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Subject: State aid SA. 49331 (2017/N) – Denmark
SGEI compensation for Bornholm Airport

Sir,

1. PROCEDURE

- (1) By letter dated 13 October 2017, Denmark formally notified to the Commission the entrustment to Bornholm Airport of a service of general economic interest (the "SGEI"). The measure was registered under State aid case number SA.49331 (2017/N).

2. DESCRIPTION OF THE MEASURES

2.1. The airport

- (2) Bornholm Airport is a small regional airport located on the island of Bornholm, Denmark (the "Bornholm Airport" or the "Airport"). The island lies in the Baltic Sea between Denmark, Sweden, Germany and Poland.
- (3) Bornholm Airport is directly operated by the Danish Transport, Construction and Housing Authority (the "Transport Authority" or the "Operator"). The Transport Authority is an agency within the Danish Ministry of Transport, Building and Housing. The administration and management of Transport Authority and Bornholm Airport are kept on separate accounts.¹

¹ Danish Finance Act 2017, Articles 28.51.01. and 28.56.03.

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- (4) The Airport served 272,995 passengers in 2016 (137,529 departing, 135,466 arriving passengers). According to the Danish authorities, most of the commercial traffic of Bornholm Airport is related to passenger aviation; only a small amount of services is designated for mail transport.
- (5) Two airlines operate from Bornholm Airport. The main destinations from Bornholm Airport are to other Danish airports. The *Danish Air Transport* is the only airline with a regular flight schedule to two Danish destinations Copenhagen and Billund. The majority of the departures are to the capital (approximately eight departures per day). In addition, charters are provided to Mallorca, Antalya, Chania/Crete and Kos during the holiday season by the airline *Spies*.
- (6) The nearest airport is Malmö Airport in Sweden. By car and ferry, the travel time to this airport from Bornholm Airport is around 3 hours and 40 minutes. However, Malmö Airport does not operate any direct connections to Danish airports.²
- (7) Other airports in its vicinity include:³
 - the Danish airport Copenhagen: the travel time by bus, train and ferry is around 3 hours and 21 minutes, and by car and ferry around 4 hours and 10 minutes;
 - the German airport Stralsund-Barth: travel time 5h50 by car and ferry. However, this airport only provides general aviation. The nearest German airport with scheduled air services is Rostock-Laage with a travel time of 6h30 min by car and ferry from Bornholm. There are no flights to Danish destinations from here;
 - the nearest Polish airport: Szczecin-Goleniów, which is 7h40 min away (by car and ferry via mainland). There are no flights to Danish destinations from here.
- (8) According to the Danish authorities, flight travel time from Bornholm Airport to Copenhagen Airport is around 35 minutes. Flying from Bornholm Airport to or via Copenhagen thus constitutes the most efficient and frequently used transport route to connect the island of Bornholm with the rest of Denmark and Europe.
- (9) Alternatively the island is reachable from Denmark mainland (via Sweden), Sweden and Germany by ferry. There is no direct ferry connection to Poland.
- (10) The different modes of transport from the island of Bornholm to the Danish mainland, and in particular to reach Copenhagen, are given in Table 1, provided by the Danish authorities, below:

² Information provided by the Danish authorities.

³ Travel times are calculated with Google Maps. Information on Rostock Laage Airport, Szczecin-Goleniow Airport and Malmö Airport (previously known as Sturup Airport) was also submitted by the Danish authorities.

Table 1: Alternative means of transport from Copenhagen to Bornholm

Alternative means of transport	Travel Time	Average number of departures per day-1 st quarter	Average number of departures per day-2 nd quarter	Average number of departures per day-3 rd quarter	Average number of departures per day-4 th quarter
BornholmerFaergen Ystad - Rønne	1 hour and 20 min ^{*4}	3.3	6.2	5	2.2
BornholmerFaergen: Køge - Rønne	5 hours and 30 min	1	1	1	1
DSB intercity lyntog by ferry via Ystad	3 hours and 20 min	3.2	3.6	4.2	3.1
Bus route 700 from KBH K, Rigshospitalet, Glostrup Hospital or Bispebjerg Hospital via Ystad	3 hours and 30 min ^{**}	1	1	1	1 ^{***}
Bus route 866 From KBH K to Rønne via Ystad	3 hours	Timetable only valid from June 1st	(May and June) 4	4.4	2.7
Private car from KBH K ^{****}	Via Ystad: approximately 4 hours				

- (11) From Table 1, it can be concluded that the fastest alternative transport mode to Copenhagen (the main destination of Bornholm Airport) is the ferry journey connecting the island to the Swedish port Ystad, with the rest of the journey either travelled by bus or train (both travel modes require around or more than 3 hours travel time). Travel by car including the ferry would be around 4 hours of travel time.
- (12) Bornholm is an independent Danish municipality and the current population counts 39,759 inhabitants. According to the Danish authorities, the population is expected to decrease by 8 % by 2028.
- (13) The Danish Authorities also stipulate that Bornholm is one of the oldest and most attractive tourist destinations in Denmark. Every year, more than half a million tourists are visiting the island. The total number of nights spent in tourist accommodations has been increasing since 2008 by an average of 0.7 % each

⁴ * Some ferries have a travel time of 2 hours and 30 min.

** From KBH K (bus stop) to Rønne Harbour.

*** No departures on the 24th and 31st of December.

**** Travel time is calculated with Google Maps.

year. 6.3 % of the workforce on the island worked in the tourism sector in 2015 whereas the Danish average was only 4.6 %.⁵

- (14) The GDP per habitant of Bornholm has been increasing during the last couple of years. However, comparing the economic growth of Bornholm to other parts of Denmark shows that Bornholm is to be found amongst the three lowest growth rates.⁶ The economic crisis had a significant impact on Bornholm. Since 2007, total employment has decreased by approximately 10 %.
- (15) According to Denmark, new jobs are created but to a lesser extent. Traditional industries, previously employing a substantial share of the workforce at Bornholm, are in recession. At the same time, a lack of skilled labour is seen in all sectors except for day care, social health workers, primary school teachers and unskilled workers. In addition, the average age of the active workforce is expected to grow.
- (16) Denmark points out that the Commission has previously confirmed that the island of Bornholm is eligible for aid under the Guidelines on regional State aid for 2014-2020 as a region with a GDP per capita below or equal to the EU-27 average or an unemployment rate above or equal to 115% of the national average.⁷

2.2. Entrustment of a service of General Economic Interest

- (17) According to the Danish Authorities, the entrustment of a service of general economic interest was defined in a contract between The Transport Authority and Bornholm Airport on public service obligations at Bornholm Airport in force since 2014, as amended from time⁸ (the "Notified Agreement").
- (18) Bornholm Airport received the following public funding in previous years:

Table 2: SGEI Compensation to Bornholm Airport

Year	2014	2015	2016	2017 (up to 20/12/2017)
Million DKK	24.9	26.4	26.4	23.9

- (19) In 2014 and 2015, the Danish authorities had sent reporting letters to the European Commission on the compensation granted.
- (20) In 2016, the Danish government decided to prolong the entrustment of a provision of an SGEI to Bornholm Airport. The Notified Agreement therefore consolidates and codifies past practice towards Bornholm Airport (the "Entrustment Act").

⁵ According to Denmark, information provided by Danish Business Authority, 2015.

⁶ According to Denmark, information provided by Bornholmerbanken, 2016.

⁷ Decision in State aid Case SA. 38247 of 7 May 2014, OJ C 251 of 1 August 2014.

⁸ The latest version is dated 19/7/2017.

- (21) The Entrustment Act specifies that the SGEI is established pursuant to conditions that follow from the requirements of the European Union State aid rules.
- (22) The Entrustment Act covers the period until 31 December 2020.
- (23) According to the Entrustment Act:
- the Airport shall ensure a high safety level (landing aids and installations, air traffic control, rescue services and security measures). The Airport shall be open to all potential users;

 - it shall provide opening hours in accordance with the need for scheduled air passenger services and necessary infrastructure tasks, such as transportation of mail and of patients as well as the Danish Defence's needs using the Airport, while complying with the applicable aviation legislation in terms of safety standards and in consideration of the environmental legislation in place;

 - the Airport shall also ensure the maintenance of the infrastructure and ensure the necessary future capacity is provided.
- (24) The Entrustment Act stipulates that the compensation shall be fixed in accordance with the Commission Communication on a European Union framework for State aid in the form of public service compensation⁹ ("the SGEI Framework") and in consideration of the Commission Guidelines for State aid to airports and airlines¹⁰ (the "Aviation Guidelines").
- (25) The compensation of the entrustment of the SGEI covers in full or partly the costs incurred by the Airport to ensure a high safety level and to maintain the infrastructure at the Airport, including buildings and installations on land.
- (26) The compensation is fixed annually on 1 January of each year. It is calculated based on the Airport's estimated net costs, i.e. the Airport's costs from which any income relating to the areas to which compensation is given is deducted. The compensation is paid monthly at the end of every month. Table 3 shows the calculation done for 2017 and included in the Entrustment Act.

⁹ OJ C 8 of 11.1.2012, p.15.

¹⁰ OJ C 99 of 4.4.2014, p. 3.

Table 3: Compensation amounts

SGEI activities	Airport's estimated costs (in million Danish Kroner)	Compensation amount (in million Danish Kroner)
A high safety level	23.5	23.5
- Landing aids and installations	9.2	9.2
- Air traffic control services	5.4	5.4
- Rescue services	2.6	2.6
- Security measures	6.3	6.3
Maintenance of infrastructure	2.4	2.4
Total	26.0	26.0

- (27) The compensation does not include any reasonable profit.
- (28) The compensation foreseen is subsequently prescribed in the yearly budget.
- (29) A special account is drawn up by the Airport for the compensation paid. The account is part of the Airport's general account which is audited by the national auditors.
- (30) The Danish authorities confirmed that it will comply with any reporting obligations.
- (31) The entrustment act stipulates that the compensation must not exceed the amount necessary to cover the costs to sustain and ensure the public services obligations. In case the Airport has nevertheless been overcompensated in a given year, it will be set off against the following year (N+2 model).
- (32) The Danish Authorities confirm that if the SGEI compensation is no longer necessary after 2020, any possible over-compensation in the last year of entrustment will be invoiced and reclaimed.
- (33) The model for financial management used separates the compensated activities from the commercial activities of the Airport.
- (34) The Danish authorities confirm that the cost calculation method distinguishes revenue and costs related to commercial activities from the activities of Airport for which support is granted. Denmark has also committed to publish the SGEI compensation to Bornholm Airport as described in the Entrustment Act on the internet with due reference to the information listed under paragraph 60 of the SGEI Framework.
- (35) Denmark confirmed that all relations between the Airport and airlines using the Airport shall comply with the market economy operator test as specified in part 3.5 of the Aviation Guidelines.

3. ASSESSMENT OF THE MEASURE

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

- (36) According to Article 107(1) TFEU¹¹ "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".

3.1.1. Economic activity and notion of undertaking

- (37) According to settled case law, the Commission must first establish whether the Operator is an undertaking within the meaning of Article 107(1) of the TFEU. The concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed.¹² Any activity consisting in offering goods and services on a given market is an economic activity.¹³
- (38) In its "Leipzig-Halle airport" judgment the Court of Justice confirmed that the operation of an airport for commercial purpose constitutes an economic activity.¹⁴
- (39) In this regard, the Commission notes that the Airport is operated by the Operator on a commercial basis as any air carrier that wants to use the Airport (recital (23)) can do it against payment of applicable airport fees, as established in the Airport's schedule of charges. The Operator therefore carries out an economic activity insofar as the operation of the Airport is concerned. It follows that the entity operating the airport constitutes an undertaking for the purposes of Article 107(1) of the TFEU.

3.1.2. State resources and imputability to the State

- (40) The SGEI compensation is financed by the Transport Authority whose funds stem from the national budget. Therefore, the measure is financed through State resources and is imputable to the State.

¹¹ The Treaty on the Functioning of the European Union; consolidated version: OJ C 326 of 26.10.2012, p.1 (the "TFEU" or the "Treaty").

¹² Case C-35/96 *Commission v Italy*, ECLI:EU:C:1998:303; C-41/90 *Höfner and Elser*, ECLI:EU:C:1991:161, paragraph 21; Case C-244/94 *Fédération Française des Sociétés d'Assurances v Ministère de l'Agriculture et de la Pêche*, ECLI:EU:C:1995:392; Case C-55/96 *Job Centre*, ECLI:EU:C:1997:603.

¹³ Case 118/85 *Commission v Italy*, ECLI:EU:C:1987:283, paragraph 7; Case 35/96 *Commission v Italy*, ECLI:EU:C:1998:303, paragraph 36.

¹⁴ *Joined Cases T-443/08 and T-455/08, Freistaat Sachsen and Land Sachsen-Anhalt and Others v Commission*, ECLI:EU:T:2011:117, upheld on appeal in Judgment of the Court of Justice of 19 December 2012, *Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH v Commission*, C-288/11 P, ECLI:EU: C:2012:821; see also Judgment of the Court of 24 October 2002, *Aéroports de Paris v Commission*, case C-82/01 P, ECLI:EU:C:2002:617 and *Ryanair v Commission*, case T-196/04, ECLI:EU:T:2008:585.

3.1.3. *Economic advantage*

- (41) The Commission recalls that SGEI compensations granted to an undertaking may not constitute an economic advantage under certain strictly defined conditions.
- (42) In particular, in its *Altmark* judgment,¹⁵ the Court of Justice held that where a State measure must be regarded as compensation for the services provided by the recipient undertakings in order to discharge public service obligations, so that those undertakings do not enjoy a real financial advantage and the measure thus does not have the effect of putting them in a more favourable competitive position than the undertakings competing with them, such a measure is not caught by Article 107(1) TFEU.
- (43) However, the Court also made clear that for such public service compensation to qualify as no aid, the four cumulative criteria ('*Altmark* criteria') summarised below must be satisfied:
1. The recipient undertaking must actually have public service obligations to discharge and those obligations must be clearly defined. (First *Altmark* criterion).
 2. The parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner. (Second *Altmark* criterion).
 3. The compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit. (Third *Altmark* criterion).
 4. Where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure, which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means to meet the public service obligations, would have incurred, taking into account the relevant receipts and a reasonable profit from discharging the obligations (hereinafter a "typical undertaking"). (Fourth *Altmark* criterion).
- (44) This jurisprudence has been codified and further explained in the *Commission's Communication on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest* ("the SGEI Communication").¹⁶

¹⁵ Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH*, ECLI:EU:C:2003:415. See also paragraphs 42 et seq. of the Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest Official Journal C8, 11.01.2012, p. 4-14.

¹⁶ OJ C 8 of 11.1.2012, p. 4.

- (45) Given that the conditions of applicability of the Altmark case-law are cumulative, non-compliance with any of these conditions would lead to the qualification of the measure under review as State aid within the meaning of Article 107 TFEU.
- (46) In view of the above, therefore, for the purposes of finding whether the measure granted an advantage within the meaning of Article 107 TFEU, the Commission will first assess whether the compensation complies with the Fourth Altmark Criterion.
- (a) Fourth *Altmark* Criterion- first sub-criterion: Appropriate public procurement procedure
- (47) This criterion is further defined in section 3.6 of the SGEI Communication: "*In accordance with the fourth Altmark criterion, the compensation offered must either be the result of a public procurement procedure which allows for selection of the tenderer capable of providing those services at the least cost to the community (...).*"
- (48) The notification states that the Operator was directly entrusted with the public service obligation, without any public procurement procedure.
- (49) The Commission therefore concludes that the Operator was not selected through a public procurement procedure responding to the standards of the Altmark rules as laid down in points 63 to 68 of the SGEI Communication.
- (b) Fourth *Altmark* Criterion- second sub-criterion: Comparison with typical, well-run undertaking
- (50) The Commission examined whether the compensation was determined on the basis of an analysis of the costs which a typical undertaking, well-run and adequately provided with means to meet the public service obligations, would have incurred, taking into account the relevant receipts and a reasonable profit from discharging the obligations.
- (51) According to point 75 of the SGEI Communication "*If the Member State can show that the cost structure of the undertaking entrusted with the operation of the SGEI corresponds to the average cost structure of efficient and comparable undertakings in the sector under consideration, the amount of compensation that will allow the undertaking to cover its costs, including a reasonable profit, is deemed to comply with the fourth Altmark criterion*".
- (52) The Commission notes that Denmark did not provide any analyses showing that the cost structure of the Operator corresponds to the average cost structure of an efficient and comparable undertaking operating an airport.
- (53) The Commission therefore concludes that the Fourth *Altmark* Criterion is not complied with in this case. As the conditions set out in the Altmark judgment are cumulative, failure to comply with any one of the four conditions leads to the conclusion that the financing measures under review grant an economic advantage within the meaning of Article 107(1) TFEU.

3.1.4. *Selectivity*

- (54) Article 107(1) TFEU requires that a measure, in order to be defined as State aid, favours "*certain undertakings or the production of certain goods*". The Commission notes that the public funding in question will be granted to the Operator only. Given that the present case concerns an individual aid measure, the identification of the economic advantage (see recital (53)) is sufficient to support the presumption that it is selective.¹⁷
- (55) In any event, it does not appear that other undertakings in the same or other sectors in a comparable factual and legal situation benefit from the same advantage. Hence, the measure is selective within the meaning of Article 107(1) TFEU.

3.1.5. *Distortion of competition and effect on trade*

- (56) When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid. In accordance with settled case law¹⁸, for a measure to distort competition, it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition.
- (57) Airport management companies compete for the operation of airports in Europe and for the attraction of air carriers to operate routes to and from their airports. The Commission considers that any undue economic advantage granted to an airport operator from public resources can strengthen the beneficiary's position vis-à-vis its competitors on this market for the provision of airport services.
- (58) Therefore, the public funding under examination distorts or threatens to distort competition and affects trade between the Member States.

3.1.6. *Conclusion on the existence of aid*

- (59) For the reasons set out above, the Commission concludes that the compensation granted to the Operator for the operation of the SGEI at Bornholm Airport constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. **Legality of the measure**

- (60) Pursuant to the standstill clause of Article 108(3) TFEU and to Article 3 of Council Regulation No 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union,¹⁹ new aid measures must not be put into effect before the Commission has taken a decision authorising it. Aid measures are considered to be put into effect when the legally binding act providing for the aid is adopted.

¹⁷ Cases C 15/14 P *Commission v MOL*, ECLI:EU:C:2015:362, paragraph 60; C 270/15 P *Belgium v Commission*, ECLI:EU:C:2016:489, paragraph 49; T-314/15 *Greece v Commission*, ECLI:EU:T:2017:903, paragraph 79.

¹⁸ Case T-214/95 *Het Vlaamse Gewest v Commission*, ECLI:EU:T:1998:77.

¹⁹ OJ L 248 of 24.9.2015, p.9.

- (61) The Commission notes that from 2014, the SGEI had not been subject to the Commission's approval.
- (62) The Commission notes that the latest version of the Entrustment Act of 19 July 2017 valid until 2020 stipulates that "*the compensation will be paid subject to an approval by the Commission*".
- (63) Nevertheless, Denmark stated that Bornholm Airport has already received compensation for all SGEI activities carried out until 31 December 2017.
- (64) Therefore, the Commission considers that for the years 2014-2017, the standstill clause has not been respected and the SGEI compensation granted in those years must be considered as illegal aid.
- (65) For the period 2018- 2020, the Commission is of the opinion that the compensation measure is granted in compliance with Article 108 (3) TFEU.

3.3. Compatibility of the aid

- (66) Article 106(2) TFEU provides that "*Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.*"
- (67) In accordance with the Aviation Guidelines, the compensation of the operation of an airport as SGEI can be considered compatible under Article 106(2) TFEU if the criteria laid out in section 4 of the Aviation Guidelines are fulfilled, in particular if the operation qualifies as genuine service of general economic interest within the meaning of points 69 and 72 of the Aviation Guidelines, and if it fulfils the compatibility criteria as laid out in section 4.2 of the Aviation Guidelines in conjunction with the relevant rules of the SGEI Framework.
- (68) Points 75 and 76 of the Aviation Guidelines stipulates that for airports where the average annual traffic exceeds 200,000 passengers, the SGEI Framework applies for the compatibility assessment. This is the case for Bornholm Airport as it serves more than 200,000 passengers.

3.3.1. Genuine service of general economic interest as referred to in Article 106 of TFEU in conjunction with points 72 and 73 of the Aviation Guidelines

- (69) As a first condition for the compensation of airport management services to be compatible with State aid rules, the service provider must be entrusted with a genuine and correctly defined service of general economic interest. This requirement is laid down in point 69 of the Aviation Guidelines in conjunction with section 2.2. of the SGEI Framework and section 3.2. of the SGEI Communication.

- (70) According to point 69 of the Aviation Guidelines, an SGEI “*should exhibit special characteristics as compared with ordinary economic activities*” and “*the general interest objective pursued by the public authorities cannot simply be that of the development of certain economic areas or economic activities provided for in Article 107(3)(c) of the Treaty.*”.
- (71) Point 72 of the Aviation Guidelines further defines this requirement by specifying that it is possible for the overall management of an airport to be considered an SGEI only “*in well-justified cases*”, that is “*if part of the area potentially served by the airport would, without the airport, be isolated from the rest of the Union to an extent that would prejudice its social and economic development. Such an assessment should take due account of other modes of transport, and in particular of high-speed rail services or maritime links served by ferries. In such cases, public authorities may impose a public service obligation on an airport to ensure that the airport remains open to commercial traffic.*”
- (72) Therefore, it has to be assessed, first, whether Denmark committed a manifest error in considering that, without the airport, the region would be isolated to an extent which would prejudice its social and economic development.
- (73) Bornholm is an island. Denmark has argued that Bornholm Airport services constitute the main mode of transport for inhabitants of the island to get to Denmark mainland, in particular the capital Copenhagen with eight departures a day (recital (5)). The closest airport Malmö in Sweden does not service this destination and is more than 3 hours away (recital (6)).
- (74) Inhabitants of the island can also get to Denmark mainland taking the ferry via Swedish port Ystad and using car/bus or train for the remaining journey. The travel for these alternative modes of transport to Copenhagen would however be around 3-4 hours (recitals (9)-(11)).
- (75) Denmark has also put forward that flying from Bornholm via Copenhagen constitutes the primary means for Bornholm citizens to link with other Danish and European airports and connection points. This is in particular so as other airports provide no real alternative for connecting to the rest of Europe as outlined above (recitals (7)-(8)).
- (76) Furthermore, tourism is one of the main sources of income for the island (recital (13)). The tourism sector has been increasing in recent years. A second main function of the Airport is therefore to bring in tourists which are mainly from Denmark mainland.
- (77) This is particular important as Bornholm is one of the economically more vulnerable regions in terms of GDP and unemployment rate in Denmark, as put forward by the Danish authorities and acknowledged by the Commission in a previous decision (recitals (14)-(16)).
- (78) Denmark concludes that the Airport therefore plays a vital part for connectivity and social and economic development for the island.
- (79) The Commission considers that Bornholm Island is a remote region, according to Point 25, paragraph (27), of the Aviation Guidelines, which stipulates: “*remote*

regions" mean outermost regions, Malta, Cyprus, Ceuta, Mellila, islands which are part of the territory of a Member State, and sparsely populated areas.

- (80) Point 72 of the Aviation Guidelines further notes *"that certain airports have an important role to play in terms of regional connections of isolated, remote or peripheral regions of the Union. Such a situation may, in particular, occur in respect of the outermost regions, as well as islands or other areas of the Union. Subject to a case-by-case assessment and depending on the particular characteristics of each airport and the region it serves, it may be justified to define SGEI obligation in those airports.*
- (81) In the case of Bornholm island, with its closest ferry connection to Sweden being over one hour and its fastest possibility to reach the Danish mainland being over three hours of travel time, the Commission considers that the Airport has indeed a vital role to play in terms of fast regional connections of a remote region.
- (82) The Commission considers that other modes of transport do not provide an acceptable alternative for citizens of the island to connect to Denmark and the rest of Europe within a reasonable time frame.
- (83) The Commission therefore notes that a lack of acceptable connections to the Danish capital and to the rest of Europe would significantly deteriorate the standard of living of inhabitants of the island and would reduce the current activities and work perspectives of the population. This is particular important given the unemployment rate (recital (14)).
- (84) The Commission concludes that if the Airport would cease to operate on the island, it would prejudice the social and economic development of the region.
- (85) The Commission therefore considers that Denmark did not commit a manifest error of appreciation in finding that, without Bornholm Airport, the region would be isolated from the rest of the Union to an extent that would prejudice its social and economic development.
- (86) Second, it has to be assessed whether Denmark committed a manifest error of appreciation in considering that the Airport could disappear without public support in the form of SGEI compensation, i.e. in considering that the overall management of Bornholm Airport is not a service which would be provided satisfactorily and at the same conditions, consistent with the public service, by undertakings operating under normal market conditions.
- (87) Denmark argues that without public funding the Airport would stop operating.
- (88) The total estimated expenditure at Bornholm Airport for 2016 equals to 40.6 million DKK (including commercial activities), which corresponds to approximately EUR 5.5 million. The government's financial contribution was 26.4 million DKK, i.e. approximately EUR 3.5 million. It means that the government covers 65 % of total expenditure.
- (89) According to Denmark, the total non-commercial operational expenditure of the Airport equalled to 32.6 million DKK in 2016, and the government's financial contribution thus covered 81 % of total non-commercial operational expenditure.

- (90) Denmark therefore concludes that the Airport would not be able to continue its operations without public support. Denmark also puts forward that without the airport, the accessibility of the island would be exceptionally jeopardised.
- (91) In the light of the aid intensities mentioned above (recitals (88)-(89)) as well as the special role for connectivity the Airport plays for the island, the Commission considers that Denmark did not commit a manifest error of appreciation in considering that the Airport could disappear without public support in the form of SGEI compensation. The Commission therefore considers that the conditions of point 72 of the Aviation Guidelines are fulfilled.
- (92) In light of the above, the Commission considers that the aid will be granted for a genuine and correctly defined service of general economic interest, in line with the SGEI Framework in conjunction with points 69 and 72 of the Aviation Guidelines.
- (93) The Commission also notes that the entrustment in question does not cover the development of commercial air transport services. Therefore, the Commission considers that point 73 of the Aviation Guidelines is complied with.

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

- (94) Pursuant to points 15 and 16 of the SGEI Framework, responsibility for the operation of an SGEI must be entrusted by way of one or several acts, the form of which may be determined by the Member State. The act or series of acts must specify at least: the content and duration of the public service obligations; the undertaking and, where applicable, the territory concerned; the nature of any exclusive or special rights assigned to the undertaking by the authority in question; the parameters for calculating, controlling and reviewing the compensation; and the arrangements for avoiding and recovering any overcompensation.
- (95) The Notified Agreement is the act of entrustment in this case (recital (17)).
- (96) The Notified Agreement entrusts a specific undertaking, it specifies the content and duration of the public service obligations (recital (23)) as well as the method for calculating the compensation (recitals (25)-(32)).
- (97) Overcompensation must be avoided and if it occurs, it will be offset in the following year (recital (31)) or, in case of the last year of entrustment, it will be recuperated in the year after (recital (32)).
- (98) The Entrustment Act also clarifies that the compensation is paid in accordance with the SGEI framework and in consideration of the Aviation Guidelines (recital (24)).
- (99) In light of the above, the Commission considers that the Entrustment Act satisfies the requirements of the SGEI Framework.

3.3.3. *Duration of the period of entrustment*

- (100) Point 17 of the SGEI Framework requires that the duration of the period of entrustment is "*justified by reference to objective criteria such as the need to amortise non-transferable fixed assets*", whereby the duration should not exceed the depreciation for the most significant assets required to provide the SGEI.
- (101) The period of entrustment was set from 2014 and renewed as of 2017 to 2020.
- (102) The Commission notes that operating of an airport requires a large number of tangible assets that depreciate over a long period.
- (103) In light of the above, the Commission considers that the given period of entrustment is acceptable for the assessed case and point 17 of the SGEI Framework is therefore complied with.

3.3.4. *Transparency of financial relations between Member States and public undertakings*

- (104) Point 18 of the SGEI Framework requires that the undertaking complies, where applicable, with Directive 2006/111/EC on the transparency of financial relations between Member States and public undertakings.²⁰
- (105) According to Article 5 of the Directive 2006/111/EC, the Directive does not apply to companies whose total net turnover is less than EUR 40 million over the period of the two financial years which proceed the year in which they received compensation for the provision of an SGEI.
- (106) The table below shows that that the Operator did not have a turnover of more than EUR 40 million with respect to the economic activities developed at the Bornholm Airport during the years preceding the act of entrustment.

²⁰ Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings. OJ L 318 of 17.11.2006, p. 17–25.

Table 4: Economic activities of Bornholm Airport

Mio. DKK	2012	2013	2014	2015
Concession/ Compensation	22.1	24.4	24.9	26.4
Income	10.3	13.8	14.4	15.6
Salary expenses	11.4	12.2	12.8	14.5
Depreciation	2.6	3.5	3.8	4.6
Interest	1.6	1.9	2.0	1.4
Other operations	16.9	17.2	17.1	18.7
Result	-0.1	3.4	3.6	2.8
Number of operations (start/landing)	5,502	5,838	5,925	6,513
Number of passengers	179,884	207,361	239,978	259,440
Number of departing passengers	91,346	104,732	120,370	131,665

(107) Therefore, the Commission considers that Directive 2006/111/EC is not applicable in this case.

3.3.5. Compliance with Union public procurement rules

(108) Pursuant to point 19 of the SGEI Framework, "*aid will be considered compatible with the internal market on the basis of Article 106(2) of the Treaty only where the responsible authority, when entrusting the provision of the service to the undertaking in question, has complied or commits to comply with the applicable Union rules in the area of public procurement. This includes any requirements of transparency, equal treatment and non-discrimination resulting directly from the Treaty and, where applicable, secondary Union law.*"

(109) The Commission notes that the act of entrustment under assessment applies to the operation of an airport. The part of the act which has the most value is the provision of services. The company's compensation for the SGEI consists mainly of the right to use the SGEI to obtain payment from third parties, mainly airlines. Only a small part of the companies' compensation is made up of public grants. The act of entrustment, therefore, constitutes a service concession which is not covered by either the Classic Directive²¹ or the Utilities Directive.²²

(110) The Commission notes that the EU Court of Justice has, in its case-law, established a concept of in-house provision of services²³, according to which, if an economic operator is controlled by public authorities and commits the major

²¹ Directive 2004/18/EC of the European Parliament and of the Council on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. OJ L 134, 30.4.2004, p. 114–240.

²² Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating procurement procedures of entities operating in water, energy, transport and postal services sectors. OJ L 134, 30.4.2004, p. 1–113.

²³ Case C-107/98, Teckal Srl v Comune di Viano and Azienda Gas-Acqua Consorziale (AGAC) di Reggio Emilia ECLI:EU:C:1999:562, paragraph 50.

part of its activities towards these controlling authorities, it is considered to be an in-house entity in relation to these authorities. According to the Court, such a relation falls outside the scope of the EU Public Procurement Rules.

- (111) Denmark has confirmed that the no public procurement procedure has taken place and those services were provided in-house as the Operator is part of the Danish state administration.
- (112) Denmark has provided the Commission with an overview of the level of airport charges per arriving and per departing passenger compared to other Danish airports. This provides sufficient ground to conclude that the SGEI is used to obtain payment from third parties, mainly airlines.
- (113) Therefore, the Commission concludes that the airport activity being the sole economic activity of the Operator at Bornholm Airport and being fully integrated into the Danish Government, the exemption of in-house provision of services applies.
- (114) Therefore, the Commission considers that the public procurement rules, referred to in the SGEI Framework, are not applicable in this case.

3.3.6. *Amount of compensation*

- (115) Pursuant to point 21 of the SGEI Framework, "*the amount of compensation must not exceed what is necessary to cover the net cost²⁴ of discharging the public service obligations, including a reasonable profit*".
- (116) According to point 22, "*The amount of compensation can be established on the basis of either the expected costs and revenues, or the costs actually incurred, or a combination of the two [...]*".
- (117) The entrustment act as outlined above in recitals (23)-(24) specifies that the calculation of the compensation is fixed ex-ante annually at the beginning of the year.

Net cost necessary to discharge the public service obligation

- (118) Pursuant to point 24 of the SGEI Framework the net cost of discharging the public service obligations should be calculated using the net avoided cost methodology²⁵ where this is possible. However, as laid down in point 27 of the SGEI Framework, the Commission allows to apply alternative methods for calculating the net cost necessary to discharge the public service obligation in cases where the use of the net avoided cost methodology is not feasible or appropriate.
- (119) The net avoided cost methodology requires the establishment of the company's costs and revenues in a hypothetical scenario in which there is no SGEI. In the current context however, the SGEI is the essence of the activity carried out at the airport. The services not covered by the act of entrustment (other commercial

²⁴ In this context, net cost means net cost as determined in point 25 of the SGEI Framework or costs minus revenues where the net avoided cost methodology cannot be applied.

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

activities) depend on the existence of the SGEI. Therefore, no relevant hypothetical scenario can be applied in which only the other activities are conducted at the airport. The net avoided cost methodology can therefore not be applied.

- (120) The net costs incurred in discharging the public service obligation must therefore be established on the basis of the cost allocation methodology as further laid down in points 28 to 32 of the SGEI Framework. According to point 28 of the SGEI Framework, the net costs are "*calculated as the difference between the costs and the revenues for a designated provider of fulfilling the public service obligations, as specified and estimated in the entrustment act.*"
- (121) The Danish authorities confirmed that the SGEI is the essence of the activity carried out at the airport. The airport services not covered by the act of entrustment depend on the existence of the SGEI. Therefore, no relevant hypothetical scenario can be applied in which only the other activities are conducted at the airport, and therefore, the net avoided cost methodology would not be applicable.
- (122) The net costs are calculated on the basis of the cost allocation methodology as described in points 28-32 of the SGEI framework; this is reflected in the Entrustment Act (recitals (23)-(24)).

Reasonable profit

- (123) A reasonable profit can be included in the calculation of the net cost for discharging the public service obligation.²⁶
- (124) The Commission notes that no profit is included in the compensation paid to the Operator. The compensation paid does not cover all expenses related to the subsidised activities.

Efficiency incentives

- (125) Point 39 of the SGEI Framework stipulates that Member States, in devising the method of compensation, must introduce incentives for the efficient provision of an SGEI of a high standard, unless the Member State can duly justify that it is not feasible or appropriate to do so.
- (126) According to the Danish authorities, the annual SGEI compensation paid to the Operator is subject to a gradual reduction. Thus the Operator will need to cover more costs than in the previous year by efficiency measures implemented every year. The table below provides the reductions foreseen.

²⁶ Point 21 of the SGEI Framework.

Table 5: Efficiency incentives reductions

MIO DKK	2017	2018	2019	2020
Agreed/envisaged compensation	26.0	25.0	24.5	24.0
Reduction/efficiency requirement	2%	4%	2%	2%

- (127) Furthermore, the Commission also notes that the compensation does not include any reasonable profit (recital (27)).
- (128) The Commission therefore considers that, in devising the method of compensation, Denmark has introduced incentives for an efficient provision of the SGEI of a high standard.

Overcompensation

- (129) Pursuant to points 47 to 50 of the SGEI Framework, the methodology described in the entrustment act must also provide for a mechanism which ensures that the discharging of the public service obligation is not overcompensated.
- (130) The Entrustment Act stipulates that "*the compensation must not exceed the amount necessary to cover the costs to sustain and ensure the public service obligations*" (recital (31)).
- (131) The Entrustment Act further states that "*in the case that overcompensation has taken place, the compensation in year n+2 will be reduced by the excess amount*" (recital (31)).
- (132) For the last year of entrustment, any overcompensation would be verified and invoiced separately in the year following the last year of entrustment (recital (32)).
- (133) The assessment of whether overcompensation has taken place is performed by the Danish authorities on the basis of the separated accounts in the financial model (recital (33)).
- (134) The Commission therefore considers that the Entrustment Act fulfils the requirements of the SGEI Framework to avoid overcompensation.

Conclusion on the amount of compensation

- (135) In light of the above, the Commission considers that the method of compensation, specified in the Entrustment Act, fulfils the requirements of the SGEI Framework.

3.3.7. Transparency

- (136) Pursuant to point 60 of the SGEI Framework, the Member State concerned must publish on the Internet or by other appropriate means information on: the results

of the public consultation or other appropriate instruments referred to in paragraph 14 of the SGEI Framework, the content and duration of the public service obligations, the undertaking and the territory concerned, the amounts of aid granted to the undertaking on a yearly basis.

- (137) Denmark has committed to publish the information requested under Point 60 of the SGEI Framework on the website dedicated to this end (recital (34)).
- (138) A public consultation has been deemed non-necessary from the Danish side. According to the Danish authorities, it would have been essentially a consultation on whether the Airport should remain open or not. Given the high frequency for using the Airport by inhabitants to join the Danish mainland, the Danish authorities have deemed the outcome of such a consultation predictable.
- (139) In light of its status of an island and the commitments made by the Danish authorities as mentioned above, the Commission considers that the transparency requirements of the SGEI Framework are met.

3.3.8. Avoidance of spillover to airlines

- (140) Denmark confirmed that all relations between Bornholm Airport and the airlines must comply with the market economy operator test as specified in part 3.5 of the Aviation Guidelines.

Conclusions on the compatibility of aid

- (141) Based on the foregoing considerations, the Commission considers that the compensation granted to the Operator by the Danish government for the discharging of a public service obligation at Bornholm Airport in accordance with the Entrustment Act fulfils the conditions as laid down in the SGEI Framework and in the Aviation guidelines and is therefore compatible with Article 106(2) TFEU.

4. CONCLUSION

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

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

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Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission