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C(2023) 27 final

<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 style="text-align: center;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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**Subject: State Aid SA.62161 (2021/PN) – Lithuania
Aid to Vilnius airport**

Excellency,

1. PROCEDURE

- (1) Following pre-notification contacts¹, by electronic notification of 25 November 2022, the Lithuanian authorities notified to the European Commission (“Commission”), in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”), their plan to grant investment aid (“the Measure”) to the Vilnius International Airport (“VNO”). The notification was registered under case number SA.62161.
- (2) Lithuania exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958² and to have this decision adopted and notified in English.

¹ Pre-notification contacts started on 1 March 2021 and included, until the notification, exchanges of emails and telephone calls.

² Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

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2. DESCRIPTION OF THE MEASURE

2.1. The beneficiary

- (3) The Measure concerns a grant amounting to EUR 22.9 million to VNO to finance the construction of a new Terminal (T4). Since 2014, the operation of VNO and two further Lithuanian airports, namely Kaunas (KUN) and Palanga (PLQ) has been entrusted to the State-owned company Lietuvos Oro Uostai ("LOU", "Lithuanian Airports") under the control of the Ministry of Transport and Communications. In 2019, LOU posted a net profit of EUR 14 million. In 2020 and 2021, it incurred net losses of EUR 9.81 million and EUR 0.78 million respectively. The forecast net profit for 2022 is EUR 1.85 million.
- (4) According to Lithuania, the airport management company ensures account separation for the different airports.
- (5) LOU will be the direct beneficiary of the Measure.
- (6) The three Lithuanian airports complement each other in terms of destinations covered, airlines present and passenger groups served. VNO is the main capital gateway for business and tourist travel from and to the country. KUN is focused on facilitating travel at low cost of Lithuanian nationals working/living abroad. PLQ provides connectivity primarily with the Scandinavian region using premium Scandinavian airlines for tourists and for business to and around the port city of Klaipeda.
- (7) VNO is located seven kilometres south of the city of Vilnius and can be reached by car, bus or train. The airport serves the country's main political and business centre together with the most populated region of the country concentrated around Vilnius. It is the largest airport in Lithuania and the second largest in the Baltic countries (after Riga).
- (8) Lithuania explains that given the large distance from many other EU countries, VNO is an important access point to grant the large number of Lithuanians studying and working abroad access to their home country and those based in Lithuania access to the EU single market. In the view of Lithuania, the use of public funding for the investment project would be a sound use of public resources in that it will address the needs in terms of mobility of the Lithuanians and more generally EU citizens travelling from/to Lithuania.
- (9) According to Lithuania, it has been demonstrated over the past years that VNO serves as a catalyst for economic growth increasing economic competitiveness of Lithuania. VNO is a strategic airport, serving the Lithuanian capital with air transportation, therefore making it attractive for foreign direct investment. As the capital airport, VNO is a core element of Lithuania's transport infrastructure.
- (10) Lithuania also notes that VNO has certain characteristics that distinguish it from the other Lithuanian airports: it is based close to the country's capital and in close proximity to a number of its business centres, shared service centres, company headquarters and academic/cultural institutions. VNO attracts higher traffic of passengers working in those business areas.
- (11) In 2019, before COVID-19, the number of annual passengers at VNO exceeded 5,000,000. The year 2020 saw a dramatic reduction of passenger numbers by

74% compared to the previous year, as a direct result of the COVID-19 pandemic. The average annual number of passengers served in the two years before the notification was 1,605,729.³

- (12) In 2019, VNO served 72 different routes. In 2020, VNO served 48 different routes with 15 different carriers servicing the airport. In 2021, VNO served, inter alia, airBaltic, together with a number of European network carriers, such as LOT, Lufthansa, SAS, Finnair and Brussels Airlines as well as two low cost airlines, namely Ryanair and Wizz Air. In terms of aircraft movements at the airport, the year on year decrease between 2019 to 2020 was lower compared to passenger numbers: during 2020, VNO served 20,857 flights (-56% compared to 2019, that is less than the decrease of 74% in the passenger count). The decrease in 2020 was followed by a slight increase again in 2021 compared to the previous year, with 25,316 flights.
- (13) As regards airfreight traffic, in 2019, 13,973 tonnes of airfreight were transported out of VNO. In 2020, airfreight traffic increased by 4% compared to 2019, with 14,478 tonnes of airfreight being transported from VNO. 2021 saw another increase by 6% to 15,311 tonnes. The forecast respective airfreight volume for 2022 is 20,933 tonnes. Lithuania explains such growth by the increase in e-commerce activities and transportation of medical equipment.
- (14) Lithuania expects that recovery from the crisis caused by the COVID-19 pandemic will most likely take a few years. In particular, Lithuania forecasts that traffic numbers at VNO will exceed the 2019 passenger levels by 2025.
- (15) That outlook, according to Lithuania, is broadly consistent with the European airport industry growth rates projected by Eurocontrol in June 2022.⁴ More specifically, under Eurocontrol's baseline scenario, the rebound of aircraft traffic in Europe may reach 2019 levels already by 2024 (see Figure 1).

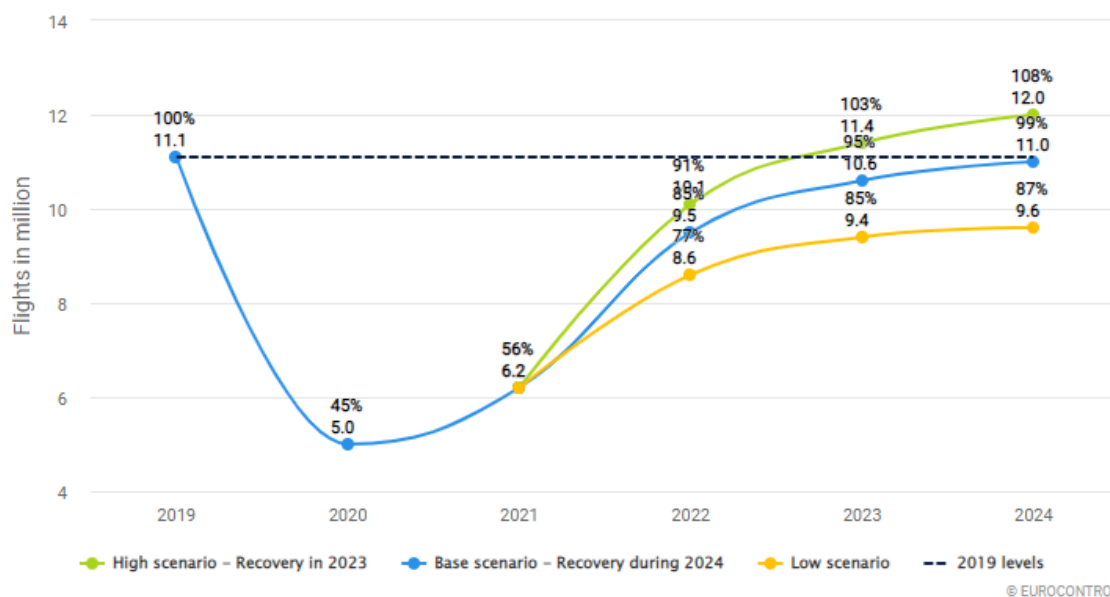
³ In particular, VNO served 1,312,468 passengers in 2020 and 1,898,991 passengers in 2021.

⁴ <https://www.eurocontrol.int/publication/eurocontrol-forecast-update-2022-2024>, which takes into account also the impact of the war of aggression against Ukraine by Russia.

Figure 1: Air passenger forecasts, Europe, 2022 – 2024

EUROCONTROL 3-year forecast for *Europe 2022-2024

Actual and future IFR movements, % traffic compared to 2019



*Europe = ECAC 44 Member States

Source: Eurocontrol

- (16) The Lithuanian authorities note that the current infrastructure at VNO has the capacity to accommodate up to 3.5 million passengers per annum with minimal adjustments to the existing infrastructure.
- (17) In 2019, the passenger count was slightly over 5 million. According to Lithuania, the main implications of operating at such overcapacity have been prolonged queueing times and reduction in comfort levels for passengers. With an estimated recovery of passenger numbers by 2025, according to Lithuania, VNO is at risk of permanently operating over intended capacity from that point onwards. Lithuania states that exceeding the capacity consistently presents risks to operational safety and creates a significant degree of congestion during peak travel times.
- (18) In that setting, Lithuania considers that a new departure terminal (T4) in VNO would mitigate those inconveniences and risks and would also create new possibilities (e.g., more effective social distancing options in case of pandemic situations). Further, adding the new terminal could provide VNO with the possibility to renovate other terminals in the future without having to close the airport and lose passenger traffic.
- (19) The Lithuanian authorities underline that VNO is open and will continue to be open to all potential users, and is not dedicated to one specific user or category of users. They also confirm that, in the case of physical limitation of capacity, the allocation will be done on the basis of pertinent, objective, transparent and non-discriminatory criteria.

- (20) The distance and travelling time by land transport between VNO and the closest commercial passenger airports currently in operation in the region are indicated in Table 1.

Table 1: Distances and travel time between VNO and closest, surrounding airports

Airport	Distance from VNO by land	Travel time from VNO
KUN – Kaunas	100 km	1h 5 min
PLQ – Palanga	336 km	3 h 10 min
Riga (Latvia)	260 km	3 h 45 min
Liepaja International Airport (Latvia)	406 km	4 h 30 min

Source: Lithuania

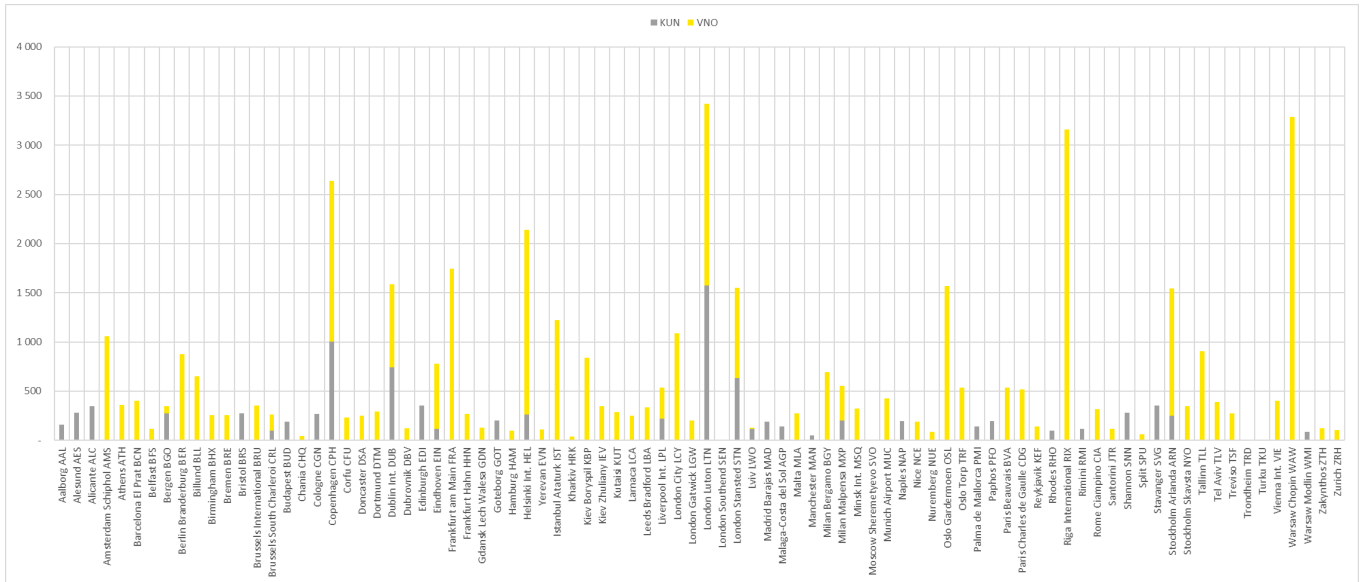
- (21) KUN is the second busiest civil airport in Lithuania after VNO and the fourth busiest in the Baltic States. The airport is located in the central part of the country, 14 km northeast of Kaunas city centre and 100 km west from VNO.
- (22) The fastest travel between KUN and VNO is by car and takes approximately 1 hour 5 minutes. There are direct bus connections between KUN and VNO, with several connections daily, which are coordinated according to the flight schedules at the two airports and which have a travel time of approximately 1 hour 30 minutes. Other means of transport, e.g., by train, take significantly longer than that.
- (23) In 2019, KUN served 1,160,591 passengers. During the Covid-19 pandemic passenger figures have decreased substantially.⁵ According to LOU, passenger numbers in KUN airport are expected to reach 1,115,862 in 2022 and to reach the 2019 levels by the end of 2023.⁶ Lithuania also notes that KUN has a yearly capacity of 800,000 passengers and, therefore, was operating at activity levels significantly exceeding its intended passenger capacity during the pre-pandemic years (and will do so again in 2022).

⁵ KUN served 370,000 passengers in 2020 and 490,000 passengers in 2021.

⁶ According to Lithuania, KUN is expected to grow beyond 2023 with significant growth figures (2024: 13%; 2025:10%; 2026:8%).

- (24) As regards destinations served by VNO and KUN, Lithuania points out that during 2021 and 2022 (to date) out of a total 86 destinations served, there are only 12 destinations operated by both VNO and KUN.⁷ Figure 2 gives a detailed overview of the destinations served by VNO and KUN, and where those overlap.⁸

Figure 2: Destinations served by VNO and KUN, 2021–2022



Source: Lithuania

- (25) In terms of further characteristics that distinguish VNO from KUN, VNO caters for a much broader range of destinations (55 destinations directly served by VNO vs 31 destinations served by KUN), with a larger number of point-to-point holiday destinations and charter flights.
- (26) By contrast, KUN provides its infrastructure to a large number of military flights and is increasingly focusing on cargo flights, servicing the nearby Kaunas free economic zone. Maintenance, Repair, and Overhaul (MRO) development in KUN during recent years marks an additional different strategic business approach compared to VNO.
- (27) Other international airports are located abroad, including Warsaw airport (390 km away), Gdansk airport (430 km away) and Tallinn airport (600 km away).

⁷ Destinations served by both VNO and KUN are Bergen (BGO), Brussels South Charleroi (CRL), Copenhagen (CPH), Dublin International (DUB), Eindhoven (EIN), Helsinki (HEL), Liverpool International (LPL), London Luton (LTN), London Stansted (STN), Lviv (LWO), Milan Malpensa (MXP) and Stockholm Arlanda (ARN).

⁸ In specific, 86% of the destinations served by LOU through VNO and KUN are “unique”. That means that they are served by only one of the airports.

The closest international airports outside the EU, notably Minsk (Belarus) and Kaliningrad (Russia), are 190 km and 340 km away, respectively, from VNO and the choice of these airports is rarely an alternative for travellers, given, for instance, the unpredictable travel time and administrative formalities related to crossing the EU's external borders.

- (28) Finally, currently no high-speed rail links exist in the Baltic States, which could accommodate the increased demand for international travel. The construction of Rail Baltica⁹ will lead to an improved connection by rail in the Baltic States and neighbouring countries. Vilnius will also be linked to Rail Baltica through a railway connection to Kaunas. According to publicly available information, Rail Baltica is expected to be operational towards the end of 2026.¹⁰

2.2. The investment project and its financing

2.2.1. *The planned investment to be financed by the grant*

Construction of the new departure terminal (T4)

- (29) LOU will use the entire grant to build and equip the new terminal (T4). According to Lithuania, the current VNO terminal infrastructure is capable of handling 3.5 million passengers per year. However, already prior to the Covid-19 pandemic, VNO operated over its intended 3.5 million-passenger capacity for a number of years, with approximately 5 million passengers passing through VNO in 2019. The passenger count is expected to recover to the pre-pandemic levels by 2025. In order to ensure operational safety, reduce passenger congestion and have the ability to grow its operations, according to Lithuania, VNO needs to build the new terminal.¹¹ The new terminal, which is expected to be deployed as of 2026, will expand VNO capacity to 7.8 million passengers per year. That expansion aims at ensuring optimal passenger flows and at addressing the concerns in relation to operating at continued overcapacity (recitals (17) and (18)). Further, Lithuania considers that enhanced social distancing capabilities for the years to come could be another benefit of the expansion.

⁹ Rail Baltica is a rail transport infrastructure project seeking to integrate the Baltic States in the European rail network. The project includes five Member States – Poland, Lithuania, Latvia, Estonia and Finland. It will connect Helsinki, Tallinn, Pärnu, Riga, Panevežys, Kaunas, Vilnius and Warsaw.

¹⁰ <https://www.railbaltica.org/about-rail-baltica/project-timeline/>

¹¹ As noted before, Lithuania explains that the main implications of operating at overcapacity have been a reduction in the service levels offered to passengers at VNO (e.g. prolonged queuing times).

- (30) According to Lithuania, the added capacity at VNO is expected to be fully used by [...] (*) or, depending on Rail Baltica's future impact on Baltic travel otherwise served by VNO, by [...] at the latest. In particular, Lithuania expects the impact of Rail Baltica on future passenger flows at VNO to be limited, i.e., a moderate [...] % impact on its total passenger numbers from the year [...] onwards.¹² Nonetheless, on a conservative basis, Lithuania assumes for the purpose of the notification of the Measure that [...] % of all VNO passengers (which would mean [...] % of all its Baltic travellers), would switch to Rail Baltica as from [...].
- (31) According to Lithuania, the total investment costs of the new terminal (T4), which include the construction of the terminal and the associated equipment, will amount to EUR 65.7 million, of which EUR 8.6 million constitutes a public remit-related investment, whereas the residual investment of EUR 57.1 million relates to an economic activity. In particular, the investment concerns appropriate infrastructure that will meet the airport's needs in terms of passenger numbers, safety standards and reduced congestion.

Explosives detection systems and aviation security equipment

- (32) According to Lithuania, a total of EUR 8.6 million will finance the following public-remit related part of the investment:
- explosives detection systems (EUR 5.3 million), and
 - other aviation security equipment (x-ray systems, EUR 3.3 million).
- (33) Two explosives detection systems will be installed for departing hold baggage as well as any transfer hold baggage arriving from non-EU countries. In addition, one conventional x-ray device will be installed for out of gauge hold baggage¹³ screening of departing- or transfer passengers.

*Confidential information

¹² Lithuania explains that, based on 2021 data, Baltic travel, i.e., the main category of flights that could be substituted by Rail Baltica, represents [...] % of the total aircraft movements between VNO and any other airport and, accordingly, approximately [...] % of the passenger flows. In line with current passenger projections, [...] % of those passenger flows in year [...] are expected to amount to approximately [...] passengers. On that basis, [...] passengers is the maximum number of passengers that are expected as possibly switching from VNO to Rail Baltica. However, Lithuania estimates that such extreme scenario is highly unlikely. In that respect, Lithuania adds that Rail Baltica will mainly target passengers otherwise travelling by car, rather than flying through airports. For example, Lithuania highlights that point-to-point travel between Riga and Vilnius by air is minimal, with most aviation passengers on that route being transit passengers. Those transit passengers will most likely continue to choose travel by air rather than a trip combining transit by train with a long haul flight. Taken those elements together, Lithuania envisages that a maximum of [...] % of VNO's Baltic travellers may switch to Rail Baltica. Accordingly, it is reflected in the traffic projections at VNO that it may lose [...] % of its total passengers to Rail Baltica.

¹³ This may relate, for instance, to skiing and large sports equipment.

- (34) As regards cabin baggage, all departing passengers' hand baggage will be screened by seven new cabin baggage explosives detection system devices (CBEDS). With the deployment of such new generation CBEDS security equipment, passengers will no longer have to remove electronic items, such as laptops, from their hand baggage and they will no longer have to remove liquids of more than 100 ml.
- (35) In addition to that, six conventional x-ray devices will be installed for hand baggage screening of staff.¹⁴
- (36) According to Lithuania, the newly installed explosives detection systems and aviation security equipment will enable airport security staff to automatically detect potential threats (e.g. firearms, improvised explosive devices, including liquid improvised explosive devices) and hinder potential threats from being loaded into aircrafts departing from VNO. It will, therefore, safeguard civil aviation against possible acts of unlawful interference in Lithuania.
- (37) More specifically, Lithuania confirms that the public funding of such public remit investment will be strictly limited to compensating the costs to which they give rise, that it may not be used to finance other investments or activities and that LOU will refund to Lithuania any funds unduly used. Moreover, Lithuania reaffirms that a separate cost accounting will be maintained in order to avoid any transfer of public funds between the non-economic and economic activities and that the respective accounting can be extracted for audit at any moment in time.
- (38) Finally, Lithuania points out that public financing of the explosives detection systems and other aviation security equipment does not lead to undue discrimination between airports, since all Lithuanian airports have equal access to request funding for that type of aviation security equipment.

2.2.2. The financing of the investment

- (39) The total cost of the planned investment amounts to EUR 65.7 million, of which EUR 8.6 million are public remit-related, whereas EUR 57.1 million relate to an economic activity. Lithuania is planning to finance with a grant (EUR 8.6 million) the totality of the public remit-related part of the investment (see recitals (32) to (38)). In addition, it will finance 25% of the economic activity-related part of the investment (EUR 57.1 million) with a direct grant to the beneficiary amounting to EUR 14.28 million. The remaining EUR 42.82 million will be financed through a loan from a commercial bank. The Lithuanian authorities explain that in order to obtain that loan, LOU committed vis-à-vis the bank [...].¹⁵

¹⁴ Staff items can be screened using conventional x-ray equipment, as the liquid ban does not apply to staff.

¹⁵ The contractual covenants laid down in the envisaged loan agreement between LOU and its commercial lender [...].

- (40) In terms of timing, Lithuania envisages awarding the grant (amounting to EUR 22.9 million, namely EUR 8.6 million for the public remit-related part of the investment and EUR 14.28 million for the economic activity-related part of the investment) still in 2022. The actual disbursement of the grant will take place in instalments until 2024.
- (41) The planned support for the economic activity-related part of the investment will not exceed the funding gap of that part of the investment as estimated by the Lithuanian authorities. To that purpose, Lithuania provided a funding gap analysis based on a business plan for the period between 2022 and 2045, corresponding to the weighted average economic lifetime of the planned investments for the construction of the terminal and the associated equipment.
- (42) In the absence of State support, according to Lithuania, i.e., in a non-investment scenario, VNO would continue to operate, although the status quo would entail some operational, regulatory and ultimately security risks. On that basis, Lithuania calculated the funding gap of the project by comparing the profitability of the scenario where VNO would carry out the investment of the new terminal (the “factual scenario”) with the profitability of an alternative scenario where VNO would continue operating with the current infrastructure (the “counterfactual scenario”). More specifically, Lithuania calculated the funding gap as the net present value of the incremental cash flows pertaining to the investment project, which are calculated as the difference in free cash flows¹⁶ between the factual and counterfactual scenario.
- (43) In addition, Lithuania provided detailed explanations on the main assumptions of the business plan related to both the factual and counterfactual scenario, which underpin the funding gap analysis.
- (44) Further, Lithuania used VNO’s weighted average cost of capital (“WACC”) as the discount rate used for the funding gap analysis. Based on the available company and market information, it estimates the WACC at [...]%. The discount rate is assumed to be identical in both scenarios.
- (45) On that basis, the funding gap is calculated as the net present value of the incremental cash flows pertaining to the investment project over its lifetime. In particular, the project presents a funding gap of EUR 25.83 million in net present value terms, as illustrated in Table 2.

Table 2: Calculation of the funding gap of the economic part of the investment, EUR million

Operational cash flows	[...]
Changes in working capital	(0.37)
Capital expenditures	(88.70)

¹⁶ The free cash flows in the factual and counterfactual scenario are defined as the sum of the operational cash flows, change in working capital and capital expenditure. In both scenarios, the operational cash flows are calculated as the difference between operational revenues (from aviation and non-aviation activities) and the associated expenditures.

Incremental cash flows	[...]
Funding gap (NPV)	(25.83)
Nominal investment aid	14.28
Investment aid (NPV)	12.17
Funding gap with investment aid (NPV)	(13.66)

Notes: (1) The calculated funding gap only relates to the economic activity-related investments; (2) Where indicated, figures in the table are presented in net present value (NPV) terms, whereby future cash flows are discounted to the end of the year 2022; other figures are presented in nominal terms as the sum of future cash flows.

Source: Lithuania

- (46) Lithuania explains that no construction works on the investment have started. Following a tender procedure, a contract has been signed with the winning contractor. However, under the terms of that contract, LOU is at present not bound to order equipment or commit in any other way to make the planned investment irreversible.
- (47) Lithuania confirms that VNO will not start construction works nor will it make any firm commitments before State aid approval by the Commission and the relevant national authorities.
- (48) Aid will be gradually disbursed to the beneficiary according to the time schedule of the project. If the allocated funds are not used in the planned year, they may be rescheduled for disbursement the following year.

2.3. Monitoring, claw-back and transparency

- (49) According to Lithuania, the Ministry of Transport and Communications will control the correct implementation of the project in line with the conditions of the Implementing Agreement (see recital (55)), including the justification of costs).
- (50) The Lithuanian authorities commit to monitor the use of the grant by LOU over the relevant period and to further ensure that the grant is limited to the minimum necessary through a claw-back mechanism. Any undue payment of the grant will be recovered with interest.
- (51) The Lithuanian authorities committed to comply with the rules on transparency set out in points 162 and 163 of the Guidelines on State aid to airports and airlines¹⁷ (“Aviation Guidelines”), as amended by the transparency communication¹⁸ (the “Transparency Communication”). That commitment

¹⁷ Communication from the Commission — Guidelines on State aid to airports and airlines, OJ C 99, 4.4.2014, p. 3.

¹⁸ Communication from the Commission amending the Communications from the Commission on EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband

includes the publication of the relevant information as well as keeping it public for at least 10 years. The Lithuanian authorities declared that the information will be available to the interested public without restrictions.

2.4. Cumulation

- (52) Lithuania confirms that the aid cannot be cumulated with any other aid from local, regional or national sources, or financing from Union sources, to cover the same eligible costs.
- (53) In its Decision of 25 August 2016¹⁹, approving aid to Investment in infrastructure at Vilnius airport (the “2016 Decision”), the Commission approved aid to finance the modernisation of infrastructure at VNO under Article 107(3)(c) TFEU. Lithuania explained that that investment program is currently nearing the end of implementation and that there is no overlap between the infrastructure objects funded by that preceding 2016 investment in infrastructure at VNO and the Measure. The Measure relates entirely to the distinct investment in the new Terminal (T4), while the 2016 measure related to investment in infrastructure existing at the time.
- (54) In its Decision of 29 July 2021, Investment aid to Palanga airport²⁰, the Commission also approved aid to be paid to LOU. However, that measure related to investment aid for Palanga airport (PLQ). Lithuania stresses that, although the beneficiary in both measures is identical, there is no cumulation between the investment aid to Palanga airport and the Measure, which relates to VNO and thus concerns a different airport and a different investment (different eligible costs).

2.5. Legal Basis

- (55) The legal basis of the Measure is the Transport Development Programme of the Ministry of Transport and Communications for 2022-2030, approved by the Resolution of the Government of the Republic of Lithuania No 245 of 16 March 2022, in connection with the implementing provision, Order No 3-475 of the Minister of Transport and Communications of the Republic of Lithuania of 17 October 2022, approving the Description of the Progress measure No 10–001–05–03–03 “Improving connectivity by air transport” for the implementation of the Transport Development Programme of the Ministry of Transport and Communications for the years 2022-2030. The Ministry of Transport and Communications will sign an Implementing Agreement with LOU setting out the details of the investment project. The Lithuanian authorities confirm that the

networks, on Guidelines on regional State aid for 2015-2020, on State aid for films and other audio-visual works, on Guidelines on State aid to promote risk finance investments and on Guidelines on State aid to airports and airlines, OJ C 198, 27.6.2014, p. 30.

¹⁹ Decision of 25 August 2016, Investment in infrastructure at Vilnius airport, C(2016) 5375 final in case SA.40197, Lithuania, OJ C 425, 18.11.2016, p. 1.

²⁰ Decision of 29 July 2021, Investment aid to Palanga airport, C(2021) 5751 final, in case SA.62162, Lithuania, OJ 521, 27.12.2021, p.1.

aid will neither be granted nor paid out before the notification of the Commission's approval.

- (56) The Measure will be administered by the Ministry of Transport and Communications. The funding for the Measure will come from the general budget of the State.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid within the meaning of Article 107(1) TFEU

(57) By virtue of Article 107(1) TFEU "*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.*"

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

- 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.

(59) In the following sections 3.1.1 to 3.1.6, the Commission assesses whether the Measure meets those cumulative criteria and thus constitutes aid in the meaning of Article 107(1) TFEU.

3.1.1. *Notion of undertaking and economic activity*

(60) According to settled case law, the Commission must first establish whether LOU 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 financed.²¹ Any activity consisting in offering goods and services on a given market is an economic activity.²²

(61) It is settled case law that the operation of an airport, including the provision of airport services to airlines and to the various service providers within airports, is

²¹ 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, *FFSA and Others*, 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.

²² 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.

an economic activity.²³ The Court of Justice has confirmed that the operation of an airport for commercial purposes and the construction of airport infrastructure constitute an economic activity.²⁴ Once an airport operator engages in economic activities, regardless of its legal status or the way in which it is financed, it constitutes an undertaking for the purposes of Article 107(1) TFEU.²⁵

- (62) The Commission notes that the airport infrastructure and equipment are operated by LOU, the beneficiary of the public funding under assessment. LOU charges airlines, as well as general aviation, fees for the use of the airport infrastructure, and thus exploits the Airport commercially. It follows that the entity operating the Airport constitutes an undertaking for the purposes of Article 107(1) TFEU.

Public remit tasks

- (63) While LOU constitutes an undertaking for the purposes of Article 107(1) TFEU, not all the activities of an airport operator are necessarily of an economic nature.²⁶
- (64) According to the Aviation Guidelines, activities such as air traffic control, police, customs, firefighting, measures designed to protect civil aviation from acts of unlawful interference, and investment in the infrastructure and equipment needed for such activities are regarded, as a general rule, as not being economic in nature.²⁷
- (65) The Aviation Guidelines also stipulate that, so as not to constitute State aid, the public financing of such non-economic activities must be strictly limited to compensating the costs to which they give rise and must not lead to undue discrimination between airports. The Aviation Guidelines clarify with regard to that second condition that, when it is normal under a given legal order that civil airports have to bear certain costs inherent to their operation, whereas other civil airports do not, the latter might be granted an advantage, regardless of whether or not those costs relate to an activity which in general is considered to be of a non-economic nature.²⁸
- (66) Lithuania explained that the explosives detection systems and the aviation security equipment (x-ray systems) to be purchased and installed fall within the

²³ Judgment of the Court of First Instance of 12 December 2000, *Aéroports de Paris v Commission*, T-128/98, EU:T:2000:290, confirmed by the judgment of the Court of Justice of 24 October 2002, *Aéroports de Paris v Commission*, C-82/01 P, EU:C:2002:617.

²⁴ Judgment of the Court of Justice of 19 December 2012, *Mitteldeutsche Flughafen and Flughafen Leipzig-Halle v Commission*, C-288/11, EU:C:2012:821; see also judgment of the Court of Justice of 24 October 2002, *Aéroports de Paris v Commission*, C-82/01, EU:C:2002:617, and judgment of the Court of First Instance of 17 December 2008, *Ryanair v Commission*, T-196/04, EU:T:2008:585.

²⁵ Judgment of the Court of Justice of 17 February 1993, *Poucet and Pistre*, Joined Cases C-159/91 and C-160/91, EU:C:1993:63.

²⁶ Judgment of the Court of Justice of 19 January 1994, *SAT Fluggesellschaft v Eurocontrol*, Case C-364/92, EU:C:1994:7.

²⁷ See Aviation Guidelines, point 35.

²⁸ See Aviation Guidelines, points 36 and 37.

public remit (see recitals (32) - (36)). The Commission finds that the equipment as described by Lithuania, which detects arms and explosives brought by passengers and staff does indeed serve to perform an activity necessary to safeguard civil aviation against acts of unlawful interference. Therefore, in line with point 35 of the Aviation Guidelines, the respective part of the investment (EUR 8.6 million) into that infrastructure and equipment are of non-economic nature.

- (67) As mentioned in recital (37), Lithuania ensures that the public funding of non-economic investments will be strictly limited to compensating the costs to which they give rise and may not be used to finance other investments and that LOU will refund any overcompensation to Lithuania. Moreover, Lithuania reaffirms that separate cost accounting will be maintained in order to avoid any transfer of public funds between the non-economic and economic activities and that the respective accounting can be extracted for audit at any moment in time.
- (68) Lithuania confirmed that the Lithuanian State finances the costs of those investments for all airports in that Member State, in a non-discriminatory manner (see recital (38)).
- (69) The Commission therefore considers the explosives detection system and the other aviation security equipment (x-ray systems) as described are of non-economic nature and, therefore, the financing of that investment (EUR 8.6 million) does not involve State aid. In contrast, the remainder of the investment, amounting to EUR 57.1 million, concerns economic activities.

3.1.2. *Use of State resources and imputability to the State*

- (70) The funding for the Measure will come from the general budget of the State (see recital (56)). The aid will be administered by the Ministry of Transport and Communications, which will sign to that effect an Implementing Agreement with LOU (see recitals (55) and (56)). The funding thus involves State resources and is imputable to the State.

3.1.3. *Economic advantage*

- (71) The Measure reduces the investment costs that the airport operator of VNO would normally have to bear if it wanted to expand, modernise the airport and improve its safety and efficiency, and therefore confers an economic advantage on the airport operator.

3.1.4. *Selectivity*

- (72) 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 economic advantages of the Measure would be granted to one beneficiary only. The Measure is thus selective within the meaning of Article 107(1) TFEU.

3.1.5. *Distortion of competition and effect on trade*

- (73) According to settled case law²⁹, an aid measure may distort competition if the recipient of the aid competes with other undertakings on markets open to competition.
- (74) VNO competes to some extent with other airports in Lithuania and Latvia, even if competition is not very intense, given the considerable distances between airports in the Baltic region. Nevertheless, public financing for the airport will enable VNO to continue operating and will strengthen its position in relation to other airports, including those outside Lithuania. Hence, the Measure is liable to have an effect on competition and trade.

3.1.6. *Conclusion on the existence of State aid*

- (75) The Commission concludes that the part of the grant (EUR 14.28 million) financing the economic related part of the investment at VNO (amounting to EUR 57.1 million) constitutes State aid under Article 107(1) TFEU.
- (76) In contrast, the financing of investment costs related to public remit tasks (EUR 8.6 million) does not constitute State aid within the meaning of Article 107 TFEU.

3.2. **Lawfulness of the aid**

- (77) The legal basis of the Measure is the Transport Development Programme of the Ministry of Transport and Communications for 2022-2030, approved by the Resolution of the Government of the Republic of Lithuania No 245 of 16 March 2022, in connection with the implementing provision, Order No 3-475 of the Minister of Transport and Communications of the Republic of Lithuania of 17 October 2022, approving the Description of the Progress measure No 10-001-05-03-03 “Improving connectivity by air transport” for the implementation of the Transport Development Programme of the Ministry of Transport and Communications for the years 2022-2030. The Ministry of Transport and Communications will sign an Implementing Agreement with LOU setting out the details of the investment project. That agreement will only be signed after notification by the Commission of its approval of the Measure (recital (55)).
- (78) Therefore, Commission considers that Lithuania has respected the standstill obligation laid down in Article 108(3) TFEU.

3.3. **Compatibility of the aid**

- (79) In its assessment of the compatibility of the Measure, the Commission will take account of the case law³⁰ of the Court of Justice in which it was recalled that aid is compatible with the internal market on the basis of Article 107(3)(c) TFEU, if:

²⁹ Judgment of the Court of First Instance of 30 April 1998, *Het Vlaamse Gewest v Commission*, T-214/95, EU:T:1998:77.

³⁰ Judgment of the Court of Justice of 22 September 2020 in case C-594/18 P, *Austria v Commission (Hinkley Point C)*, EU:C:2020:742.

- it facilitates the development of an economic activity, and
- it does not adversely affect the trading conditions to an extent contrary to the common interest.

(80) In its assessment the Commission also considers the framework provided by the Aviation Guidelines for assessing whether aid for the financing of airport infrastructures may be declared compatible pursuant to Article 107(3)(c) TFEU.

3.3.1. Identification of the economic activity supported by the aid

(81) As discussed in section 3.1.1, the Measure will enable LOU to expand VNO through the construction of the new airport infrastructure, which – with the exception of the public remit related part of the investment³¹ – is an economic activity.

3.3.2. The aid facilitates the development of the economic activity

(82) In line with point 93 of the Aviation Guidelines, works on the new infrastructure investment have not started before an application has been submitted to the granting authority and no firm commitment to order equipment or other commitment that would make the investment irreversible has been made (see recitals (46) and (47)).

(83) Point 94 of the Aviation Guidelines requires to verify that the project is not economically attractive in its own right and that the investment would not have been undertaken or would not have been undertaken to the same extent without State aid.

(84) The financial analysis presented by the Lithuanian authorities (see recital (41)) demonstrates that the project is not financially profitable without the aid. The capital cost funding gap at VNO amounts to EUR 25.83 million. The revenues generated by the project do not cover the expenses incurred by the investment.

(85) In the absence of State aid, i.e., in a non-investment scenario, VNO would continue to operate, but the status quo would entail significant operational and ultimately security risks (see recital (42)). This counterfactual scenario would include only a minimum level of investments in existing assets to continue operations.

(86) The Commission concludes that the investment project is not economically attractive in its own right and that the aid has a clear incentive effect.

3.3.3. The aid does not unduly affect trading conditions to an extent contrary to the common interest

3.3.3.1. Identifying the market affected by the aid

(87) The Measure is aimed primarily at creating new airport capacity at VNO (recital (29)). VNO plays an important role in the Lithuanian transportation system and in Lithuanian economy as a whole, as it is the main international airport in

³¹ See recital (69).

Lithuania. Before the COVID-19 pandemic, in 2019, VNO connected Lithuania with 72 cities within Europe (see recital (12)), allowing efficient access to destinations within the EU.

3.3.3.2. Identifying the positive effects of the aid measure

- (88) Given the large distance from many other EU countries, VNO effectively enables Lithuanians studying and working abroad to return to their country and gives those based in Lithuania access to the EU single market (see recital (8)).
- (89) As noted in recital (9), VNO increases the economic competitiveness of Lithuania and serves as a catalyst for economic growth. VNO is a strategic airport, serving the Lithuanian capital with air transportation, therefore attracting foreign direct investment. As the “capital airport”, VNO is a core element of Lithuania’s transport infrastructure and contributes to regional development.

3.3.3.3. Minimisation of distortions of competition and trade

- (90) To be declared compatible with the internal market under Article 107(3)(c) TFEU, an aid must not adversely affect trading conditions to an extent contrary to the common interest. The Commission will therefore assess any negative effects on competition and trade in the transport sector.
- (91) In this regard, the Aviation Guidelines provide a framework for assessing whether investment aid to airports can be declared compatible under Article 107(3)(c) TFEU. The criteria set out by the Aviation Guidelines will be considered in recitals (93) to (133).
- (92) In particular, the Commission will assess whether the Lithuanian authorities designed the Measure in such a way as to limit its negative effects by ensuring that their intervention is necessary; the aid is appropriate as an instrument of intervention; the aid is proportionate; the aid is transparent, and undue negative effects on competition and trade are avoided.

(a) Necessity of State intervention

- (93) State aid should be targeted towards situations where such aid can bring about a material improvement that the market itself cannot deliver.
- (94) Pursuant to point 89(c) of the Aviation Guidelines, airports with annual passenger traffic between 1 million and 3 million should, on average, be able to cover their capital costs to a greater extent. With an average annual passenger traffic of approximately 1.61 million passengers in 2020 and 2021, the Commission notes that VNO is within that described range.
- (95) The Lithuanian authorities explained that LOU cannot finance the planned economic activity-related investment without public funding. The pandemic affected severely the revenues of the airport in the last years (see recital (3)) and it would be difficult for LOU to finance itself the full investment. LOU will partly (i.e. 75%) finance the investment through a loan amounting to EUR 42.82 million (see recital (39)). However, in order to obtain that loan, LOU [...]. Consequently, the aid is necessary to enable LOU to implement this investment.

- (96) The Commission takes note of the financial analysis, submitted by Lithuania, which confirms that the project's revenues will not be sufficient to cover its costs (see Table 2). The economic activity-related investment itself amounts to EUR 57.1 million. The funding gap is calculated as the net present value of the incremental cash flows pertaining to the investment project over its weighted average economic lifetime (see recitals (41) and (42)). In particular, the funding gap is calculated by comparing the profitability of the project in the factual scenario, where VNO would carry out the investment of the new terminal, with the profitability of the counterfactual scenario, where VNO would continue operating with the current infrastructure (see recital (42)). As the funding gap for this investment is estimated at EUR 25.83 million, VNO would not carry out this investment without State support (see recital (45)).
- (97) In the counterfactual scenario, VNO would continue to operate, with a minimum investment in existing assets. However, this could give rise to operational and ultimately security risks.
- (98) The Commission thus concludes that the Measure will bring a material improvement to VNO that the market itself does not deliver and that, therefore, there is a need for State intervention.

(b) Appropriateness of the aid

- (99) Pursuant to point 90 of the Aviation Guidelines, Member States must demonstrate that the aid measure is an appropriate policy instrument to achieve the intended objective or resolve the problems intended to be addressed by the aid. An aid measure will not be considered compatible with the internal market if other less distortive policy instruments or aid instruments allow the same objective to be reached.
- (100) The Lithuanian authorities submit that none of the less distortive instruments listed in point 91 of the Aviation Guidelines could be considered feasible alternatives to a direct grant in this case. In particular, given the impact of the pandemic on LOU's revenues (see recital (3)), it would be difficult for LOU to finance itself the full investment. LOU thus plans to finance the investment through a loan. However, the loan that it could obtain from the market does not cover the full amount of the investment and the contractual covenants laid down in the envisaged loan agreement between LOU and its commercial lender [...].
- (101) The Commission, therefore, concludes that the Measure is an appropriate policy instrument.

(c) Proportionality of the aid

- (102) The aid is considered proportionate, only if the same result could not be reached with less aid. This means that the amount and intensity of the aid must be limited to the minimum needed for the aided investment to take place.
- (103) Point 97 of the Aviation Guidelines states that the maximum permissible amount of State aid is expressed as a percentage of the eligible costs (the maximum aid intensity). The eligible costs are the costs relating to the investment in airport infrastructure, including planning costs, ground handling infrastructure (such as baggage belt etc.) and airport equipment. Investment costs relating to non-

aeronautical activities (including car parks, hotels, restaurants and offices) are ineligible.

- (104) The Commission notes that the Measure will finance exclusively investment costs that are eligible under the Aviation Guidelines (see recitals (29)-(33)).
- (105) According to point 101 of the Aviation Guidelines the maximum permissible aid intensity for airports with between 1 million and 3 million yearly passengers³² is 50%. The eligible costs of the economic activity-related part of the investment amount to EUR 57.1 million, while the aid (for that part of the investment) amounts to EUR 14.28 million, which corresponds to an aid intensity of 25%. Therefore, the Commission concludes that the maximum aid intensity is respected.
- (106) Point 99 of the Aviation Guidelines stipulates that, in order to be proportionate, investment aid to airports must be limited to the extra costs (net of extra revenues) which result from undertaking the aided project/activity rather than the alternative project/activity that the beneficiary would have undertaken in the counterfactual scenario, that is to say, if it had not received the aid. For investment aid, the business plan should cover the period of the economic utilisation of the asset.
- (107) In the absence of State aid, according to Lithuania, i.e., in a non-investment scenario, VNO would continue to operate, although the status quo could entail operational, regulatory and ultimately security risks (see recital (42)). On that basis, Lithuania calculates the funding gap of the investment project as the net present value of the incremental cash flows pertaining to the investment project, which are calculated as the difference in free cash flows between the factual and counterfactual scenario. The Commission notes that this methodology is appropriate, given that it is credible to assume that VNO would be likely to continue operations, in case the investment project were not to take place.
- (108) The calculation of the funding gap as provided by the Lithuanian authorities takes into consideration all relevant revenues, operating costs and capital expenditures related to the investment project. The Commission reviewed in detail the funding gap calculations and verified the relevant assumptions included in those calculations against the justifications provided by Lithuania and publicly available information (see recital (43)). First, the business plan period used for the calculations is adequate, as it corresponds to the weighted average economic lifetime of the supported investment in the terminal infrastructure and associated equipment. Second, the assumed traffic projections are reasonable as they are in line with historical growth at VNO and industry forecasts. Third, the estimated relationships between the revenue and operating cost components on the one hand, and the traffic projections on the other hand, are duly justified, based on the evidence submitted by Lithuania. Fourth, to support the estimation of the required investment between 2022 and 2024 in the factual scenario, Lithuania provided a detailed list of the civil works and equipment, with the corresponding cost estimates based on tender outcomes and quotations from suppliers.

³² The actual average annual passenger traffic is calculated based on the two financial years preceding the year in which the aid is notified or actually granted or paid in the case of non-notified aid.

- (109) Further, the Commission takes note of the estimated impact of Rail Baltica on future passenger flows at VNO for the purpose of the funding gap analysis (see recital (30)). Based on the evidence submitted by Lithuania (see in particular footnote 13), it is reasonable to assume that a maximum of [...] % of Baltic travellers may switch to Rail Baltica as from [...].
- (110) Finally, the Commission reviewed in detail the calculation of the different components of the WACC, together with the underlying market information as provided by Lithuania (see recital (44)). On that basis, the Commission considers that the methodology applied to derive the WACC is sound and that the underlying market data is credibly justified.
- (111) In conclusion, the Commission considers that the Lithuanian authorities have demonstrated that the proposed investment aid will not exceed the funding gap of the investment project in question.
- (112) Therefore, considering that the aid does not exceed the capital cost funding gap, nor the maximum permissible aid intensity, the Commission concludes that the Measure is proportionate.
- (113) The Commission also notes that the Lithuanian authorities commit to monitor the use of the aid, that they will ensure that the aid is limited to the minimum necessary, and that they will put in place to this effect a claw back mechanism (see recital (50)).

(d) Transparency of aid

- (114) The Lithuanian authorities will respect the transparency obligations as set out in section 8.2 of the Aviation Guidelines, as amended by the Transparency Communication (see recital (51)). Notably Lithuania will ensure the publication of the following information on its State aid website: full text of the aid granting decision and its implementing provisions, or a link to it; the identity of the granting authority; the identity of the aid beneficiary; the form and amount of aid granted the date of granting; the size of undertaking and its location; the principal economic sector in which the beneficiary has its activities.

(e) Avoidance of undue negative effects on competition and trade between Member States

- (115) With respect to the effects of the investment at VNO, it can be noted that the Measure is primarily aimed at creating new airport capacity.
- (116) The increased capacity to be created through the investment at issue is expected to be fully used by 2031 or 2036, depending on the future impact of Rail Baltica on passenger figures served at VNO (see recital (30)).
- (117) Given that the added infrastructure at VNO is expected to enter into service in 2026, the Commission considers that the full use of the added capacity by 2031 or 2036 (as a conservative estimate) means that the new infrastructure does indeed meet the forecast demand in the medium term.
- (118) With respect to the effects of the Measure on existing infrastructure in the catchment area, according to point 106 of the Aviation Guidelines in particular, the duplication of unprofitable airports or the creation of additional unused

capacity in the catchment area of existing infrastructure might have distortive effects.

- (119) The catchment area is defined in point 25(12) of the Aviation Guidelines as “*a geographic market boundary that is normally set at around 100 kilometres or around 60 minutes travelling time by car, bus, train or high-speed train; however, the catchment area of a given airport may be different and needs to take into account the specificities of each particular airport. The size and shape of the catchment area varies from airport to airport, and depends on various characteristics of the airport, including its business model, location and the destinations it serves.*”
- (120) First, as noted in recital (20), VNO and KUN airports are located within 100 km and 1 hour 5 minutes’ drive by car from each other. Therefore, KUN is located just on the edge of the parameters in terms of distance and travel time as defined in the Aviation Guidelines.³³
- (121) Second, as regards the business model of VNO and KUN, Lithuania explained (see recital (6)), that VNO and KUN are complementary rather than competing with each other, in that KUN is focussed on travel at low cost mainly for Lithuanian citizens living or working abroad, while VNO is the main capital gateway for international business and leisure travel. As has been explained in recital (11), VNO serves a mix of airlines i.e., airBaltic as well as both network carriers and low cost carriers, whereas KUN serves exclusively low cost carriers. In addition to that, KUN provides its infrastructure to a large number of military flights and is increasingly focusing on cargo flights, servicing the nearby Kaunas free economic zone and has focused on Maintenance, Repair, and Overhaul (MRO) development during recent years (see recital (26)). It follows that both airports have different business models.
- (122) Third, as regards the destinations served by VNO and KUN during 2021 and 2022 (to date), as described in Figure 2, a total of 86 destinations were served by either VNO or KUN, with only 12 out of those 86 destinations served by both VNO and KUN (14%).³⁴ Therefore, it can be concluded that the overlap of both airports in terms of definitions is limited and the majority of destinations served by each of the two airports is unique to them.
- (123) Fourth, in terms of further characteristics, as described in recital (10), VNO is based close to the country’s capital and in close proximity to a number of business centres, shared service centres, company headquarters and academic/cultural institutions. VNO also statistically attracts higher traffic of passengers working in those business areas. Those factors are distinct from KUN.
- (124) In conclusion, based on distance between VNO and KUN, it cannot be excluded that both airports are located in the same catchment area within the meaning of point 25(12) of the Aviation Guidelines. Those two airports present, however,

³³ In the 2016 Decision, the question as to whether or not VNO and KUN were located in the same catchment area was left open, based on the conclusion that the investment project would not lead to the duplication of unprofitable airports or create additional unused capacity.

³⁴ See footnote 7

significant different characteristics, including as regards their respective business models, location and destinations served.

- (125) Further, the Commission notes that KUN is expected to reach the pre-COVID-19 passenger figures of 2019 (1,160,591 passengers) by the end of 2023. Even the still diminished passengers numbers expected for 2022 (1,115,862 passengers) are above KUN's 800,000 passengers capacity as stated by the Lithuanian authorities (see recital (23)). It follows that the existing airport KUN is operating at or beyond full capacity. Given that KUN is expected to continue to grow in the medium term as is confirmed by its forecast growth figures until 2026,³⁵ the Commission concludes that the planned investment at VNO will have limited detrimental effects on KUN.
- (126) Therefore, the Commission considers that the investment supported by the Measure will not lead to the duplication of unprofitable airports or create additional unused capacity.
- (127) Apart from KUN, the other nearby airports referred to in recitals (21) and (22), given the distance of those airports from VNO (both in terms of kilometres and in terms of travel time) cannot be considered as offering an alternative to VNO. Therefore, those airports are not in the same catchment area as VNO within the meaning of point 25(12) of the Aviation Guidelines.
- (128) Furthermore, according to point 86 of the Aviation Guidelines, the *ex ante* business plan for the investment must also "*identify the likely effect of the investment on the use of existing infrastructure, such as another airport or other modes of transport, in particular high-speed train connections*".
- (129) As regards other airports, the assessment of the likely effect of the investment supported by the Measure on KUN has shown that in terms of use of capacity the investment will have limited detrimental effects (if any) on the use of the KUN infrastructure. On the contrary, according to Lithuania's forecasts, KUN, which belongs to the same operator (LOU), will continue to attract more passengers.
- (130) With regards to high-speed train connections, as has been explained in recital (28), currently there are no high-speed rail links operating in the Baltic States, on which the investment project could have an effect.³⁶
- (131) In line with point 108 of the Aviation Guidelines, the Lithuanian authorities confirmed that the VNO will continue to be open to all potential users, that it is not dedicated to one specific user, and that in the case of physical limitation of capacity, the allocation will be done on the basis of pertinent, objective, transparent and non-discriminatory criteria (see recital (19)).

³⁵ See footnote 6.

³⁶ The Commission notes that the high-speed rail network Rail Baltica is not expected to become operational before the 2026 deployment year of the new infrastructure at VNO. In any event, the Commission notes that the overlap from a traveller's perspective between flying from VNO and travelling by train with Rail Baltica, is mostly limited to destinations in the Baltic region. On that basis, the Commission finds it reasonable that Lithuania factored in the likely effects of the future Rail Baltica network in VNO's traffic forecast and business plan used for the funding gap analysis (see recital (31)).

(132) Therefore, the Commission, concludes that the Measure is likely to avoid undue negative effects on competition and trade between Member States.

(f) Conclusion regarding the negative effects of the of the Measure on the internal market

(133) In light of the considerations contained in recitals (93) to (132), it can be concluded that possible negative effects of the measure, if any, would be limited. Thereby, the aid does not adversely affect trading conditions to an extent contrary to the common interest.

3.3.3.4. Weighing the positive effects of the aid against the negative effects on competition and trade

(134) The Commission must ensure that the overall balance of the effects of the Measure is positive in terms of avoiding that the aid affects competition and trade within the Union to an extent contrary to the common interest.

(135) The Measure facilitates the development of the air transport sector in Lithuania, in particular regarding airport services at VNO. As shown in Section 3.3.3.2, the Measure will improve the mobility of both residents as well as businesses and tourists to/from Lithuania. VNO is a key access point for the country to/from the European Union. VNO also serves as a catalyst for economic growth increasing economic competitiveness of Lithuania.

(136) Furthermore, as shown in section 3.2.2.3, the Lithuanian authorities designed the Measure in such a way as to minimise any distortions of competition potentially resulting from it. In the Aviation Guidelines, the Commission has set out the criteria it applies when assessing the compatibility of investment aid for airports with the internal market by ensuring that the development of the economic activity in question does not adversely affect trading conditions contrary to the common interest. The intended investment at VNO fulfils the conditions specified in the Aviation Guidelines and, in particular, it is necessary, appropriate, proportionate and transparent, and it avoids undue negative effects on competition and trade. Hence, it can be concluded that any negative effects of the aid on the air transport sector are limited.

(137) Therefore, the Commission concludes that the positive impact of the Measure in facilitating the development of an economic activity at issue outweighs any potential negative effects on competition and trade. On balance, the Measure is in line with Article 107(3)(c) TFEU as it facilitates the development of the air transport sector and especially airport services in Lithuania while not affecting adversely competition and trade between the Member States to an extent contrary to the common interest.

3.3.4. *Cumulation of aid*

(138) Pursuant to point 159 of the Aviation Guidelines, aid authorised under the Aviation Guidelines may not be combined with other State aid, *de minimis* aid or other forms of Union financing, if the combination results in higher aid intensity than the one laid down therein.

- (139) The Lithuanian authorities confirmed that the investment aid granted under the Aviation Guidelines will not be cumulated with other aid for the same eligible costs (see recitals (52) to (54)).
- (140) The Commission therefore concludes that the conditions on the cumulation of aid under the Aviation Guidelines are met.

3.3.5. *Conclusion*

- (141) In view of the above assessment the Commission considers that the Measure is in accordance with the internal market under Article 107(3)(c) TFEU as interpreted by the compatibility conditions set out in the Aviation Guidelines.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid to finance the modernisation of infrastructure at Vilnius airport as notified by the Lithuanian authorities on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) 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:

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State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

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For the Secretary-General

Martine DEPREZ
Director
Decision-making & Collegiality
EUROPEAN COMMISSION