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<p>In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 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, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...]</p>		<p>PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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**Subject: State Aid SA.50707 (2018/FC) – Spain
Air Nostrum fleet renewal**

Sir,

The Commission wishes to inform Spain that, having examined the information supplied by your authorities on the aid 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.

1. THE PROCEDURE

- (1) On 26 February 2018, the Commission received a complaint alleging that unlawful State aid had been granted by the Government of the Region of Valencia to the Spanish regional airline Air Nostrum Líneas Aéreas del Mediterráneo SA (hereafter “Air Nostrum”) with respect to the renewal of its fleet. This complaint was registered under State aid case number SA.50707 (2018/FC).

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- (2) On 17 April 2018, the Commission sent a letter informing Spain about the receipt of a complaint about alleged State aid granted to Air Nostrum, and forwarded the complaint to Spain, which submitted its first comments on 18 May 2018.
- (3) Following the receipt of Spain's comments, on 11 June 2018, the Commission sent a request for information to Spain. A Spanish translation of this request for information was sent on 28 June 2018. Spain provided its reply on 27 July 2018.
- (4) On 3 October 2018, the Commission sent a further request for information to Spain, requesting additional information. A Spanish translation of this request for information was sent on 7 November 2018. Spain replied to this second request for information on 27 December 2018.
- (5) On 8 April 2019, the Commission asked Spain whether the aid granted for 2018 had already been paid out in the meantime. In its letter of 26 April 2019, the Government of the Region of Valencia indicated that the alleged aid had not been yet paid out.
- (6) On 2 July 2019, a meeting took place at the Commission's premises with three representatives of the Government of the Region of Valencia.
- (7) On 26 July 2019, Spain sent additional information about the alleged aid measure to the Commission.

2. DESCRIPTION OF THE AID

2.1. The complaint

- (8) The complainant, a competitor of the regional airline Air Nostrum, brought to the Commission's attention that the Regional Government of Valencia planned to financially support Air Nostrum's fleet renewal programme, through a direct grant of EUR 9 million, spread over three years (2018, 2019, 2020).
- (9) The complainant holds that Air Nostrum will receive in this way illegal State aid, and submits that, by receiving this financial support from the Valencian authorities, Air Nostrum would gain an unfair competitive advantage vis-à-vis its competitors, which have to finance their fleet renewals themselves. According to the complainant, the alleged State aid would not have any economic, environmental or social benefits that would make it compatible aid.

2.2. General information about Air Nostrum

- (10) Air Nostrum is an airline company headquartered in Valencia, with about 1 400 employees in the Region of Valencia and a yearly turnover of more than EUR 400 million. Air Nostrum is the fourth biggest company in Valencia, and the leading regional civil aviation company in Spain, operating under the name "Iberia Regional Air Nostrum". Air Nostrum operates 77 000 flights per year, flying to and from more than 60 airports in 7 countries in Europe and North Africa, and carrying more than 4.2 million passengers per year.
- (11) Air Nostrum was founded in 1994 and experienced a steep increase in its activities until 2007-2008. Since then, in the period 2008-2017, the number of passengers

flying with the airline declined by 20%, the number of annual flights was halved (also due to the purchase of bigger aircraft) and the number of air routes decreased.

- (12) Based on the data provided by Spain, Air Nostrum’s fleet was at the end of 2018 composed of [...] aircraft of which almost two thirds ([...] out of [...]) are the latest Bombardier model, the CRJ-1000 aircraft. Table 1 below provides an overview of the evolution in the composition of Air Nostrum’s fleet during the last decade.

Table 1: Evolution of Air Nostrum’s fleet (2009-2018)

	ATR-72	CRJ-200	CRJ-900	CRJ-1000	Total
2009	[...]	[...]	[...]	[...]	[...]
2010	[...]	[...]	[...]	[...]	[...]
2011	[...]	[...]	[...]	[...]	[...]
2012	[...]	[...]	[...]	[...]	[...]
2016	[...]	[...]	[...]	[...]	[...]
2017	[...]	[...]	[...]	[...]	[...]
2018	[...]	[...]	[...]	[...]	[...]

Source: Submission by Spain of 27 December 2018 and 26 July 2019

2.3. Description of the aid subject to the decision

- (13) On 9 March 2017, Air Nostrum sent a letter to the Regional Government of Valencia informing them about their investment plans to expand and renew their fleet and requesting financial support for the acquisition of new, more environmental-friendly, aircraft. Air Nostrum submitted an aid application for a non-repayable grant of maximum EUR 15 million.
- (14) According to the letter, Air Nostrum wanted to renew its fleet *“in order to improve its competitiveness, efficiency and sustainability, and to substantially enhance the current air transport services on its existing routes as well as on new routes that could be started from the Valencian Autonomous Community”*. Air Nostrum argues that the objective of their investment project is *“to renew up to 12 planes in the existing fleet, replacing them with others that are more efficient and sustainable [...]”*. Therefore, apart from environmental benefits, Air Nostrum’s letter also stresses that the investment project will strengthen the aviation sector in Valencia and, more generally, that it will generate jobs and boost the economy of the Region of Valencia (e.g. tourism will also benefit).
- (15) Eventually Air Nostrum incorporated [...] new Bombardier CRJ-1000 aircraft into its fleet, [...] aircraft in 2017 and [...] in 2018 (see Table 1). According to Spain, only 10 out of these [...] aircraft are subject to the aid requested by Air Nostrum in March 2017. The first order was made on 19 June 2017. Since only [...] aircraft of the type CRJ-200 and [...] aircraft of the type CRJ-900 were replaced, the [...] new

aircraft did not just renew Air Nostrum's fleet but also expanded it: indeed, [...] aircraft were added to Air Nostrum's total fleet in 2017 and 2018 (see Table 1)¹.

- (16) According to Spain, Air Nostrum's investments plans fitted the agenda of the Regional Government of Valencia to boost the economy and to improve the sustainable development of the region². In its reaction of 18 May 2019, Spain submitted that the Region of Valencia will implement its "action plan for the transformation of the Valencian economic model 2017-2027" through, inter alia, a subsidy (paid out of its own funds) of EUR 3 million per year during the period 2018-2020 (that is, in total EUR 9 million) for Air Nostrum, in order to renew and green its fleet by acquiring 10 Bombardier CRJ-1000 aircraft.
- (17) The Regional Government of Valencia included a nominative subsidy line of EUR 3 million, in favour of Air Nostrum, in the budget for 2018, on the basis of Law 22/2017 adopted on 29 December 2017. This law was approved by the Valencian Regional Parliament and a cooperation agreement (as required under the Spanish rules on direct subsidies for investments³) was signed between Air Nostrum and the Region of Valencia on 25 October 2018 (hereafter the "2018 Cooperation Agreement"). The 2018 Cooperation Agreement stresses the environmental benefits of the new aircraft as well as the wider-defined objectives of promoting industrialisation, research, development and innovation, and human capital formation, and of boosting the economy in the Region of Valencia.
- (18) The payment of the aid for 2018 has not yet taken place as confirmed by the Regional Government of Valencia in their email of 26 April 2019.

3. ASSESSMENT OF THE AID

3.1. Existence of aid

- (19) 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*".

¹ The Commission also notes that, according to public sources, in 2018 and 2019 Air Nostrum leased two of its CRJ-1000 aircraft to Croatian Airlines, and a similar arrangement existed with SAS in the past. See e.g. <https://avioradar.hr/index.php/hr/hrvatska/1435-predstavljamo-dva-iznajmljena-zrakoplova-za-croatia-airlines> and <https://avioradar.hr/index.php/hr/hrvatska/985-predstavljamo-dva-nova-zrakoplova-u-floti-croatia-airlinesa>.

² The Ministry of Finance and the Economic Model of Valencia adopted an "Action Plan for the Transformation of the Valencian Economic Model 2017-2027" and a Strategic Plan on Subsidies for 2018-2020, having as strategic objective "*promoting change in the direction of an economic model based on knowledge, innovation and opening to the outside world*", with as principles "*environmental, manufacturing and social sustainability*".

³ A cooperation agreement is required according to the provisions in Article 22.2 of Law 38/2003 of 17 November 2003 – the General Law on Subsidies, and the provisions in Article 168.1.a) of Law 1/2015 of 6 February 2015 – Law on Public Finance, Instrumental Public Bodies and Subsidies.

- (20) The criteria laid down in Article 107(1) TFEU are cumulative. Therefore, for a measure to constitute State aid within the meaning of Article 107(1) TFEU, all of the following conditions need to be fulfilled. The measure must:
- be granted to an undertaking;
 - 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.
- (21) In the following sections, the Commission will assess whether the measure as described above in section 2.3 meets these cumulative criteria and thus constitutes aid within the meaning of Article 107(1) TFEU.

3.1.1. Notion of undertaking and economic activity

- (22) Air Nostrum is the beneficiary of the alleged aid granted by the Regional Government of Valencia. The Commission must establish whether Air Nostrum is an undertaking within the meaning of Article 107(1) 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 financed⁴. Any activity consisting in offering goods and services on a given market is an economic activity⁵.
- (23) As an airline company, Air Nostrum offers air services on the market, in competition with other airlines. It thus engages in an economic activity. The recipient of the financial support is thus an undertaking.

3.1.2. Use of State resources and imputability to the State

- (24) The measure consists in a grant, directly financed from the budget of the Regional Government of Valencia.
- (25) The subsidy granted in 2018 to Air Nostrum, is implemented through a nominative subsidy line of EUR 3 million in the budget for 2018, on the basis of Law 22/2017 adopted on 29 December 2017, and the cooperation agreement signed between the Region of Valencia and Air Nostrum on 25 October 2018.
- (26) The measure is thus financed from State resources and imputable to the State within the meaning of Article 107(1) TFEU and the related case law.

⁴ Judgment of the Court of Justice of 18 June 1998, *Commission v Italy*, C-35/96, EU:C:1998:303, paragraph 36; judgment of the Court of Justice of 23 April 1991, *Höfner and Elser*, C-41/90, EU:C:1991:161, paragraph 21; judgment of the Court of Justice of 16 November 1995, *Fédération Française des Sociétés d'Assurances v Ministère de l'Agriculture et de la Pêche*, C-244/94, EU:C:1995:392, paragraph 14; judgment of the Court of Justice of 11 December 1997, *Job Centre*, C-55/96, EU:C:1997:603, paragraph 21.

⁵ Judgment of the Court of Justice of 16 June 1987, *Commission v Italy*, 118/85, EU:C:1987:283, paragraph 7; judgment of the Court of Justice of 18 June 1998, *Commission v. Italy*, C-35/96, EU:C:1998:303, paragraph 36.

3.1.3. *Selective economic advantage*

- (27) An advantage within the meaning of Article 107(1) TFEU is any economic benefit that an undertaking could not have obtained under normal market conditions, that is to say in the absence of State intervention⁶.
- (28) Under normal market circumstances, airline companies must themselves finance the acquisition of new aircraft and the renewal of their fleet. The alleged aid will enable Air Nostrum to fund its fleet renewal programme without having to use traditional financing methods (commercial loans, capital market transactions, cash). This gives them the opportunity to increase their asset base while decreasing their costs base with more fuel efficient and bigger aircraft. This will leave them more money to compete more aggressively with other airlines not receiving these funds, for instance by enabling them to lower fares or increase flight frequencies.
- (29) The measure consists in an outright grant from the Region of Valencia, without any prospect of any returns. Spain only submits that the aid will help to boost the regional economy in Valencia by creating jobs and social welfare. It does not claim that the Region of Valencia acted a market economy operator, carrying out a market-conform investment.
- (30) Therefore, the financial support granted by the Regional Government of Valencia constitutes an economic advantage to the beneficiary, Air Nostrum.
- (31) Since the financial support is only granted to Air Nostrum, and not to competing other airline companies, the measure is also selective.

3.1.4. *Distortion of competition and effect on trade between Member States*

- (32) An aid measure granted by the State is considered to distort or threaten to distort competition when it is liable to improve the competitive position of the recipient compared to other undertakings with which it competes⁷. For all practical purposes, a distortion of competition within the meaning of Article 107(1) TFEU is generally found to exist when the State grants a financial advantage to an undertaking in a liberalised sector where there is, or could be, competition⁸.
- (33) Air Nostrum is an airline company, active in the highly competitive sector of air passenger transport. Therefore, the financial support granted to Air Nostrum distorts competition in the passenger air transport sector.
- (34) As regards the effect on trade between Member States, the Union Courts have ruled that “*where State financial aid strengthens the position of an undertaking as*

⁶ Judgment of the Court of Justice of 11 July 1996, *SFEI and Others*, C-39/94, EU:C:1996:285, paragraph 60; judgment of the Court of Justice of 29 April 1999, *Spain v Commission*, C-342/96, EU:C:1999:210, paragraph 41.

⁷ Judgment of the Court of Justice of 17 September 1980, *Philip Morris*, 730/79, EU:C:1980:209, paragraph 11; judgment of the General Court of 15 June 2000, *Alzetta*, Joined Cases T-298/97, T-312/97 etc., EU:T:2000:151, paragraph 80.

⁸ Judgment of the General Court of 15 June 2000, *Alzetta*, Joined Cases T-298/97, T-312/97 etc., EU:T:2000:151, paragraphs 141 to 147; judgment of the Court of Justice of 24 July 2003, *Altmark Trans*, C-280/00, EU:C:2003:415.

compared with other undertakings competing in intra-[Union] trade, the latter must be regarded as affected by the aid”⁹.

- (35) Air Nostrum, as an airline, operates as an undertaking in a sector where there is competition, and the financial support for its fleet renewal is liable to strengthen its position in comparison to that of its competitors. As airlines compete with each other in intra-Union trade and Air Nostrum is an airline active in several Union Member States, the Commission considers at this stage that the public support in question is liable to distort competition and affect intra-Union trade.

3.1.5. Conclusion

- (36) The Commission concludes on a preliminary basis that the financial support granted by the Region of Valencia for the fleet renewal of Air Nostrum constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. Lawfulness of the aid

- (37) This measure has been put into effect without prior notification to the Commission.
- (38) Spain does not contest that the measure constitutes State aid, but submits that it qualifies as compatible aid for environmental protection within the meaning of the General Block Exemption Regulation (“GBER”), Regulation 651/2014¹⁰. Regulation 651/2014 declares that certain categories of aid, including certain aid for environmental protection, are compatible with the internal market, and require no notification to the Commission. Spain claims that all the conditions to grant aid laid down in Article 36 of the GBER are fulfilled so that notification of the aid to the Commission was not necessary.
- (39) In the following recitals, the Commission assesses whether the measure indeed meets the conditions of the GBER in order to be found compatible with the internal market without a notification to the Commission.
- (40) First, pursuant to Article 4(1)(s) of the GBER, investment aid for environmental protection should not exceed the threshold of EUR 15 million per undertaking per investment project. Since Spain intends to grant over the entire period EUR 9 million this requirement appears to be met.
- (41) Second, pursuant to Article 36 of the GBER, investment aid enabling undertakings to go beyond Union standards for environmental protection or to increase the level of environmental protection in the absence of Union standards shall be compatible

⁹ Judgment of the Court of Justice of 14 January 2015, *Eventech v The Parking Adjudicator*, C-518/13, EU:C:2015:9, paragraph 66; judgment of the Court of Justice of 8 May 2013, *Libert and others*, Joined Cases C-197/11 and C-203/11, EU:C:2013:288, paragraph 77; judgment of the General Court of 4 April 2001, *Friulia Venezia Giulia*, T-288/97, EU:T:2001:115, paragraph 41.

¹⁰ Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.06.2014, p. 1, as amended by Commission Regulation (EU) 2017/1084 of 14 June 2017 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs, OJ L156, 20.6.2017, p. 1.

with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in Article 36 and in Chapter I (in particular Article 6) of the GBER are fulfilled.

(42) The conditions laid down in Article 36 of the GBER for aid for environmental protection can be summarised as follows:

- The aid consists of investment aid (see section 3.2.1);
- The investment shall enable the beneficiary to increase the level of environmental protection resulting from its activities by going beyond the applicable Union standards; no aid may be granted to help the undertaking to comply with Union standards (see section 3.2.2);
- The eligible costs are limited to the extra investment costs necessary to go beyond the applicable Union standards. If those extra costs do not correspond to a separate investment, they have to be determined by reference to a similar, less environmentally friendly investment that would have been credibly carried out without the aid; the aid can only be granted for the difference in costs between the investment that the undertaking would carry out without the aid and the costs of the more environmentally-friendly investment (see section 3.2.4);
- The aid intensity shall not exceed 40% of the eligible costs; the aid intensity may be increased for aid granted to small and medium-sized undertakings and for investments in assisted areas fulfilling the conditions of Article 107(3)(a) or 107(3)(c) of the Treaty (see section 3.2.4).

(43) Third, Article 6 of the GBER requires that the aid granted has an incentive effect on the beneficiary, i.e. making it substantially change its behaviour. The incentive effect requirement is met when two conditions are fulfilled (see section 3.2.3):

- the beneficiary has submitted a written application for the aid to the Member State concerned before work on the project or activity starts (cf. Article 6(2) of the GBER), and
- in addition, in the case of ad hoc aid to large undertakings¹¹, the Member State has verified, before granting the aid concerned, that documentation prepared by the beneficiary establishes that the aid will result in a material increase in the scope of the project due to the aid, in the total amount spent by the beneficiary on the project or an increase speed of completion of the project due to the aid (cf. Article 6(3)(b) of the GBER).

(44) In this section 3.2 the Commission has verified whether the aid granted by the Regional Government of Valencia to Air Nostrum falls indeed under Article 36 of

¹¹ Large undertakings are undertakings that are not “SMEs”. According to Article 2(1) of Annex I of the GBER, the category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

the GBER and also fulfils all other requirements under this Regulation, especially the requirement of incentive effect under Article 6 of the GBER.

3.2.1. *Investment aid*

- (45) Article 36 of the GBER only applies to investment aid. It seems however that Air Nostrum is not planning to purchase the concerned aircraft but to lease them. Under the GBER a leasing agreement can be assimilated to an investment only if the leasing takes the form of a financial leasing and contains the obligation to purchase the equipment¹².
- (46) In its reply to the request for information of 27 December 2018, Spain refers to the financing of its CRJ-900 aircraft (currently in place but to be replaced by the CRJ-1000 aircraft), which occurs through an operational lease agreement. The wording of the 2018 Cooperation Agreement leaves the type of leasing for the subsidised aircraft, financial versus operational, open. Article 6 of the 2018 Cooperation Agreement states that “*expenses involving financial or operational leasing [...]*” and “*when* (emphasis added) *the subsidised expenses correspond to financial leasing, there will be an undertaking by the company to purchase the asset*”. The Commission asked Spain to clarify the type of lease agreement, but the reply provided in its submission of 26 July 2019 remained ambiguous.
- (47) In addition, the leasing agreement communicated by Spain does not seem to contain any purchase obligation. On the contrary, it contains provisions describing the obligations of the lessee when the aircraft is returned to the lessor at the end of the leasing period, confirming that a purchase is a mere option, not an obligation. In addition, it seems that the CRJ-1000 aircraft would be leased instead of continuing the leasing of CRJ-900 aircraft without the obligation for Air Nostrum to purchase those CRJ-900 aircraft. This further appears to confirm that at least so far the leasing agreements cannot be assimilated to investments.
- (48) For this reason alone, it is open to question whether Article 36 of the GBER applies.

3.2.2. *Going beyond the current environmental Union standards*

- (49) Article 36 of the GBER only applies to aid enabling undertakings to go beyond Union standards for environmental protection. It does not apply to aid helping companies to merely comply with Union standards for environmental protection (see recital (42) above).

¹² See point 155 of the Frequently Asked Questions linked to the General Block Exemption Regulation (March 2016), which in the context of discussing the purchase price of a transport vehicle covered by investment aid under Article 36 of the GBER states the following: “*GBER allows lease costs to be covered by investment aid only when it is in the form of financial leasing, which contains an obligation to purchase the asset at the expiry of the term of the lease*”. Available under: https://ec.europa.eu/competition/state_aid/legislation/practical_guide_gber_en.pdf. A similar statement is made in the context of regional investment aid in Article 14(6)(b) of the GBER: “[...] *for plant or machinery, the lease must take the form of financial leasing and must contain an obligation for the beneficiary of the aid to purchase the asset upon expiry of the term of the lease.*”

- (50) Spain provided evidence that the CRJ-1000 aircraft meet higher environmental standards than what is required under Union environmental standards¹³. In addition, it provided evidence that the alleged alternative aircraft, the cheaper CRJ-900 aircraft, also go beyond Union environmental standards, although to a lesser extent than the CRJ-1000 aircraft¹⁴.
- (51) Since the CRJ-1000 aircraft go beyond Union standards in terms of environmental protection, it seems the aid may enable Air Nostrum to go beyond Union standards for environmental protection. Since the alternative aircraft CRJ-900 also goes beyond Union standards for environmental protection, the aid does not help the company to comply with Union standards for environmental protection.
- (52) However, since both types of aircraft allegedly considered by Air Nostrum for its fleet expansion and renewal comply with the Union standards for environmental protection, the environmental effects of the fleet renewal appear to be only marginal and mainly seem to focus on higher fuel efficiency, which helps Air Nostrum to reduce its operating costs.
- (53) In addition, the Commission has doubts that the main reason for granting aid by the Regional Government of Valencia is the positive environmental effect for the Valencian region.
- First, from the wording in the 2018 Cooperation Agreement it is clear that the Regional Government of Valencia puts a lot of emphasis on the positive welfare effects of the aid for the regional economy, including job creation and boosting the tourism sector (see recitals (16) and (17)).
 - Second, if the main reason for granting aid by the Region of Valencia would be improving the sustainability of the Region by limiting the environmental impact of the air transport sector, it would seem more reasonable to support

¹³ The relevant environmental standards are established in Commission Regulation (EU) 2016/4 of 5 January 2016 amending Regulation (EC) No 216/2008 of the European Parliament and of the Council as regards essential requirements for environmental protection in the field of civil aviation. Article 1 of Regulation 2016/4 (replacing Article 6 (1) on "Essential requirement for environmental protection") states that "Products, parts and appliances shall comply with the environmental protection requirements contained in Amendment 11-B of Volume I and in Amendment 8 of Volume II of Annex 16 to the Chicago Convention [International Civil Aviation Organisation or ICAO] as applicable on 1 January 2015, except for the Appendices to Annex 16".

¹⁴ Spain submitted a technical report by the audit company SGS Tecnos (dated 5 July 2018), specialised in environmental matters and aviation. According to the report replacing the CRJ-900 aircraft by CRJ-1000 aircraft will improve environmental protection due to lower fuel consumption (thanks to increased accuracy in the system of positioning of the aircraft, weight reduction of the plane and better navigation system), lower use of raw materials in the aircraft construction, reduced waste generation and removal of fluorescent lamps. The CRJ-900 aircraft has a passenger capacity of maximum 90 seats versus 100 seats in the case of the CRJ-1000 aircraft. The weight per seat is 422.16 kg MTOW/seat and 409.95 kg MTOW/seat ("Maximum Takeoff Weight") for the CRJ-900 and CRJ-1000 respectively. In terms of fuel efficiency, the CRJ-900 aircraft has a fuel/seat capacity of 98.74 versus 90.03 for the CRJ-1000 aircraft.

all airlines operating in the Region of Valencia to renew their fleet with more environmentally-friendly aircraft, instead of only supporting Air Nostrum¹⁵.

- Finally, apart from the environmental benefits, Air Nostrum itself also puts forward in its letter to the Regional Government of Valencia the argument of higher efficiency and competitiveness when using the newer types of aircraft (see recital (14)). Indeed, with a bigger, more fuel-efficient and better performing aircraft, Air Nostrum will be able to lower its operating costs, so the aid will also give them a cost and competitive advantage.

(54) In summary, while technically speaking the requirement of going beyond the current environmental Union standards, as laid down in Article 36 of the GBER, appears to be fulfilled the Commission has doubts about the relevance of the positive environmental impact of the measure.

3.2.3. *Incentive effect*

(55) Since Air Nostrum is a large undertaking and since the measure is granted only to that company (i.e., the aid in question concerns ad hoc aid to a large undertaking), both requirements regarding the incentive effect mentioned in recital (43) have to be fulfilled.

(56) The first requirement is that the beneficiary submitted a written application for the aid to the Member State concerned before work on the project or activity starts. In the present case, Air Nostrum's aid application was submitted to the Government of the Region of Valencia on 9 March 2017. It refers to [...] non-specified aircraft to be purchased in 2017 and 2018. According to the information submitted by Spain, [...] CRJ-1000 aircraft were ordered before 9 March 2017 in order to replace [...] CRJ-200 and [...] CRJ-900 aircraft in February 2017. Ten additional CRJ-1000 were ordered after 9 March 2017. Spain indicated that the aid has been granted only in respect of the latter ten CRJ-1000 aircraft. Therefore, the first requirement is met with respect to the CRJ-1000 aircraft ordered after 9 March 2017.

(57) The second requirement is that the aid effectively changed the behaviour of Air Nostrum, i.e., the Member State has verified that there is a material increase in the scope, total amount spent or speed of completion of the project due to the aid. This implies that Spain would have asked for and would have obtained internal strategic documents (such as a business plan) that Air Nostrum really considered ordering another (less environmentally-friendly) type of aircraft (such as the CRJ-900) in case the aid would not be granted or would have ordered fewer environmentally-friendly aircraft. However, Spain does not seem to have requested such documents and does not seem to have received them. The documents provided by Spain in this respect were all postdating the Commission's request for information. At this juncture, it remains unclear whether the aid changed at all the behaviour of Air Nostrum and, if it did, whether it enabled Air Nostrum to simply increase its fleet or to modify the fleet in order to use more environmentally friendly aircraft.

¹⁵ In addition, if it were confirmed that Air Nostrum also leases some of its aircraft to other airline companies in other Member States (see footnote 1), it is not clear why the Region of Valencia would support this in the context of their plan to improve the sustainability of the Region.

- (58) According to the 2018 Cooperation Agreement, internal company documents were provided to the Spanish authorities, proving that the aid helped to change Air Nostrum's decision-making behaviour and the scope of the investment project. Article 7 of the 2018 Cooperation Agreement indeed mentions that *“Air Nostrum provided evidence, by means of internal company documents containing a reliable analysis of the viability of the project with and without the aid, and that as a result of the aid received it managed to achieve added value as is evident from, at least, one of the following indicators: a substantial increase in the scope of the project/activity due to the aid; or a substantial increase in the total amount spent by the beneficiary on the project/activity due to the aid; or a substantial increase in the speed of completion of the project/activity concerned. Evidence of this aspect has been supplied to the Ministry of Finance and the Economic Model [...]”*. The Commission however has not received copies of these internal documents.
- (59) In contrast, the information provided by Spain so far in response to the Commission's requests for information seems to indicate that the aid was not decisive for Air Nostrum and that they would have bought the CRJ-1000 in any event.
- First, the minutes of the board meetings of Air Nostrum submitted by Spain only refer to the option of buying the CRJ-1000 aircraft. The option of buying an alternative type of aircraft does not seem to have been discussed.
 - Second, the past purchasing behaviour of Air Nostrum casts doubt on the fact that Air Nostrum would have bought a different aircraft than the CRJ-1000 in the absence of the aid. Indeed, since 2010, Air Nostrum has almost exclusively purchased CRJ-1000 aircraft. In 2009, Air Nostrum already requested aid for the purchase of the CRJ-1000 aircraft, which was eventually not obtained because of the budgetary constraints of the Region of Valencia. Nevertheless, in 2010 and in later years, Air Nostrum went ahead ordering the CRJ-1000 aircraft: in the period 2010-2012, [...] CRJ-1000 aircraft were added to the fleet and in 2016 an additional [...] CRJ-1000 were ordered (see Table 1). Also in 2017, Spain indicated that [...] CRJ-1000 were ordered before Air Nostrum applied for aid. Therefore, before the application of the aid in the present case in March 2017, Air Nostrum's fleet already consisted of [...] CRJ-1000 aircraft.
 - Finally, Air Nostrum pursued the orders of the CRJ-1000 aircraft in 2017, without having any firm confirmation that the Regional Government of Valencia would grant them the aid this time. This does not seem to be cautious behaviour in the context of their previous experience of 2009 in which they had requested aid without obtaining it eventually.

- (60) In addition, the main advantage for airlines of the new CRJ-1000 aircraft appears to be their higher fuel-efficiency compared to the CRJ-900 aircraft (see footnote 14). Therefore, even if Air Nostrum were to provide internal documents on its decision-making process purporting to show it would purchase the CRJ-1000 aircraft only under the condition of receiving aid, the Commission has doubts that the incentive effect requirement would be fulfilled. Indeed, fuel is the largest single cost item for airlines¹⁶, representing about 25% of their total operating cost (2019 data)¹⁷. Flying with more fuel-efficient planes implies using less fuel and therefore reducing the operating expenses of airlines. As a consequence, airlines generally do not need incentives to invest in more fuel-efficient planes as it is in their own interest to do so (by reducing the operating cost base).

3.2.4. *Eligible costs threshold and credible counterfactual*

- (61) In accordance with Article 36(5) and Article 36(6) of the GBER, the “*aid intensity shall not exceed 40 % of the eligible costs*”. Since in this case the aid is alleged to help the undertaking to replace its existing fleet or at least incentivise Air Nostrum to purchase CRJ-1000 aircraft instead of another more polluting type of aircraft, the alleged environmental investment cannot be identified as a separate investment (as per Article 36(5)(a) of the GBER). Instead, the eligible costs must be identified by reference to a counterfactual, which must be a similar, less environmentally-friendly, investment that would have been credibly carried out without the aid (and complies with Union standards). The costs not directly linked to the achievement of a higher level of environmental protection are not eligible. As a result, aid that enables the undertaking to increase its capacity is not eligible under Article 36 of the GBER. The difference between the costs of both investments identifies the costs related to environmental protection and constitutes the eligible costs.
- (62) In order to compute the eligible cost threshold, Spain compares the yearly lease cost of 10 new CRJ-1000 aircraft with the lease cost of the continuation of 10 existing CRJ-900 aircraft. According to Spain, the cost difference between the two leases (excluding the interests) for the year 2018 amounts to EUR 6.4 million. Spain submits that the maximum aid to be granted in line with Article 36 of the GBER would be 40% (potentially augmented by 5 percentage points as regional bonus) of this cost difference, being EUR 2.56 million for 2018. Similar calculations were provided by Spain for the following two years, resulting in a yearly threshold of EUR 2.9 million in 2019 and 2020. Spain submitted in their email of 26 April 2019 that for the year 2018 a request for payment of 2.4 million EUR has been made (but this amount has not yet been paid out).
- (63) The Commission believes that the calculation of the eligible cost thresholds submitted by Spain does not comply with the GBER requirements.

¹⁶ According to an IATA Economic Briefing of February 2010, fuel costs were only 12% of European airlines’ operating costs in 2001, but increased to more than 25% in 2008: https://www.iata.org/whatwedo/Documents/economics/Airline_Labour_Cost_Share_Feb2010.pdf.

¹⁷ See e.g. Statista, “Fuel costs of airlines worldwide from 2011 to 2019, as percentage of expenditure”, available at: <https://www.statista.com/statistics/591285/aviation-industry-fuel-cost/> (consulted on 3 October 2019). In 2012, fuel costs represented more than 30% of the total operating expenses of airlines.

- (64) First, it is not convinced that the CRJ-900 aircraft is a credible counterfactual in the context of Air Nostrum's decision to renew and expand its fleet:
- First, no ex ante business plan or internal strategic document regarding this investment decision of Air Nostrum has been provided from which it would be clear that Air Nostrum envisaged the CRJ-900 aircraft as an alternative to the renewal of its fleet. To the contrary, Spain submitted contradicting information regarding the alternative investment in the absence of aid. In some parts of its submission, Spain argues that there was not even a need to renew the fleet while in other parts of its submission, Spain claims that also other (even cheaper) types of aircraft than the CRJ-900 could have been considered as relevant counterfactual. Spain refers to the E1920 and SSJ100 models as other types of aircraft on the market complying with the applicable legislation but having lower environmental standards.
 - Second, since 2010 almost all newly purchased/leased aircraft have been CRJ-1000 aircraft, although Air Nostrum was never received any aid for them. An acquisition of the CRJ-900 aircraft is questionable as a counterfactual given the past purchasing behaviour of Air Nostrum (having ordered only CRJ-1000, but no CRJ-900 aircraft, in the past years) and since Air Nostrum's fleet renewal strategy seems to be pursuing the aim of improving its competitiveness, efficiency, and sustainability to fight the trend of declining activities (see recital (11)). Renewing its fleet of CRJ-900 with CRJ-900 aircraft is not a credible scenario in that context.
- (65) Second, even assuming that the CRJ-900 aircraft could constitute the right counterfactual, in order to have a reference investment that is similar in terms of duration and size, Spain should have compared the cost to acquire ten new CRJ-900 aircraft with the cost to acquire ten new CRJ-1000 aircraft, and this after deduction of the difference related to the higher capacity of the CRJ-1000 aircraft. Indeed the CRJ-1000 aircraft offers ten additional seats, which also justifies its higher price. This part of the price difference between the CRJ-900 and the CRJ-1000 aircraft is however not eligible according to Article 36(5) second sentence of the GBER and Spain does not seem to have taken this into account.
- (66) In addition, it appears that Spain did not compare the cost to acquire new CRJ-900 and CRJ-1000 aircraft but compared the lease price for already used (CRJ-900) aircraft with the lease price of the new (CRJ-1000) aircraft. This also raises issues. First, Spain's comparison does not cater for the difference in the useful lifetime of the aircraft. Existing planes cannot be used as long as new planes, which needs to be taken into account in the comparison. In addition, Air Nostrum did not take out of service as many CRJ-200 and CRJ-900 aircraft as the number of new CRJ-1000 it acquired allegedly with the aid (see recital (15)), which also shows that the counterfactual cannot simply be the continuation of the lease of older planes.
- (67) Finally, the Commission notes that the main environmental benefit of the CRJ-1000 over the CRJ-900 is its fuel efficiency; the reduced CO₂ emissions are a consequence of this improved energy efficiency. The Commission has therefore verified whether Spain could rely on Article 38 of the GBER to grant the aid.
- (68) The compatibility conditions under Article 38 of the GBER are similar to the compatibility conditions of Article 36 of the GBER (investment aid only, aid to comply with Union standards is not eligible, costs not directly linked to the

achievement of a higher level of energy efficiency are not eligible, eligible costs must be defined by comparison to a credible counterfactual). In addition, also Article 6 of the GBER has to be fulfilled, i.e. the aid must have an incentive effect. Under Article 38 of the GBER, the aid thus raises exactly the same issues as the ones identified under Article 36 of the GBER as described in recitals (45) to (66).

- (69) In addition, as the authorised aid intensity under Article 38 of the GBER is lower than the one under Article 36 of the GBER (30% instead of 40% for large undertakings) the aid granted by Spain raises an additional issue under Article 38 of the GBER. In case the lower aid intensity of 30% would apply (potentially augmented by 5 percentage points as regional bonus), the maximal permissible aid would amount to only EUR 1.92 million. This is lower than the requested amount of EUR 2.4 million (see recital (62)).
- (70) For all those reasons, the Commission has serious doubts whether the aid is exempted from notification and compatible with the internal market under the GBER.

3.3. Compatibility of the aid under the Environmental and Energy State aid Guidelines

- (71) Since Spain argued that the aid aims at improving environmental protection, the Commission has also examined the aid under the Environmental and Energy State aid Guidelines (“EEAG”)¹⁸.

3.3.1. Contribution to an objective of common interest (3.2.1 EEAG)

- (72) Based on the EEAG, an aid measure must contribute to a well-defined objective of common interest.
- (73) In the present case, it is alleged that the aid would improve environmental protection by enabling the purchase of an aircraft that is more environmentally friendly (the CRJ-1000 aircraft). The CRJ-1000 aircraft is more energy-efficient and is alleged to also increase environmental protection in other ways.
- (74) While an aid improving the energy-efficiency of an undertaking, or reducing its environmental impact in another way, can contribute to the achievement of an objective of common interest (i.e. environmental protection, including energy-efficiency), the main environmental benefit of the measure remains and should be described in a more specific manner, in particular because compatibility criteria are different for energy-efficiency measures and other measures for environmental protection.
- (75) The Commission notes in this respect that the fact that it is unclear whether the aircraft would be financed through an operating or a financial lease, linked or not with a purchase obligation, also casts doubt on the extent of the environmental benefit. The file seems to suggest that Air Nostrum can easily modify the type of aircraft under the lease agreement.

¹⁸ Communication from the Commission - Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, pp. 1-55.

3.3.2. *Need for State intervention (3.2.2 EEAG)*

- (76) According to the EEAG, the aid measure must be targeted towards a situation where the aid can bring about a material improvement that the market alone cannot deliver contributing to an increased level of environmental protection.
- (77) Spain has so far not provided any particular element in this respect. It has communicated a list of cases and decisions in which the Commission concluded that there was a need for State aid intervention, but it has not submitted any concrete element showing a market failure or a need for State intervention. In particular, Spain has not demonstrated that airline companies would not buy any environmentally friendly aircraft in the absence of aid. The fact that Air Nostrum itself ordered [...] CRJ-1000 aircraft without aid in the past casts doubt on the need for State intervention. It is possible that the CRJ-1000 aircraft brings in itself sufficient economic savings (in terms of reduced fuel cost, lower maintenance costs, etc.) to constitute an investment that economically makes sense, even absent any aid.

3.3.3. *Appropriateness of the aid scheme (3.2.3 EEAG)*

- (78) The Commission assesses whether the type of aid chosen, i.e. a grant as opposed to a loan or tax credit, is coherent with the market failure that the aid aims to address. As Spain has not clearly identified the market failure, the Commission has not yet been in a position to verify the appropriateness of the aid.
- (79) The Commission notes that the appropriateness of the aid is assumed for energy-efficiency aid measures. Nevertheless, Spain so far did not specify the main aim of the aid measure.

3.3.4. *Incentive effect (3.2.4 EEAG)*

- (80) The Commission considers that an aid measure has an incentive effect if it changes the behaviour of the undertaking concerned (point 49 of the EEAG). The aid will not have any incentive effect if the works started before the aid application (point 50 of the EEAG). The aid application form includes at least the applicant's name and the size of the undertaking, a description of the project, including its location and start and end dates, the amount of aid needed to carry it out and the eligible costs. In the application form, beneficiaries must describe the situation without the aid, i.e., a situation that is referred to as the counterfactual scenario, or the alternative scenario or project. In addition, large undertakings must submit documentary evidence in support of the counterfactual scenario described in the application form. When receiving an application form, the granting authority must carry out a credibility check of the counterfactual scenario and confirm that the aid has the required incentive effect. A counterfactual scenario is credible if it is genuine and relates to the decision-making factors prevalent at the time of the decision by the beneficiary regarding the investment (point 51 of the EEAG).
- (81) For the same reasons as explained in recitals (55) to (60), the Commission has doubts that the incentive effect is met in the present case. In particular, it does not seem that Spain obtained a description of the counterfactual scenario and obtained documentary evidence to support the counterfactual scenario. The ordering history of Air Nostrum tends to show that without the aid the company would also have ordered the CRJ-1000 aircraft.

3.3.5. Proportionality of the aid (3.2.5 EEAG)

- (82) Environmental aid is considered to be proportionate if the aid amount per beneficiary is limited to the minimum needed to achieve the environmental protection or energy objective aimed for.
- (83) Aid will be considered to be limited to the minimum necessary if the aid corresponds to the net extra cost necessary to meet the objective, compared to the counterfactual scenario in the absence of aid (see point 70 of the EEAG, point 148 and 150(a) of the EEAG).
- (84) As already pointed out in recitals (64) to (66), at this juncture the Commission has doubts about the counterfactual scenario and has consequently also doubts on the eligible costs and the proportionality of the aid.
- (85) The Commission notes that, the proportionality of the aid (in terms of aid intensities) and duration of the aid will however have to be verified in a different manner depending on whether the aid qualifies as investment aid or not and whether it constitutes aid for energy-efficiency or not. The unclarity on the nature of the leasing therefore also casts doubts about the relevant aid intensity.

3.3.6. Avoidance of undue negative effects on competition and trade (3.2.6 EEAG)

- (86) As the Commission has doubts about the added value of the aid in terms of environmental protection, it also has doubts at this juncture that the positive effect of the aid could outbalance the distortions of competition that would be felt on the market.

3.3.7. Transparency (3.2.7 EEAG)

- (87) The Commission would like to remind Spain about the requirement to publish the following information on a comprehensive State aid website, at national or regional level: the full text of the approved aid granting decision and its implementing provisions, the identity of the granting authority and the individual beneficiaries, the form and amount of the aid granted, the date of granting, the type of undertaking (SME/large company), the region in which the beneficiary is located and the principal economic sector in which the beneficiary is active (see point (104) of the EEAG).
- (88) Such information must be published after the decision to grant the aid has been taken, must be kept for at least 10 years and must be available to the general public without restrictions (see point (106) of the EEAG).
- (89) The Commission notes in this respect that it is unclear whether the publication of the information listed in recital (87) has been published on a relevant website.

4. DECISION

- (90) Based on the information at its disposal, the Commission believes that, for the reasons explained in section 3.2 above, the requirements for the grant to Air Nostrum being compatible aid under Article 36 (and Article 38) of Regulation 651/2014, are not met. Moreover, even under the Environmental and Energy State

aid Guidelines (see section 3.3), the Commission would still face the same concerns as regards the incentive effect of the aid and the relevant counterfactual.

(91) In order to complete its assessment and to be able to take a final position on the compatibility of the aid under the GBER or the Environmental and Energy State aid Guidelines, the Commission lacks in particular the following information:

- Evidence about the objective of the aid.
- Evidence about the need for State intervention.
- Evidence about the incentive effect of the aid and the relevant counterfactual: evidence about the counterfactual scenario in case Air Nostrum would not have been granted the aid, in the form of internal company documents (such as authentic strategic documents of the board, business plans with different scenarios of aid – no aid). The Commission understands from this that these internal documents exist and requests Spain to provide them.
- Evidence regarding the type of leasing (financial versus operational) and purchase obligation: the replies provided by Spain in the context of the Commission's requests for information, remain unclear and ambiguous regarding the type of lease.
- Net extra production costs resulting from the investment, taking account of benefits resulting from energy saving.

In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, requests Spain to submit its comments and to provide all such information as may help to assess the aid, within one month of the date of receipt of this letter. In particular, at least the missing evidence as set out in recital (91) has to be provided by Spain. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.

The Commission wishes to remind Spain that Article 108(3) of the Treaty on the Functioning of the European Union has suspensory effect, and would draw your attention to Article 16 of Council Regulation (EU) 2015/1589, which provides that all unlawful aid may be recovered from the recipient.

The Commission warns Spain that it will inform interested parties by publishing this letter and a meaningful summary of it in the Official Journal of the European Union. It will also inform interested parties in the EFTA countries, which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the Official Journal of the European Union and will inform the EFTA Surveillance Authority by sending a copy of this letter. All 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 should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Member of the Commission