider that trade between Member States is not liable to be affected.

(90) On the basis of what precedes the economic advantage which Timisoara receives strengthen its position vis-à-vis its competitors on the European market of providers of airport services. Therefore, the public funding under examination distorts or threatens to distort competition and affects trade between the Member States.

Conclusion

(91) For the reasons set out above the Commission takes the preliminary view that the operating financing provided to Timisoara airport amounts to State aid within the meaning of Article 107 (1) TFEU. As the direct grants were not subject to Commission's approval, Romania has not respected the prohibition of Article 108 (3) TFEU.

4.1.2. The base rate of the 2007, 2008 and 2010

(92) As explained above in section 4.1.1, Timisoara airport has been loss-making in the years 2007 to 2009. The Commission has analysed whether this is due to the fact that the airport operator has set the base rate in the applicable airport charges regulation too low.

(93) The Commission takes the preliminary view that the 2007, 2008 and 2010 AIP are characterized by an important number of different discount schemes. As a result, only very few users appear to pay the base rate of the 2007, 2008 and 2010 AIP.

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19 See above, paragraph (70) and (71).
Given the size of the discounts and the size of the losses of the airport, the Commission takes the preliminary view that if all air carriers were to pay the base rate, the airport would probably be profitable. Therefore, it takes the preliminary view that there is no aid involved in the base rate of the 2007, 2008 and 2010 AIP.

4.1.3. Aid nature of the discounts and rebates according to the 2007 AIP introduced on 7 June 2007

State resources and imputability to the State

The concept of State aid applies to any advantage granted directly or indirectly, financed out of State resources, granted by the State itself or by any intermediary body acting by virtue of powers conferred on it. 21

In the case at hand, at all material times the State exercised direct or indirect control on the resources under consideration. As mentioned above, at the time the discounts and rebates provided for in the 2007 AIP at Timisoara airport were introduced, the airport was 80% owned directly by the Ministry of Transport of Romania and, for this reason it is clearly a public undertaking according to Article 2 (b) of Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as financial transparency within certain undertakings. 22

Thus, the Commission considers that the discounts and rebates according to the 2007 AIP amount to a loss of State resources.

However, the Court has also ruled that, even if the State is in a position to control a public undertaking and to exercise a dominant influence over its operations, actual exercise of that control in a particular case cannot be automatically presumed. A public undertaking may act with more or less independence, according to the degree of autonomy left to it by the State. Therefore, the mere fact that a public undertaking is under State control is not sufficient for measures taken by that undertaking, such as the discounts and rebates according to the 2007 AIP in question, to be considered imputable to the State. It is also necessary to examine whether the public authorities must be regarded as having been involved, in one way or another, in the adoption of this measure. On that point, the Court indicated that the imputability to the State of a measure taken by a public undertaking might be inferred from a set of indicators arising from the circumstances of the case and the context in which that measure was taken. 23

Such indicators can be the integration of the undertaking into the structures of the public administration, the nature of its activities and the exercise of the latter on the market in normal conditions of competition with private operators, the legal status of the undertaking (in the sense of its being subject to public law or ordinary company law), the intensity of the supervision exercised by the public authorities over the management of

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23 Stardust Marine Judgment, paragraph 52 and 57.
the undertaking, or any other indicator showing, in the particular case, an involvement by the public authorities in the adoption of a measure or the unlikelihood of their not being involved, having regard also to the compass of the measure, its content or the conditions which it contains.24.

(100) The Romanian authorities argue that Timisoara airport operates as a market economy investor and that the State's influence is strictly limited to its role as the shareholder of the company according to company's memorandum of association and Act No 31/1990 on companies. Airport's pricing policy is decided by the Board of Directors and the executive management of the airport in accordance with the company's memorandum of association.

(101) The Commission first notes, that airport activities play a fundamental role in several policies: transport policy, regional or national economic development policy or town and country planning policy. The public authorities are in general not "absent" when the manager of an airport takes decisions that determines its long term development and implementation of new strategies. Timisoara airport due to the nature of its activities plays a fundamental role in regional and even national development policy.

(102) Second, as regards the supervision of the activities of Timisoara airport by the State, the Commission observes that according to Article 14 of the airport's statute, approved by the Government decision 521/1998, as subsequently amended, the General Shareholders assembly is made up by representatives of the shareholders, the majority shareholder being the Ministry of Transport (80 %), and is competent to decide on the activities and the economic policy pursued by the airport.

(103) Third, according to Article 20 of the airport's statute, the Management Board is made up by seven Members, out of which two are representatives of the Ministry of Transport and one is representative of Ministry of Finance. Furthermore, the Commission observes that the Management Board is chosen by the General Shareholders Assembly and appointed by Order of the Ministry of Transport.

(104) Based on these elements it appears that the State is capable to control the activities of Timisoara airport and it is unlikely that it was not involved in important decision concerning the economic exploitation of the airport. Therefore, at this stage the Commission takes the preliminary view that the decision concerning the implementation of the 2007 AIP is imputable to the public authorities.

Specific economic advantage

(105) If a discount scheme is designed in a way as to give preferential treatment to a specific undertaking by foregoing State resources, then Article 107 (1) TFEU may apply.

(106) A private investor may grant discounts for commercial reasons, for instance if they are of limited duration or do not discriminate between users of the airport infrastructure, and if they do not jeopardize the economic viability of the airport, but rather improve it. In any

24 Stardust Marine Judgment, paragraph 55 and 56.
case rebates and discounts should reflect economy of scale or other costs saving for the airport operator or be based on some economic rationale so that it is economically convenient for the airport operator to grant them.25

(107) On the other hand discounts that lead to the results that the airport charges paid by the airlines are lower than the cost of the underlying operation provided by the airport to the airlines would make no sense from an economic point of view as they would only have the effects of increasing the losses of the airport operator. Therefore, a private airport operator would not grant them under normal market conditions. It follows that such discounts would provide an advantage to the airlines which they would not obtain under normal market conditions.

(108) The 2007 AIP contains discounts on landing charges depending on the number of landings.26 Furthermore, it provides for reductions of 50 % in airport charges for new operators for a period of 6 months and a discount of 50 % in airport charges for new opened destinations for a period of 6 months. Finally, it contains a discount for transit passengers.

(109) Therefore, in the present case the Commission has to establish whether the scheme of discounts according to the 2007 AIP is defined in a way that it lacks any economic justification, i.e. if also a private airport operator operating under normal market condition would not have enacted such a system of rebates and discounts.

(110) The airport charges including schemes of discounts have to be clear and there has to be a direct link between the level of the charges and the services rendered to the users.

(111) The Romanian authorities claim, that the airport is profitable, and therefore the scheme of charges and discount is not designed in a way that it provides a selective economic advantage to some users of the airport.

(112) The Commission first observes that the 2007 AIP differentiates between the passenger service charge for international flights amounting to 8 EUR per passenger and domestic flights amounting to 3 EUR per passenger. Discounts that distinguish between domestic and other flights within the EU would appear to be in conflict with the rules of the internal market. If they contain State aid elements that aid may therefore be incompatible simply for this reason.27

(113) Second, the discount on the landing charges provides for reductions up to 85 % for more than 4 001 landings per year. Third, new operators or operators opening new destinations from the airport receive further 50 % discount on airport charges. Fourth, airlines pay less for transit passengers than for normal passengers.

26 See section 2.2 further above.
At this stage, the Commission doubts whether all users of the airport infrastructure have the same open and non-discriminatory access to it. It appears that some of the users might pay higher charges for the same level of services as other users. The Commission observes further that it is no clear whether and to what extend the airport charges rebates and discounts have been fixed by a direct reference to operating costs of the airport infrastructure and services provided and on the basis of the information available cannot assess if a market economy investor would have offered them.

Therefore, at the current stage the Commission cannot exclude that some users of the airport have received a selective economic advantage granted through the rebates and discounts to the 2007 AIP.

The Commission invites the Romanian authorities to provide further details on the cost-benefit-analysis of the rebates and discounts to the 2007 AIP carried out at the time, when the decision was taken to introduce the scheme of airport charges and discounts at Timisoara airport. The Commission invites the Romanian authorities to provide details on the different discounts and rebates applicable to different users of the airport and their economic rationale. The Commission invites also the users of the airport infrastructure to provide further details concerning their access to the infrastructure at Timisoara airport and possible discrimination.

Distortion of competition and affectation of trade

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

The reduction of airport charges reduces the normal operating costs of the airlines benefitting from such reduction. Therefore it is capable of strengthening their position on the market. 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 1993. It follows that the discounts and rebates provided for by the 2007 AIP affect trade between Member States and distort or threaten to distort competition in the air transport sector.

Conclusion

Under these conditions the Commission takes the preliminary view that the discounts and rebates provided for by the 2007 AIP amount to State aid within the meaning of Article 107 (1) TFEU. As the discounts and rebates provided for under 2007 AIP were not subject to Commission's approval, Romania has not respected the prohibition of Article 108 (3) TFEU.

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4.1.4. Aid nature of the 2008 Agreements between Timisoara airport and Wizz Air

State resources and imputability to the State

(120) As clarified further above in section 4.1.2, when the 2008 Agreements between Timisoara airport and Wizz Air were concluded, the Airport was 80 % directly owned by the Ministry of Transport of Romania. Thus, the Commission considers that the 2008 Agreements with Wizz Air insofar as they had an impact on the resources of the Airport they were financed by State resources.

(121) As regards the imputability of the 2008 Agreements to the Romanian authorities, the same reasoning as for the discounts and rebates according to the 2007 AIP applies. At this stage the Commission cannot exclude that the decision concerning the conclusion of the 2008 Agreements is imputable to the public authorities.

(122) The Commission invites the Romanian government and all interested parties to bring to its attention any other element that might be relevant for establishing the imputability or otherwise of the 2008 Agreements to the Romanian authorities.

Specific economic advantage

(123) 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". In the case at issue, the Commission notes that the 2008 Agreements concern Wizz Air only. Thus it is selective within the meaning of Article 107 (1) TFEU.

(124) To constitute State aid, a measure must confer on recipients an advantage. In its "Leipzig-Halle airport" judgement the General Court confirmed that one possible criterion to exclude the existence of State aid to the users of the infrastructure is the equal and non-discriminatory access to it. 30 Furthermore, according to the Charleroi Judgement 31 when assessing the measure in question the Commission has to take into account all the relevant features of the measure and their context.

(125) In the present case, the 2008 Agreements with Wizz Air contains provisions, such as Marketing support, or the agreement of the Airport to make available slots at Wizz Air’s request, or to extend the passenger terminal to handle up to 3 million passengers per year, which would seem not to be available to other users of the infrastructure to the same extent. Thus, at the current stage the Commission takes the preliminary view that the 2008 Agreements provides for advantages connected to the use of the airport infrastructure that are not available to all users at equal and non-discriminatory conditions.

31 Case T-196/04 Ryanair v Commission ("Charleroi Judgement"), [2008], paragraph 59.
The application of the Market economy investor principle

(126) In assessing whether the 2008 Agreements were granted under normal market conditions, the Commission has to examine whether in similar circumstances an investor operating under normal conditions of the market economy would have entered into same or similar commercial arrangements as Timisoara airport.

(127) According to the principles established in the case law the Commission has to compare the conduct of Timisoara airport to a market economy operator guided by prospects of profitability. The Romanian authorities claim that the airport has acted rationally, but they did not provide the Commission with an underlining business plan or profitability projections of the Agreements in question.

(128) The Court declared in the Stardust Marine Judgment that, [...] in order to examine whether or not the State has adopted the conduct of a prudent investor operating in a market economy, it is necessary to place oneself in the context of the period during which the financial support measures were taken in order to assess the economic rationality of the State's conduct, and thus to refrain from any assessment based on a later situation.

(129) In accordance with settled case-law, it is necessary to assess whether, in similar circumstances, a private airport operator would have entered into same or similar commercial arrangements as Timisoara airport, having regard in particular to the information available and foreseeable developments at the date of those contributions.

(130) The assessment should leave aside any positive repercussions on the economy of the region in which the airport is located, since the Commission assesses whether the given measure constitutes aid by considering whether "in similar circumstances a private shareholder, having regard to the foreseeability of obtaining a return and leaving aside all social, regional-policy and sectoral considerations, would have subscribed the capital in question"

(131) In order to be able to apply the private investor test the Commission has to place itself at the time the Agreement was signed. Timisoara airport signed the 2008 Agreements with Wizz Air on 25 June 2008, 30 July 2008 and 1 August 2008. The Commission must also base its assessment on the information and assumptions which were at the disposal of the operator when the 2008 Agreements were signed.

(132) The Commission has no indication that the Romanian authorities have projected the estimated revenues and costs of the airport over the duration of the 2008 Agreements on the basis of the airport's business plan. At the current stage, the Commission has also no

36 See 2005 Guidelines, paragraph 46.
information how the relevant revenues and cost positions were attributed to the 2008 Agreements.

(133) Furthermore, the Romanian authorities argue that the airport is profitable, and thus there is no advantage granted to Wizz Air through the 2008 Agreements. However, this argument is based on an ex-post consideration on which the Commission cannot rely to conclude that the airport has acted like a private operator in normal market conditions. Moreover, it does not demonstrate that the airport could expect that the 2008 Agreements would have a positive impact on its results, since nothing excludes that those results would have been even better in the absence of those agreements. Finally, as demonstrated above in section 4.1.1, the Commission takes the preliminary view that the airport was only profitable thanks to operating aid granted by the Romanian authorities.

(134) In the view of the above, the Commission takes the preliminary view that the 2008 Agreements with Wizz Air were not concluded under normal market conditions. Therefore, it takes the preliminary view that Wizz Air has received a selective economic advantage.

(135) The economic effect of the 2008 agreement was that Wizz Air, in addition to receiving the rebates under the 2007 AIP described in section 4.1.3 above respectively the rebates under the 2008 AIP described in section 4.1.5 below, did de facto not pay any airport charges at all, but received from the airport payments for marketing services.

(136) At this stage, the information at the disposal of the Commission does not allow the Commission to evaluate the exact amounts that were paid by the airport to Wizz Air as a result of the agreement, nor whether the services rendered had any economic value, and if so, if that economic value corresponds to the amounts paid by the airport.

(137) The Commission takes, however, the preliminary view that Wizz Air, at the minimum, received an advantage that corresponds to the total amount the airport charges it should have paid under the 2007 and 2008 AIP. This amount appears to be at least EUR [ . . . ] for the period October 2009 to February 2010. The Commission requests the Romanian authorities to put at its disposal all information that is needed to calculate the total amount of airport charges that should have been paid by Wizz Air since it started operations at Timisoara airport.

Distortion of competition and affectation of trade

(138) The same reasoning as for the discounts and rebates according to the 2007 AIP applies with the difference that the measures in question are exclusively directed at Wizz Air.

Conclusion

(139) Under these conditions the Commission takes the preliminary view that the 2008 Agreements amount to State aid within the meaning of Article 107 (1) TFEU.
4.1.5. Aid nature of the discounts and rebates according to the 2008 AIP introduced on 23 October 2008

State resources and imputability to the State

(140) The same reasoning as for the discounts and rebates according to the 2007 AIP applies.

Specific economic advantage

(141) Similarly as the 2007 AIP, also the 2008 AIP contains discounts on landing charges depending on the number of landings, and rebates for transit passengers. Furthermore, it provides for reductions of 50% in airport charges for new operators for a period of 12 months and a discount of 50% in airport charges for new opened destinations for a period of 6 months. In addition, the 2008 AIP introduced for the first time also a partial reimbursement of airport charges depending on the number of embarked passengers per year.

(142) The Commission first observes that the 2008 AIP differentiates between the passenger service charge for international flights amounting to 8 EUR per passenger and domestic flights amounting to 5 EUR per passenger. Discounts that distinguish between domestic and other flights within the EU would appear to be in conflict with the rules of the internal market. If they contain State aid elements that aid may therefore be incompatible simply for this reason.

(143) Second, the discount on the landing charges provides for reductions up to 70% for more than 3,501 landings per year. Third, the 2008 AIP also provides for a partial reimbursement of the passenger service charge. Furthermore, new operators or operators opening new destinations from the airport receive further 50% discount on airport charges. Finally, it gives a rebate to transit passengers.

(144) In view of the above, it appears that some of the users might pay higher charges for the same level of services as other users. The Commission observes further that it is not clear whether and to what extend the discounts and rebates on the airport charges have been fixed by a direct reference to operating costs of the airport infrastructure and services provided.

(145) Therefore, at the current stage the Commission cannot exclude that some users of the airport have received a selective economic advantage granted through the 2008 AIP including the scheme of discounts.

(146) The Commission invites the Romanian authorities to provide further details on the cost-benefit-analysis of the 2008 AIP carried out at the time, when the decision was taken to introduce the scheme of airport charges and discounts at Timisoara airport.

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36 See section 2.4 further above.
37 See section 2.4 further above.
38 See Case C-266/96 Corsica Ferries France SA and others, cited further above.
Commission invites the Romanian authorities to provide details on the different discounts and rebates applicable to different users of the airport. The Commission invites also the users of the airport infrastructure to provide further details concerning their access to the infrastructure at Timisoara airport.

Distortion of competition and affectation of trade

(147) The same reasoning as for the discounts and rebates according to the 2007 AIP applies.

Conclusion

(148) For the reasons set out above the Commission cannot exclude that the 2008 AIP involves State aid within the meaning of Article 107 (1) TFEU.

4.1.6. Aid nature of the discounts and rebates according to the 2010 AIP introduced on 26 August 2010

State resources and imputability to the State

(149) The same reasoning as for the discounts and rebates according to the 2007 AIP applies.

Specific economic advantage

(150) Similarly as the 2008 AIP, also the 2010 AIP contains discounts on landing charges depending on the number of landings and a partial reimbursement of airport charges depending on the number of embarked passenger per year.39 Furthermore, it provides for reductions of 50 % in airport charges for new operators for a period of 12 months and a discount of 50 % in airport charges for new opened destinations for a period of 6 months. In addition, the 2010 AIP introduced for the first time also discounts for aircraft over 70 tonnes MTOW depending on the number of the embarked passengers per month.40 According to the information at the disposal of the Commission, only Wizz Air uses aircraft in Timisoara that meet this condition.

(151) The Romanian authorities argue that the fact that the airport has a major difference between the passenger processing capacity (890 passengers/hour) and the passenger receiving capacity (10 003 passengers/hour) has lead the Airport to a policy to attract high-capacity aircraft, which can absorb the passengers, processed through the two terminals.

(152) According to the Romanian authorities the reason for the new pricing policy introduced in 2010 was to take into account that low-capacity aircraft and the lack of parking place for aircrafts already overloaded the Airport. In order to improve efficiency of the operating capacities (26 mixed operations, landings and take-offs/hour) the only option was to provide incentives for airlines with high-capacity aircraft to expand their operations.

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39 See section 2.4 further above.
40 See section 2.5.1 further above.
Also with regard to 2010 AIP, the Commission has to establish whether the scheme of discounts is defined in a way that it gives rise to discrimination between the users of the airport.

The Romanian authorities state that in 2010 three airlines, namely Austrian Airlines, Lufthansa and Carpatair, have profited of discounts on the landings fees. However, Wizz Air has profited of reductions of all fees, namely landing fee, lighting, parking, internal and external embarkment, security and transit/transfer fees, since June 2010.

The Commission first observes that the 2010 AIP differentiates between the passenger service charge for international flights amounting to 8 EUR per passenger and domestic flights amounting to 5 EUR per passenger. Discounts that distinguish between domestic and other flights within the EU would appear to be in conflict with the rules of the internal market. If they contain State aid elements that aid may therefore be incompatible simply for this reason.41

Second, the discount on the landing charges provides for reductions up to 70 % for more than 3 501 landings per year, and for transit passengers.

Third, the 2010 AIP also provides for a partial reimbursement of the passenger service charge. Furthermore, new operators or operators opening new destinations from the airport receive further 50 % discount on airport charges.

Moreover, due to the introduction of an additional discount category for airlines using aircraft over 70t MTOW Wizz Air has profited from discounts on all airport charges.

In view of the above, it appears that some of the users might pay higher charges for the same level of services as other users.

The Romanian authorities argue further that the introduction of the 2010 AIP increase further the profitability of the Airport. The operation of the Airport is in all areas (maintenance and administration of the infrastructure, airport services, non-aviation activities) self-financing. The Romanian authorities explain that in 2010 in comparison to 2009 the turnover of the Airport has increased by 7.2 %. In the same period there was also an increase of 4.1 % in the number of aircraft movements, an increase of 17 % in the number of passengers processed, and an increase of 33 % in the quantity of goods. Therefore, the Romanian authorities are of the opinion that they have acted as a market economy investor.

The Commission observes that it is not clear whether and to what extent the airport charges have been fixed by a direct reference to operating costs of the airport infrastructure and services provided.

Therefore, at the current stage the Commission cannot exclude that some users of the airport have received a selective economic advantage granted through the 2010 AIP.

See Case C-266/96 Corsica Ferries France SA and others, cited further above.
The Commission also observes that the 2010 AIP provides very important discounts for airlines using aircraft with a capacity of more than 70 MTOW. This discount consists in a reduction of between 72% und 85% of all airport charges.

The Commission furthermore observes that even if the Romanian authorities wanted to attract larger aircraft, there is at this stage no credible indication that the use of larger aircraft leads to a reduction of more than 70% in the costs of the airport when handling large aircraft. It also observes that the discount is granted in addition to the other rebates already foreseen in the 2010 AIP. As a practical consequence, Wizz Air pays a negligible amount of airport charges, which *prima facie* are not sufficient to cover the costs generated for the airport.

The Commission invites the Romanian authorities to provide further details on the cost-benefit-analysis of the 2010 AIP carried out at the time, when the decision was taken to introduce the scheme of airport charges and discounts at Timisoara airport. The Commission invites the Romanian authorities to provide details on the different discounts and rebates applicable to different users of the airport. The Commission invites also the users of the airport infrastructure to provide further details concerning their access to the infrastructure at Timisoara airport.

*Distortion of competition and affectation of trade*

The same reasoning as for the discounts and rebates according to the 2007 AIP applies.

**Conclusion**

For the reasons set out above the Commission cannot exclude that the 2010 AIP involves State aid within the meaning of Article 107 (1) TFEU.

With regards to the new rebate for aircraft over 70 MTOW, which is added to the other rebates, the Commission takes the preliminary view that it constitutes State aid, as it is *prima facie* not sufficient to cover the costs of the airport.

**4.1.7. State aid to Wizz Air through forbearance of airport charges**

*State resources and imputability to the State*

The same reasoning as for the discounts and rebates according to the 2007 AIP applies.

*Specific economic advantage*

The Commission notes that the forbearance of airport charges concerns Wizz Air only. Thus it is selective within the meaning of Article 107 (1) TFEU.

Wizz Air has not yet paid the airport charges (i.e. fees due under the Operation agreement and the GHA) for the period of time from October 2009 to February 2010 amounting to
EUR [. . .]∗. The Timisoara airport did not collect its airport charges from Wizz Air, when these fell due; these outstanding liabilities have then been taken into account in its financial statements as receivables against Wizz Air, but no court action has been undertaken by the airport.

(172) At the current stage the Commission has no information at its disposal whether interest and penalty payments have been charged for the non-payment of airport charges of Wizz Air.

(173) The airport charges are operating cost of running an airline. Thus, at the current stage the Commission cannot exclude that the forbearance of payment of airport charges provides an economic advantage to Wizz Air. The Commission invites the Romanian authorities to provide further information about the payment of airport charges by Wizz air and to clarify also, whether late payment interest and penalties have been charged to Wizz Air and which actions have been undertaken in order to enforce the payment of the airport charges by Wizz Air. The information supplied by the Romanian authorities should enable the Commission to assess, if the behaviour of the airport in respect to the payment of those charges can be considered as that of a private creditor that tries to recover the sums that are due to him by one of its commercial partner or a means to grant an advantage to Wizz Air that this company would not have received under normal market conditions.

Distortion of competition and affectation of trade

(174) The same reasoning as for discounts and rebates according to the 2007 AIP applies.

Conclusion

(175) For the reasons set out above the Commission cannot exclude that the forbearance of the payment of airport charges involves State aid within the meaning of Article 107 (1) TFEU.

4.2. Compatibility of aid

4.2.1. The annual financing granted to Timisoara airport

(176) As regards public funding granted to Timisoara airport, the Commission notes that, since the Romanian authorities do not consider it to amount to State aid, no arguments have been brought forward as to its compatibility with the internal market.

(177) At this stage the Commission takes a preliminary view that annual subsidies granted to Timisoara airport represent operating aid, reducing the airport operator's current

∗ approximately EUR 2.6 million
expenditure. According to the case law of the Court, such operating aid is in principle incompatible with the internal market.\textsuperscript{42}

4.2.2. Discrimination between national and international (as far as EU destinations are concerned) destination

(178) Discounts that distinguish between domestic and other flights within the EU would appear to be in conflict with the rules of the internal market. At the current stage the Commission cannot exclude that they contain State aid elements and that this aid may therefore be incompatible with the internal market simply for this reason.\textsuperscript{43}

4.2.3. Discounts and rebates according to the 2007, 2008 and 2010 AIP and 2008 Agreements

(179) In relation to the financing by public authorities of discounts and rebates according to the 2007, 2008 and 2010 AIP and 2008 Agreements the Commission must have regard to the Community guidelines on financing of airports and start-up aid to airlines departing from regional airports\textsuperscript{44} (hereinafter: the “2005 Guidelines”).

(180) The Romanian authorities explain that the discount schemes are not incentive schemes or start-up aid within the meaning of the 2005 Guidelines. They argue that there are no specific conditions aimed at certain airlines. All airlines operating at the Airport have contractual relationships with the Airport, which are subject to the fees and discounts published in AIP Romania.

(181) The 2005 Guidelines set out a number of conditions to be complied with in order for start-up aid to be found compatible with the internal market under Article 107 (3) (c) TFEU. The Commission invites the Romanian authorities to submit all the information necessary to enable it to assess whether the measures in question can be considered as compatible with the 2005 Guidelines. According to point 79 of the Guidelines:

(182) (a) "the aid is paid to air carriers with a valid operating licence issued by a Member State pursuant to Council Regulation (EEC) No 2407/92\textsuperscript{45} on licensing of air carriers".

(183) The Commission invites the Romanian authorities to clarify, whether the measures at stake are paid to carriers with a valid operating licence pursuant to Regulation 1008/2008.

(184) (b) "... the aid is paid for routes linking a regional airport in category C or D to another EU airport."


\textsuperscript{43} See Case C-266/96 Corsica Ferries France SA and others [1998] ECR I-03949.

\textsuperscript{44} OJ C 312, 9 December 2005, page 1.

Timisoara Airport was until 2010 a category D airport (“small regional airport”), with an annual passenger volume of less than 1 million, for the purposes of the 2005 Guidelines. As from 2010 is Timisoara a category C airport (“large regional airport), with an annual passenger volume between 1 and 5 million.

(c) "... aid will apply only to the opening of new routes or new schedules, (as defined in the 2005 Guidelines), which will lead to an increase in the net volume of passengers. This aid must not encourage traffic simply to be transferred from one airline or company to another. In particular, it must not lead to a relocation of traffic which is unjustified with regard to the frequency and viability of existing services leaving from another airport in the same city, the same conurbation or the same airport system, which serve the same or a similar destination under the same criteria".

At the current stage, the Commission has no information how the new routes under 2007, 2008 and 2010 AIP and 2008 Agreements were defined. On the basis of currently very limited information, it appears that all new routes of an air carrier operating from the Airport are eligible for the discounts for new destinations independently whether other airlines operate such destinations from the airport.

Furthermore, some of the discounts under 2007, 2008 and 2010 AIP and 2008 Agreements are not aimed at encouraging the opening of new routes.

Therefore, the Commission has doubts whether this criterion has been complied with. The Commission invites the Romanian authorities to provide further information how the new destinations eligible for discounts have been defined.

(d) "... the route receiving the aid must ultimately prove profitable, i.e. it must at least cover its costs, without public funding. For this reason start-up aid must be digressive and of limited duration.

The discounts for new destinations and new carriers are limited in time (6 or respectively 12 months), however are not digressive. The other discounts on landing and airport charges are not limited in time and are not digressive.

At the current stage, the Commission has no information whether the airlines applying for the discounts must demonstrate, on the basis of a business plan, the viability of the route during a considerable period of time after the contribution has ended.

Therefore, the Commission has doubts, whether this conditions has been complied with.

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

The discounts under 2007, 2008 and 2010 AIP and 2008 Agreements are granted on landing or airport charges, thus the public funding is not limited to the additional start-up costs incurred in launching the new route or frequency.
At the current stage the Commission cannot exclude that discounts and rebates are granted for regular operating costs.

In view of the above, the Commission has doubts whether this condition has been complied with.

(f) "...digressive aid may be granted for a maximum period of three years. The amount of aid in any one year may not exceed 50% of total eligible costs for that year and total aid may not exceed an average of 30% of eligible costs. For routes from disadvantaged regions, i.e. the outermost regions, the regions referred to in Article 87(3)(a) TEC [now 107 (3) (a) TFEU], and sparsely populated regions, digressive aid may be granted for a maximum period of five years. The amount of aid in any one year may not exceed 50% of total eligible costs for that year and total aid may not exceed an average of 40% of eligible costs. If the aid is granted for five years, it may be maintained at 50% of total eligible costs for the initial three years".

Only the discounts for new destinations and discounts for new operators are limited in time, namely to 6 months and 12 months. All other discounts and measures under 2007, 2008 and 2010 AIP and 2008 Agreements are not limited in time.

At least for some carriers, the discounts granted under 2007, 2008 and 2010 AIP and 2008 Agreements appear to exceed the aid intensity of 50 % of total eligible costs. Only discounts for new routes or new air carriers are limited to 50 %. Moreover, as stated further above it appears that the discounts are granted on regular operating cost, thus, they might exceed the amount of the eligible costs.

The Commission as therefore doubts, whether this condition is complied with.

(f), 3rd paragraph "In any event, the period during which start-up aid is granted to an airline must be substantially less than the period during which the airline undertakes to operate from the airport in question". Furthermore, the aid should be stopped once the objectives in terms of passengers have been reached or when the line breaks even, even if this is achieved before the end of the period initially foreseen".

At the current stage, the Commission has doubts whether the period during which the aid is granted to the airline under 2007, 2008 and 2010 AIP and 2008 Agreements is substantially shorter than the period during which the airline undertakes to operate from the airport in question.

(g) "...aid payments must be linked to the net development of the number of passengers transported".

The aid is paid in the form of a reduction on landing charges and on passenger charges. While landing charges present an indirect link with the number of passengers (via the capacity of the aircraft), the passenger fees, which are proportionally more important, are directly related to the number of passengers. Also the marketing contribution is linked to

[46] See Table 5, Table 8, and Table 10 further above.
the number of passengers transported. Hence, there is a clear link between the number of passengers carried leading to the development of the route and the amount of aid paid.

(206) (h) "... any public body which plans to grant start-up aid to an airline for a new route, whether or not via an airport, must make its plans public in good time and with adequate publicity to enable all interested airlines to offer their services. The notification must in particular include the description of the route as well as the objective criteria in terms of the amount and the duration of the aid".

(207) The discounts under 2007, 2008 and 2010 AIP are public in the AIP Romania in order to allow all interested airlines to apply.

(208) However, the 2008 Agreements have not been published. Therefore, the Commission has doubts whether this criterion has been respected with regard to the 2008 Agreements.

(209) (i) "... when submitting its application, any airline which proposes a service to a public body offering to grant start-up aid must provide a business plan showing, over a substantial period, the viability of the route after the aid has expired. The public body should also carry out an analysis of the impact of the new route on competing routes prior to granting start-up aid."

(210) The Commission has doubts whether a business plan is submitted to Timisoara airport while applying for discounts under 2007, 2008 and 2010 AIP and 2008 Agreements.

(211) Furthermore, the Commission has doubts whether the Airport has examined which impact the new routes or new operators may have on the competitive routes.

(212) (j) "States must ensure that the list of routes receiving aid is published annually for each airport, in each instance indicating the source of public funding, the recipient company, the amount of aid paid and the number of passengers concerned".

(213) At the current stage, the Commission has no information whether Timisoara airport publishes a report listing all supported routes and indicating the origin of the government contribution, the beneficiary, the amount of the aid and the number of passengers for each route.

(214) Therefore, the Commission has doubts whether this conditions is complied with.

(215) (k) "...where applicable, appeal procedures must be provided for at Member State level to ensure that there is no discrimination in the granting of aid".

(216) At the current stage, the Commission has doubts whether the Romanian authorities have provided for appeal procedures to deal with possible complaints with regard to the 2007, 2008 and 2010 AIP or the 2008 Agreements. Therefore, the Commission has doubts whether this condition is complied with.

(217) (l) "... penalty mechanisms must be implemented in the event that a carrier fails to keep to the undertakings that it gave in relation to an airport when the aid was paid."
At the current stage, the Commission has no information whether Timisoara airport has implemented penalty mechanisms. Therefore, the Commission has doubts whether this condition is complied with.

In addition, Point 80 of the 2005 Guidelines provides that "start-up aid cannot be combined with other types of aid granted for the operation of a route, such as aid of a social nature granted to certain categories of passengers and compensation for discharging public services. In addition, such aid cannot be granted when access to a route has been reserved for a single carrier under Article 4 of Regulation (EEC) No 2408/92, and in particular paragraph 1(d) of that Article. Also, in accordance with the rules of proportionality, such aid cannot be combined with other aid granted to cover the same costs, including aid paid in another State."

At the current stage the Commission has no information whether the aid can be combined with other types of aid. Therefore, the Commission has doubts, whether this condition has been complied with.

In the view of the above, the Commission considers at this stage that not all conditions for compatibility as set out in the 2005 Guidelines have been satisfied in the present case.

Accordingly, the Commission has doubts whether the funding granted under 2007, 2008 and 2010 AIP and 2008 Agreements can be considered compatible with the internal market pursuant to Article 107 (3) (c) TFEU.

The measures under 2007, 2008 and 2010 AIP and 2008 Agreements do not appear to quantify for any other exception provided for by the Treaty. Therefore, at the current stage the Commission cannot exclude that the 2007, 2008 and 2010 AIP and 2008 Agreements involve illegal and incompatible State aid.

4.2.4. **Forbearance of airport charges invoiced to Wizz Air by Timisoara airport**

The measure does not appear to qualify for any of the exceptions provided for in the Treaty. Therefore, the Commission has serious doubts about its compatibility with the internal market.

5. **INVITATION TO SUBMIT COMMENTS IN VIEW OF A POSSIBLE SUSPENSION AND RECOVERY INJUNCTION**

Article 11 (1) and (2) of Regulation (EC) No. 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (hereafter: the procedural Regulation)\(^\text{47}\) provide that the Commission may, after giving the Member State concerned the opportunity to submit its comments, adopt a decision requiring the Member State to suspend any unlawful aid until the Commission has taken a decision on the compatibility of the aid with the common market, and to recover any unlawful aid it has already granted.

\(^{47}\) OJ L 83, 27.3.1999, p. 1
5.1. Invitation to submit comments in view of a possible suspension injunction

The Commission herewith invites Romania to submit its comments pursuant to Article 11 (1) of the Procedural Regulation in view of a possible Commission decision requiring Romania to suspend the rule in the AIP 2010 which grants additional rebates of 72% to 85% on all airport charges for aircraft above 70 MTOW. This additional rebate, which seems to benefit exclusively Wizz Air, is prima facie not sufficient to cover the costs of the airport, and granted in a de facto discriminatory manner.

5.2. Invitation to submit comments in view of a possible recovery injunction

The Commission herewith invites Romania to submit its comments pursuant to Article 11 (1) of the Procedural Regulation in view of a possible Commission decision requiring Romania to recover from Wizz Air the entire outstanding airport charges from the point in time when Wizz Air started operating from Timisoara until the expiry of the 2008 agreement, as well as all aid granted under the rule in the AIP 2010 which grants additional rebates of 72% to 85% on all airport charges for aircraft above 70 MTOW.

Article 11 (2) of the procedural Regulation stipulates:

"The Commission may, after giving the Member State concerned the opportunity to submit its comments, adopt a decision requiring the Member State provisionally to recover any unlawful aid until the Commission has taken a decision on the compatibility of the aid with the common market (hereinafter referred to as a 'recovery injunction'), if the following criteria are fulfilled:

— according to an established practice there are no doubts about the aid character of the measure concerned

and

— there is an urgency to act

and

— there is a serious risk of substantial and irreparable damage to a competitor.

Recovery shall be effected in accordance with the procedure set out in Article 14 (2) and (3). After the aid has been effectively recovered, the Commission shall take a decision within the time limits applicable to notified aid."

At this stage, the Commission takes the preliminary view that the conditions for a recovery injunction are met in the present case, for the reasons set out in the following sections.

5.2.1. According to an established practice there are no doubts about the aid character of the measure concerned

The Commission has established in the 2005 Airport Guidelines that incentives given in a discriminatory manner to one airline, for instance in the form of reduced airport charges,
constitutes State aid. It has since then applied these guidelines to a large number of cases where individual airlines receive such incentives.

(231) The General Court has furthermore confirmed in 2007 a Commission decision concerning Olympic Airlines, where the non-collection of airport charges that are due is qualified as State aid.48

(232) The Commission therefore takes the preliminary view that the 2008 agreement, which has lead to the non-payment of airport charges, as well as the rule in the AIP 2010 which grants additional rebates of 72% to 85% on all airport charges for aircraft above 70 MTOW constitute, according to an established practice, without doubt State aid.

5.2.2. There is an urgency to act

(233) The economic situation of the complainant is such that without recovery of the aid, it may be obliged to file for insolvency in the near future (see detailed description under 5.2.3).

(234) The Commission therefore takes at this stage the view that there is urgency to act.

(235) The Commission furthermore notes that the complainant has informed the Commission that in parallel to the State aid complaint with the Commission, it has also introduced a complaint with the responsible national authorities, which has so far yielded no results.

5.2.3. There is a serious risk of substantial and irreparable damage to a competitor

(236) The complainant claims that without the recovery of the aid, it will be forced into insolvency, because Wizz Air, thanks to the aid, has rendered the operation of several of its main routes economically unviable.

(237) The Commission first observes that the complainant49 and Wizz Air50 compete currently on 5 routes from/to Timisoara airport. On the basis of the data provided by the complainant, as summarised in the table below, it appears that since Wizz Air entered the market the passenger numbers, yields and revenues of the competitor decreased substantially.

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49 The complainant operates currently 27 destinations from/to Timisoara airport.

50 Wizz Air operates currently 10 destinations from/to Timisoara airport.
Table 12: Development of passengers, net yield/passenger and revenues of the complainant on routes in competition with Wizz Air

<table>
<thead>
<tr>
<th>Base/Route</th>
<th>Year</th>
<th>Year</th>
<th>Year</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>2008</td>
<td>2009</td>
<td>2010</td>
</tr>
<tr>
<td>TIMISOARA (TSR)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TSR-VCE (Venice)</td>
<td>16.724</td>
<td>10.895</td>
<td>10.260</td>
</tr>
<tr>
<td>Passenger Number</td>
<td></td>
<td></td>
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<tr>
<td>Net yield/passenger development in %</td>
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<tr>
<td>Revenue development in %</td>
<td>[…]</td>
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<tr>
<td>TSR-BGY (Milan)</td>
<td>11.233</td>
<td>10.342</td>
<td>9.290</td>
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<tr>
<td>Passenger Number</td>
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<tr>
<td>Net yield/passenger development in %</td>
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<td>Revenue development in %</td>
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<td>[…]</td>
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<tr>
<td>TSR-FCO (Rome)</td>
<td>11.356</td>
<td>7.200</td>
<td>6.003</td>
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<tr>
<td>Passenger Number</td>
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<tr>
<td>Net yield/passenger development in %</td>
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<td>Revenue development in %</td>
<td>[…]</td>
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<tr>
<td>TSR-BLQ (Bologna)</td>
<td>3.677</td>
<td>2.784</td>
<td></td>
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<tr>
<td>Passenger Number</td>
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<tr>
<td>Net yield/passenger development in %</td>
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<tr>
<td>Revenue development in %</td>
<td>[…]</td>
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</tr>
<tr>
<td>TSR-DUS (Dusseldorf)</td>
<td>11.486</td>
<td>6.191</td>
<td>8.135</td>
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<tr>
<td>Passenger Number</td>
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<tr>
<td>Net yield/passenger development in %</td>
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<tr>
<td>Revenue development in %</td>
<td>[…]</td>
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<td>[…]</td>
</tr>
</tbody>
</table>

(238) The complainant showed that the decrease in revenue had also a negative impact of its cash flow from operating activities. Therefore, the shareholders of the complainant were forced to provide additional financing to the company. However, at the current stage the shareholder of the company are not anymore in the position to further support the company.

(239) The Commission notes that Timisoara is the hub from which Carpatair operates. Wizz Air appears to engage in cherry picking in competing on Carpatair on its most profitable routes, and can undercut the prices of Carpatair thanks to the State aid it receives, in particular through the 2008 agreement and the rule in the AIP 2010 which grants additional rebates of 72% to 85% on all airport charges for aircraft above 70 MTOW.

(240) In view of the above, the Commission takes the preliminary view that without a provisional recovery of the aid in favour of Wizz Air Carpatair is likely to be obliged to file for insolvency. Thus, it takes the preliminary view that the conditions of a serious risk of substantial and irreparable damage to a competitor are satisfied in the case at stake.

(241) The Commission furthermore observes that the relevant product market in air transport is the city pair. On the five city pairs on which Wizz Air competes with Carpatair, Wizz Air
appears to try to squeeze Carpatair out of the market, using illegal State aid. If Carpatair was to exit the five contested routes, this would also lead to a monopoly for Wizz Air on these routes. Such a monopoly could lead to substantial and irreparable damage not only for Carpatair, but also for consumers.

(242) With regard to this measure and due to the urgency of the matter, the Romanian authorities are invited to submit their comments within one month of the date of receipt of this letter.

6. DECISION

In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108 (2) TFEU, requests Romania to submit its comments and to provide all such information as may help to assess the measures addressed in the present decision, within one month of the date of receipt of this letter. The Commission requires Romania, within one month of receipt of this letter, to provide all documents, information and data needed for assessment of the existence of the aid and compatibility of the measures. It requests your authorities to forward a copy of this letter to the potential recipients of the aid immediately.

The Commission wishes to remind Romania that Article 108 (3) TFEU 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 Romania that it will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the *Official Journal of the European Union* and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.
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  
Rue Joseph II, 70  
B-1049 Bruxelles  
Fax: +32 2 296 12 42  
Stateaidgreffe@ec.europa.eu

Yours faithfully,  
For the Commission

Joaquin Almunia  
Vice-President