JUDGMENT OF THE GENERAL COURT (Sixth Chamber, Extended Composition)

13 December 2018 (*)

(State aid — Agreements between the Syndicat mixte des aéroports de Charente and Ryanair and its subsidiary Airport Marketing Services — Airport services — Marketing services — Decision declaring the aid incompatible with the internal market and ordering its recovery — Notion of State aid — Imputability to the State — Chamber of Commerce and Industry — Advantage — Private investor test — Recovery — Article 41 of the Charter of Fundamental Rights — Right of access to the file — Right to be heard)

In Case T-111/15,

Ryanair DAC, formerly Ryanair Ltd, established in Dublin (Ireland),

Airport Marketing Services Ltd, established in Dublin,

represented by G. Berrisch, E. Vahida, I.-G. Metaxas-Maranghidis, lawyers, and B. Byrne, Solicitor,

applicants,

v

European Commission, represented by L. Flynn and S. Noë, acting as Agents,

defendant,

APPLICATION under Article 263 TFEU seeking the partial annulment of Commission Decision (EU) 2015/1226 of 23 July 2014 on State aid SA.33963 (2012/C) (ex 2012/NN) implemented by France in favour of Angoulême Chamber of Commerce and Industry, SNC-Lavalin, Ryanair and Airport Marketing Services (OJ 2015 L 201, p. 48),

THE GENERAL COURT (Sixth Chamber, Extended Composition),

composed of G. Berardis, President, S. Papasavvas, D. Spielmann (Rapporteur), Z. Csehi and O. Spineanu-Matei, Judges,

Registrar: P. Cullen, Administrator,

having regard to the written part of the procedure and further to the hearing on 25 October 2017,

gives the following

Judgment

I. Background to the dispute

A. Measures at issue

1 The applicants, namely Ryanair DAC, formerly Ryanair Ltd, and Airport Marketing Services Ltd (‘AMS’), are, the former, an airline established in Ireland which operates more than 1 600 flights daily connecting 189 destinations in 30 countries across Europe and North Africa, and, the latter, a subsidiary of Ryanair which provides marketing strategy solutions, principally online, its activity consisting primarily of selling advertising space on Ryanair’s website.

2 Angoulême Brie Champniers airport (‘Angoulême airport’) is situated in the Department of Charente in France and was operated jointly in the period concerned by the Chamber of Commerce and Industry (CCI) of Angoulême acting as manager (‘CCI-airport’) and the Syndicat mixte des aéroports de Charente (‘SMAC’), whose members include the Department of Charente, the Urban Community of Greater Angoulême, the Communal Community of Braconne and Charente, Angoulême CCI, the Communal Community of Cognac and the Cognac CCI. By order of the Prefect of 22 December 2006, ownership of Angoulême airport was transferred from the French Republic to SMAC.

3 Following the publication of a European call for projects, SMAC entered into an initial agreement with Ryanair and a second with AMS on 8 February 2008 (together ‘the 2008 agreements’). The initial term of those agreements was five years.

4 Under the first of those agreements, entitled ‘Airport Services Agreement’, Ryanair undertook to operate an initial flight programme of the route between Angoulême airport and London Stansted airport, three times per week during the summer months. [*confidential*] (1) SMAC granted Ryanair certain reductions on aeronautical charges compared with the general schedule of charges in force at the latter airport (passenger charge, landing charge and ground-handling charge).

5 Under the second of the agreements, entitled ‘Marketing Services Agreement’, AMS undertook to provide services for the first three years consisting in advertising on Ryanair’s website, in return for payment by SMAC of EUR 400 000 in 2008, EUR 300 000 in 2009 EUR 225 000 in 2010.

6 Ryanair operated the route between Angoulême airport and London Stansted airport during the summer seasons of 2008 and 2009. Taking the view that the route had ceased to be economically viable, Ryanair terminated the 2008 agreements and stopped operating that route in February 2010.

B. **Administrative procedure**

7 On 26 January 2010, the European Commission registered a complaint lodged by Air France concerning advantages which Ryanair had allegedly received at a number of French airports, including Angoulême airport.

8 By letter of 21 March 2012, the Commission notified the French Republic of its decision to open the procedure laid down in Article 108(2) TFEU with respect to the measures from which Ryanair was alleged to have benefited in respect of Angoulême airport (‘the opening decision’). In the publication of that decision in the *Official Journal of the European Union* on 25 May 2012 (OJ 2012 C 149, p. 29), the Commission called on the interested parties to submit their comments on those measures.

9 The French authorities submitted their comments to the Commission and answered the questions set out by the Commission in the opening decision and subsequently.

10 By letters of 29 May and 20 July 2012, Ryanair's legal counsel requested, in accordance with Article 41(1) and (2) of the Charter of Fundamental Rights of the European Union ('the Charter'), that the Commission inform Ryanair, before adopting a final decision, of the facts and considerations on which it intended to base its decision, grant it access to the file, particularly to the evidence on which the Commission intended to base its decision, and afford it an opportunity to present its views, within a reasonable period of time after notification of the abovementioned facts and considerations. By letters of 19 June and 4 October 2012, the Commission refused those requests.

11 By letters of 25 June 2012, the applicants submitted their comments on the opening decision.By several subsequent letters, Ryanair sent further comments. The Commission forwarded their comments to the French authorities, which did not comment on them.

12 By letters of 24 February, 13 and 19 March 2014, in accordance with the Guidelines on State aid to airports and airlines, published in the Official Journal on 4 April 2014 (OJ 2014 C 99, p. 3; 'the 2014 Guidelines'), the Commission invited the French authorities and the interested parties to submit their comments on the application of those guidelines in particular to the measures concerning Angoulême airport and Ryanair. On 19 March 2014, the French authorities submitted comments.

13 In addition, by a notice published in the Official Journal on 15 April 2014 (OJ 2014 C 113, p. 30), the Commission invited the Member States and interested parties to submit their comments, including with regard to the measures concerning Angoulême airport in the light of the entry into force of the 2014 Guidelines.

14 In response to the Commission's letters of 24 February and 13 March 2014, Ryanair submitted, by letter of 2 May 2014, comments on the application of the 2014 Guidelines to the State aid cases in which it was involved.In its letter, Ryanair also gave its views on those guidelines.

C. **Contested decision**

15 At the end of the formal investigation procedure, the Commission adopted Decision (EU) 2015/1226 of 23 July 2014 on State aid SA.33963 (2012/C) (ex 2012/NN) implemented by France in favour of Angoulême Chamber of Commerce and Industry, SNC-Lavalin, Ryanair and Airport Marketing Services (OJ 2015 L 201, p. 48; 'the contested decision').

16 In the contested decision, the Commission gave a detailed description of the measures at issue. Those measures consisted of financial support to Angoulême airport concerning investments in airport infrastructure and the costs associated with sovereign tasks and the operation of the airport (recitals 18 to 29) and the 2008 agreements entered into by SMAC with Ryanair and AMS (recitals 32 to 42).

17 The Commission considered that the measures in favour of the operators of Angoulême airport constituted aid within the meaning of Article 107(1) TFEU, and were nevertheless compatible with the internal market on the basis of Article 106(2) TFEU and Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) [TFEU] to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ 2012 L 7, p. 3) (recitals 170 to 293 of the contested decision).

18 As regards the 2008 agreements which SMAC entered into with Ryanair and AMS, the Commission concluded that they granted them State aid within the meaning of Article 107(1) TFEU.

19 In that regard, the Commission found that the decision to enter into the 2008 agreements could be imputed to the French Republic (see recitals 297 and 298 of the contested decision). In order to determine whether any advantage had been conferred, the Commission considered whether a hypothetical market economy operator motivated by the prospect of profits and managing Angoulême airport in place of SMAC and CCI-airport, would have entered into those agreements.

20 In that regard, the Commission began by taking the view that it was necessary, first, to analyse the 2008 agreements jointly as a single transaction (recitals 304 to 313 of the contested decision). Second, account should be taken only of the possible positive effect of the services performed under the second agreement concerning the number of passengers using the routes covered by those agreements during the period of operation of those routes, to the exclusion of any other excessively uncertain benefits (recitals 314 to 338 of the contested decision). Third, it was necessary to depart, for the purposes of applying the operator in a market economy test, from the method consisting of making a comparison with the 'price on the market' ('the comparative analysis') and to confine itself to an *ex ante* incremental profitability analysis ('the incremental profitability analysis') (recitals 339 to 349 of that decision).

21 Next, the Commission carried out its own incremental profitability analysis concerning the 2008 agreements. On concluding that analysis, it found that the anticipated annual incremental flows (revenues less costs) for the entire contractual period specified were negative. It inferred from that that those agreements conferred an economic advantage on Ryanair and AMS (recitals 354 to 389 of the contested decision).

22 The Commission found that the State aid granted to Ryanair and to AMS constituted start-up aid for the opening of new routes, which did not satisfy the conditions laid down in the Community guidelines on financing of airports and start-up aid to airlines departing from regional airports (OJ 2005 C 312, p. 1), which, according to the Commission, were applicable in the present case and were accordingly incompatible with the internal market.

23 Finally, the Commission determined the amount of recoverable aid using the negative part, for each year in which the 2008 agreements were applicable, of the annual incremental flows estimated at the time when the agreements were concluded. The Commission assessed the recoverable aid at approximately EUR 868 695 in total.

24 In so far as is relevant, the operative part of the contested decision reads as follows:

'*Article 1*

...

2. The payments made to Ryanair and [AMS] by [SMAC] pursuant to [the 2008 agreements] constitute State aid within the meaning of Article 107(1) TFEU granted unlawfully by [the French Republic], in breach of Article 108(3) TFEU.

Article 2

...

4. The aid granted in favour of Ryanair and [AMS] by [SMAC] under [the 2008 agreements] is incompatible with the internal market.

...

Article 3

1. [The French Republic] shall recover the aid referred to in Article 2(4) from the beneficiaries. Ryanair and [AMS] are jointly liable for repayment of the aid.

2. The sums to be recovered shall bear interest from the date on which they were made available to the beneficiaries until the date of their actual recovery.

3. The interest shall be calculated on a compound basis in accordance with Chapter V of [Commission] Regulation (EC) No 794/2004 and Commission Regulation (EC) No 271/2008 amending Regulation (EC) No 794/2004.

4. [The French Republic] shall cancel all outstanding payments of the aid referred to in Article 2 with effect from the date of adoption of this Decision.

Article 4

1. The recovery of the aid specified in Article 2(4) shall be immediate and effective.

2. [The French Republic] shall ensure that this Decision is implemented within four months following the date of its notification.

Article 5

1. Within two months following notification of this Decision, [the French Republic] shall submit the following information to the Commission:

(a) the amounts of aid to be recovered under Article 3;

(b) a detailed description of the measures already taken and planned to comply with this Decision;

(c) documents demonstrating that the beneficiaries have been given formal notice to repay the aid.

2. [The French Republic] shall keep the Commission informed of the progress of the national measures taken to implement this Decision until the aid referred to in Article 2(4) has been fully recovered. At the Commission's request, it shall immediately submit all information on the measures already adopted and planned for the purpose of complying with this Decision. It shall also provide detailed information concerning the amounts of aid and interest already recovered from the beneficiaries.'

II. **Procedure and forms of order sought**

25 By application lodged at the Court Registry on 1 March 2015, the applicants brought the present action.

26 By separate document lodged at the Court Registry on 11 August 2015, the applicants made an application for measures of organisation of procedure and, if necessary, measures of inquiry, by which they requested that the Commission produce certain documents.

27 The Commission submitted its observations within the prescribed period.

28 Upon hearing the Judge-Rapporteur, the Court invited, in the context of the measures of organisation of procedure provided for in Article 89 of the Rules of Procedure, the Commission and the applicants to reply to some questions and requested the Commission to produce certain documents. Those parties replied within the prescribed periods.

29 By decision of 17 May 2017, the Court decided to refer the case to the Sixth Chamber, Extended Composition.

30 On a proposal from the Judge-Rapporteur, the Court decided to open the oral part of the procedure.

31 By decision of the President of the Sixth Chamber, Extended Composition, of the Court of 28 August 2017, the parties having been heard, Cases T-111/15, T-165/15 and T-53/16 were joined for the purposes of the oral part of the procedure, pursuant to Article 68(1) of the Rules of Procedure.

32 The parties presented oral argument at the hearing on 25 October 2017.

33 The applicants claim that the Court should:

– annul Article 1(2), Article 2(4), and Articles 3 to 5 of the contested decision;

– order the Commission to pay the costs.

34 The Commission claims that the Court should:

– dismiss the action;

– order the applicants to pay the costs.

III. **Law**

35 In their application the applicants rely on four pleas in law in support of the action.

36 In response to a written question from the Court, the applicants withdrew the fourth plea in law, alleging infringement of Article 107(1) and Article 108(2) TFEU, in that the Commission had manifestly erred when determining the amount of recoverable aid.

37 It is therefore necessary to examine only the first three pleas in law, alleging (i) infringement of the principle of good administration enshrined in Article 41 of the Charter and of the rights of the defence, (ii) incorrect imputation of the 2008 agreements to the French Republic and (iii) infringement of Article 107(1) TFEU in so far as the Commission failed properly to apply the operator in a market economy test.

1. **The first plea in law, alleging breach of the principle of good administration enshrined in Article 41 of the Charter and of the rights of the defence**

38 The applicants maintain that the Commission infringed the principle of good administration enshrined in Article 41(1) and (2)(a) and (b) of the Charter by failing to allow them access to the investigation file and by failing to inform them of the facts and considerations on which it intended to base its decision and thereby depriving them of the opportunity to make their views known effectively. According to the applicants, those procedural errors also infringed their rights of defence and should result in the annulment of the contested decision.

39 In particular, the applicants state that, since the entry into force of the FEU Treaty on 1 December 2009, Article 41 of the Charter forms part of primary EU law and overrides any contrary provisions of secondary EU law, such as Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [108 TFEU] (OJ 1999 L 83, p. 1).

40 In support of the present plea, the applicants claim that they have the right to invoke the right to good administration under Article 41 of the Charter, since the State aid investigation conducted by the Commission in respect of their agreements with the SMAC constitutes an 'affair' of the applicants within the meaning of Article 41(1) of the Charter. They consider that they enjoy the procedural rights laid down in Article 41(1) and (2) of the Charter, which go beyond the rights conferred by Regulation No 659/1999. First, Article 41(2)(b) of the Charter grants every person a right to have access to 'his or her' file, in the present case the Commission State aid file relating to the 2008 agreements. Second, the right to be heard, laid down in Article 41(2)(a) of the Charter requires that the applicants should be put in a position to make their views known effectively, which implies access to the Commission's file and prior notification of the facts and considerations on which the Commission intends to base its final decision.

41 The Commission disputes that line of argument.

42 In that regard, in the first place, it should be noted that Article 41 of the Charter provides for the right of good administration. As set out in paragraph 1 of that article, every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions of the Union. In addition, under Article 41(2) of the Charter, that right includes in particular (i) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken, and (ii) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy.

43 The explanations relating to the Charter, published in the *Official Journal of the European Union* of 14 December 2007 (OJ 2007 C 303, p. 17), state that Article 41 of the Charter is based on the existence of the European Union as subject to the rule of law, whose characteristics were developed in the case-law which enshrined inter alia good administration as a general principle of law. Moreover, under Article 52(7) of the Charter, those explanations are to be given due regard by the Courts of the Union and of the Member States.

44 In addition, according to the case-law, it is for the competent institution to examine carefully and impartially all the relevant aspects of the individual case (judgment of 21 November 1991, *Technische Universität München*, C-269/90, EU:C:1991:438, paragraph 14).

45 Furthermore, according to settled case-law, observance of the rights of the defence is, in all proceedings initiated against a person which are liable to culminate in a measure adversely affecting

that person, a fundamental principle of EU law. That principle requires that a person against whom the Commission has initiated administrative proceedings must have been afforded the opportunity during those proceedings to make known its views on the truth and relevance of the facts and circumstances alleged and on the documents used by the Commission to support its claim that there has been an infringement of EU law (see judgment of 30 April 2014, *Tisza Erőmű* v *Commission*, T-468/08, not published, EU:T:2014:235, paragraph 204 and the case-law cited).

46 In the second place, it must be recalled that, according to settled case-law, the procedure for reviewing State aid provided for in Article 108 TFEU is a procedure opened only against the Member State responsible for granting the aid. Only the Member State concerned, as the addressee of the future Commission decision, may therefore rely on actual rights of defence. By contrast, the recipient undertakings of aid and their competitors are considered only to be parties concerned in the procedure for the purpose of Article 108(2) TFEU. No provision reserves any special role to the recipients of aid, among all the parties concerned. They cannot rely on rights as extensive as the rights of the defence as such and cannot seek to engage in an adversarial debate with the Commission (see, to that effect, judgments of 24 September 2002, *Falck and Acciaierie di Bolzano* v *Commission*, C-74/00 P and C-75/00 P, EU:C:2002:524, paragraphs 81 to 83, and of 12 May 2011, *Région Nord-Pas-de-Calais and Communauté d'agglomération du Douaisis* v *Commission*, T-267/08 and T-279/08, EU:T:2011:209, paragraphs 71 and 78).

47 Thus, the parties concerned, unlike the Member State responsible for granting the aid, do not have a right under the procedure for reviewing State aid to consult the documents of the Commission's administrative file (judgment of 29 June 2010, *Commission* v *Technische Glaswerke Ilmenau*, C-139/07 P, EU:C:2010:376, paragraph 58).

48 The parties concerned have essentially the role of information sources for the Commission in the procedure for reviewing State aid. It follows that, far from enjoying the same rights of defence as those which individuals against whom a procedure has been instituted are recognised as having, parties concerned have only the right to be involved in the procedure to the extent appropriate in the light of the circumstances of the case (see judgment of 12 May 2011, *Région Nord-Pas-de-Calais and Communauté d'agglomération du Douaisis* v *Commission*, T-267/08 and T-279/08, EU:T:2011:209, paragraph 74 and the case-law cited).

49 The applicants' first plea in law must be examined in the light of those principles.

50 In this respect, it should be noted that the applicants, as parties concerned within the meaning of Article 108(2) TFEU, have a right to see the Commission's investigation into the 2008 agreements conducted impartially and fairly within the meaning of Article 41(1) of the Charter, especially since the finding of State aid in relation to their trade agreements with Angoulême airport is likely to result in financial consequences for them in terms of the recovery of amounts received.

51 However, the reasoning of the applicants cannot be followed where they consider that Article 41(2) of the Charter grants them the right of access to the Commission's administrative file in State aid matters and the right to be heard on matters on which the Commission intends to base its final decision.

52 While the right to good administration under Article 41(1) of the Charter reflects the obligation to examine carefully and impartially all the elements of the case, Article 41(2) of the Charter lists a set of rights to be observed by the European Union's administration, including the rights of defence, which include the right to be heard and the right to have access to the file.

53 However, in the procedure for reviewing State aid, the applicants, as beneficiaries of the aid, cannot rely on actual rights of defence.

54 It has already been held that the Charter was not intended to alter the nature of the review of State aid established by the FEU Treaty or to confer on third parties a right of scrutiny which Article 108 TFEU did not provide (see, to that effect, judgments of 9 December 2014, *Netherlands Maritime Technology Association* v *Commission*, T-140/13, not published, EU:T:2014:1029, paragraph 60, and of 6 July 2017, *SNCM* v *Commission*, T-1/15, not published, EU:T:2017:470, paragraph 86). The applicants' argument that the Charter would be rendered meaningless if a right which it lays down could be excluded simply because it was not expressly reproduced in the FEU Treaty must therefore be rejected.

55 In that regard, the Court of Justice has held that if the persons concerned by a procedure for reviewing State aid were able to obtain access to the documents in the Commission's administrative file, the system for the review of State aid would be called into question. Whatever the legal basis on which it is granted, access to the file enables the parties concerned to obtain all the observations and documents submitted to the Commission and, as the case may be, to adopt a position on those matters in their own observations, which is likely to modify the nature of that procedure (see, to that effect, judgment of 29 June 2010, *Commission* v *Technische Glaswerke Ilmenau*, C-139/07 P, EU:C:2010:376, paragraphs 58 and 59).

56 Similarly, the obligation for the Commission to send the applicants prior notification of the evidence on which it intends to base its final decision would amount to establishing an adversarial debate such as that initiated for the Member State responsible for granting the aid (see, to that effect, judgment of 15 November 2011, *Commission and Spain* v *Government of Gibraltar and United Kingdom*, C-106/09 P and C-107/09 P, EU:C:2011:732, paragraphs 180 and 181).

57 Therefore, the applicants' argument that the exercise of additional procedural rights of access to the file and the right to be heard, as claimed on the basis of Article 41 of the Charter, is not excluded by Articles 107 and 108 TFEU must be rejected.

58 It follows that, by adopting the contested decision without having granted access to the file and without having given notice beforehand of the facts and considerations on which it intended to base that decision, the Commission did not disregard the principle of good administration in Article 41(1) and (2) of the Charter or the applicants' rights of defence, without prejudice, however, to their procedural rights as parties concerned guaranteed by Article 108(2) TFEU.

59 None of the other arguments put forward by the applicants is capable of undermining those conclusions.

60 In the first place, the applicants cannot rely on the judgment of 12 July 1973, *Commission* v *Germany*, (70/72, EU:C:1973:87, paragraph 19), concerning the aim of the communication required by Article 108(2) TFEU, in order to claim that that provision does not preclude the granting to the parties concerned of rights additional to the right to submit their observations during the administrative procedure. On the contrary, that judgment essentially confers on the parties concerned the role of information sources. Likewise, according to the case-law, the Commission is not obliged, under the system of Articles 107 and 108 TFEU, to involve third parties in the administrative procedure in an extensive manner (see, to that effect, judgment of 22 October 1996, *Skibsværftsforeningen and Others* v *Commission*, T-266/94, EU:T:1996:153, paragraph 258). It cannot be deduced from that case-law, therefore, that the extensive involvement of third parties, as

claimed by the applicants, is compatible with the general scheme of the procedure for monitoring State aid established by Article 108 TFEU.

61 In the second place, the applicants submit that observance of the right of access to the file and of the right to be heard, under Article 41 of the Charter, furthers the aim of Article 108(2) TFEU, which is the gathering by the Commission of the most pertinent and comprehensive information. The observance of the procedural rights of private parties is especially important in State aid proceedings, in which the Member State responsible for the aid and the beneficiary of it often have conflicting interests, as is demonstrated in the present case by the fact that the French Republic is a major shareholder in Air France which leads to conflicts of interests, by the national litigation between Angoulême airport and the applicants and the minimal, not to say harmful, participation of the French Republic in the Commission's investigation.

62 In that regard, it should be borne in mind that, according to case-law, the parties concerned cannot rely on actual rights of defence comparable to those of the Member State even if that State, which granted the State aid, and the parties concerned, as the recipients thereof, may have diverging interests in the context of such a procedure (see, to that effect, judgments of 15 December 2009, *EDF* v *Commission*, T-156/04, EU:T:2009:505, paragraph 104, and of 16 March 2016, *Frucona Košice* v *Commission*, T-103/14, EU:T:2016:152, paragraph 54).

63 The fact that the Member State concerned does not defend the interests of the recipient of the aid is not capable of altering the role of the recipient during the administrative procedure or the nature of its participation in that procedure, so as to confer on it, in respect of the rights of the defence, guarantees comparable to those of that Member State (judgment of 16 March 2016, *Frucona Košice* v *Commission*, T-103/14, EU:T:2016:152, paragraph 77).

64 In the third place, to the extent that the applicants call into question the validity of Regulation No 659/1999 as being contrary to the Charter, it is necessary, in any event, to reject that argument, since it is also based on the erroneous premiss that the Charter grants to recipients of State aid the right of access to the Commission's State aid file and the right to be informed in advance of the facts and considerations on which the Commission intends to base its final decision.

65 For the same reasons, and contrary to what is claimed by the applicants, the fact that they could take note only of relevant information contained in the opening decision, as laid down in Article 6 of Regulation No 659/1999 cannot constitute an infringement of their rights.

66 In the fourth place, as regards the applicants' argument that the judgment of 9 December 2014, *Netherlands Maritime Technology Association* v *Commission* (T-140/13, not published, EU:T:2014:1029), is irrelevant in the present case owing to the fact that the applicant was a complainant in the case giving rise to that judgment, it is sufficient to recall that, according to settled case-law, no special role is reserved to the recipients within the framework of State aid control (see paragraph 46 above). Likewise, the applicants' argument that the judgment of 29 June 2010, *Commission* v *Technische Glaswerke Ilmenau* (C-139/07 P, EU:C:2010:376), is no longer relevant in the present case, in so far as it concerned State aid proceedings which were closed before the Charter became part of primary EU law, cannot succeed since that judgment highlights the fact that the granting to recipients of aid of a right of access to the Commission's file would call into question the system for the review of State aid.

67 In the fifth place, in so far as it follows from the foregoing that the Commission did not infringe either Article 41 of the Charter or the applicants' rights of defence, it is unnecessary to address the argument put forward by the applicants that the outcome of the procedure might have

been different if the Commission had granted them access to the file and had informed them of the considerations and evidence on which it intended to base its final decision.

68 It follows that the applicants' arguments referred to in paragraphs 60 to 67 above must be rejected.

69 However, in so far as, in the context of the present plea, an infringement of the rights of the defence is invoked, it is necessary to examine the right which the parties concerned, within the meaning of Article 108(2) TFEU, have to be involved in the administrative procedure to the extent appropriate in the light of the circumstances of the case (see the case-law cited in paragraph 48 above).

70 In that regard, it must be borne in mind that it is settled case-law that, in the context of an examination under Article 108(2) TFEU, the Commission is obliged to give notice to the parties concerned to submit their comments (see judgment of 8 May 2008, *Ferriere Nord* v *Commission*, C-49/05 P, not published, EU:C:2008:259, paragraph 68 and the case-law cited). With regard to that obligation, the Court of Justice has ruled that the publication of a notice in the Official Journal is an appropriate means of informing all the parties concerned that a formal investigation procedure has been initiated (judgment of 14 November 1984, *Intermills* v *Commission*, 323/82, EU:C:1984:345, paragraph 17), while also pointing out that the sole aim of this communication is to obtain from persons concerned all information required for the guidance of the Commission with regard to its future action (see judgment of 16 March 2016, *Frucona Košice* v *Commission*, T-103/14, EU:T:2016:152, paragraph 56 and the case-law cited).

71 In addition, according to the case-law, where the Commission decides to initiate the formal investigation procedure, it is permissible for that decision merely to summarise the relevant issues of fact and law, include a preliminary assessment as to the aid character of the State measure in question and set out its doubts as to the measure's compatibility with the internal market (judgment of 23 October 2002, *Diputación Foral de Guipúzcoa and Others* v *Commission*, T-269/99, T-271/99 and T-272/99, EU:T:2002:258, paragraph 104).

72 Thus, a decision to initiate the formal investigation procedure must give the parties concerned the opportunity effectively to participate in that procedure, during which they will have the opportunity to put forward their arguments. For that purpose, it is sufficient for the parties concerned to be aware of the reasoning which has led the Commission to conclude provisionally that the measure in issue might constitute new aid incompatible with the internal market (judgment of 30 April 2002, *Government of Gibraltar* v *Commission*, T-195/01 and T-207/01, EU:T:2002:111, paragraph 138).

73 In the present case, it is common ground that, following publication of the letter informing the French Republic of the opening decision, together with a summary of that decision calling on all the parties concerned to submit their comments, the Commission received comments from the applicants. Ryanair and AMS both submitted their comments by letters of 25 June 2012. They also lodged a number of additional documents during the formal investigation procedure.

74 In the opening decision, the Commission explained sufficiently clearly the reasons on which it had based its provisional conclusion that the 2008 agreements conferred aid within the meaning of Article 107(1) TFEU on the applicants and that that aid was incompatible with the internal market.

75 After having described, inter alia, the characteristics of Angoulême airport and its traffic, the operators and owners of the infrastructure and the 2008 agreements, the Commission made a provisional assessment of the aid contained in those agreements in the light of the State aid criteria laid down in Article 107(1) TFEU, including the private investor in a market economy test, in order finally to examine their compatibility with the internal market. In particular, as regards the application of the private investor test, it considered at that stage that the airport services agreement and the marketing services agreement should be assessed together. It also found that the French authorities had not provided any basis for comparison which could be used to assess whether the price paid by Ryanair corresponded to the normal price and considered that the study of the costs incurred by the operator of that airport in providing the airport services in question could be part of the assessment of the 'normal market conditions'. It invited the French authorities to provide details of all the operating costs associated with or attributable to accommodating Ryanair under those agreements.

76 Moreover, it is common ground that, further to the Commission's letters of 24 February and 13 March 2014 and the publication of the notice of 15 April 2014 in the Official Journal, Ryanair inter alia submitted, by letter of 2 May 2014, comments on the approaches set out in the 2014 Guidelines as an assessment method for the purposes of the application of the market economy operator test, namely the comparative analysis and the incremental profitability analysis.

77 As regards their mere right to be involved in the administrative procedure in an appropriate manner, the applicants have adduced no evidence to show that they did not have sufficient knowledge of the reasoning provisionally followed and, therefore, that they were not able properly to submit their observations in that regard.

78 It follows that, during the formal investigation procedure which resulted in the adoption of the contested decision, the Commission did not infringe the applicants' procedural rights.

79 In the light of all the foregoing considerations, the first plea in law must be rejected in its entirety.

2. **The second plea in law, concerning the imputability of the measures in question to the French Republic**

80 The applicants claim that the contested decision is vitiated by a failure to state reasons and errors of assessment regarding the imputability to the State of the 2008 agreements. By an initial complaint, they claim that the reasoning of the contested decision concerning the imputability to the State of those agreements is practically non-existent. By a second complaint, they claim that, by imputing to the State SMAC's decision to enter into the 2008 agreements, the Commission applied criteria based purely on the nature of the entity, although the judgment of 16 May 2002, *France* v *Commission* (C-482/99, EU:C:2002:294), requires confirmation of the existence of several indicators in order to establish that public authorities were involved in one way or another in the adoption by SMAC of measures in their favour. By a third complaint, they consider that the Commission erred in its assessment since CCIs are not entities whose decisions are necessarily imputable to the State. By a fourth complaint, they consider that the Commission's views on the role of CCI-airport in the context of the imputability to the State of those agreements are contradictory.

81 The Commission contests that line of argument.

(a) **The first complaint, alleging failure to state reasons**

82 The applicants maintain that the contested decision is vitiated by a failure to state reasons, given that the Commission's reasoning concerning the imputability to the State of the 2008 agreements is practically non-existent, in so far as it refers generally to an earlier passage of the contested decision which concerns the imputability to the State of aid measures granted to successive operators of Angoulême airport.

83 In that regard, it should be noted that, according to settled case-law, the statement of reasons required by Article 296 TFEU must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the court having jurisdiction to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see judgment of 2 April 1998, *Commission* v *Sytraval and Brink's France*, C-367/95 P, EU:C:1998:154, paragraph 63 and the case-law cited).

84 In the present case, it should be noted that, when analysing the imputability to the State of the 2008 agreements in recital 297 of the contested decision, the Commission referred to its analysis of the imputability to the State of the aid measures in favour of the operators of Angoulême airport, made in recitals 206 to 210 of that decision.

85 However, that does not permit the conclusion that there was a failure to state reasons within the meaning of Article 296 TFEU.

86 The Commission's reasoning concerning the imputability to the State of the 2008 agreements is clearly apparent from recitals 206 to 210 and 297 of the contested decision, read together.

87 It should thus be noted that, in recital 297 of the contested decision, the Commission stated that 'SMAC's decision authorising signature of the 2008 agreements' was approved unanimously by the public bodies that are members of SMAC, which is itself directly or indirectly composed of local authorities and CCIs. Moreover, referring to point 8.1.2.2 of that decision, which concerns the imputability to the State of aid measures in favour of the operators of Angoulême airport, it noted that the characteristics of those entities meant that the decisions of SMAC concerning airport activities were imputable to the State.

88 In addition, under point 8.1.2.2 of the contested decision, the Commission observed, in recital 207 of that decision, that SMAC was a public body which had no employees and administratively formed part of the local authorities which it grouped together directly or indirectly. It added that, SMAC's budgetary decisions, which are binding on its members, were taken by a committee made up of representatives of its members. Taking account of those factors, the Commission found that the decisions taken by SMAC relating to the activity of the airport were imputable to the State.

89 Furthermore, as regards the measures taken by Angoulême CCI, which is one of the members of SMAC, the Commission pointed out, in recital 208 of the contested decision, that CCIs were public administrative bodies and as such were subject to public law. It added that French law classed CCIs as 'intermediary bodies of the State' and conferred on them the task of contributing to economic development, the attractiveness and land planning of the territory and support for

businesses and business associations. It also explained that the airport operation task entrusted to the CCIs also derived from their role of supporting local and regional development, even though the activity of operating Angoulême airport is in itself an economic activity. Moreover, it found, in recital 209 of that decision that that law subjected CCIs to the supervision of representatives of the State and that the authority exercising supervision had access to all CCI general meetings and could have items added to the agenda. In particular, decisions relating to initial, amending or implemented budgets were binding only once they had been approved, even tacitly, by the authority exercising supervision. It inferred, in recital 210 of that decision that Angoulême CCI, in its capacity as CCI-airport, forms part of the public administration and that the measures adopted by it in favour of the operators of that airport are necessarily imputable to the State.

90 Moreover, as regards the question whether the resources of Angoulême CCI constituted State resources, the Commission considered, in recital 205 of the contested decision, that local authority resources constituted State resources for the purposes of applying Article 107(1) TFEU.

91 It follows that the contested decision clearly shows the Commission's reasoning to the effect that decisions taken by SMAC, in particular those authorising the signing of the 2008 agreements, on account of the characteristics of its members, namely local authorities and CCIs, were imputable to the State.

92 The fact that, in the contested decision, the Commission developed its reasoning regarding the nature of SMAC, local authorities and CCIs in relation to the aid measures in favour of the operators of Angoulême airport did not prevent the applicants from understanding the reasoning followed with regard to the 2008 agreements. The reasoning is valid irrespective of the aid measure adopted by SMAC or its members.

93 In the light of the foregoing, the complaint alleging failure to state reasons must be rejected.

(b) **The second complaint, alleging an error of assessment regarding the imputability to the State of the decision taken by SMAC to enter into the 2008 agreements**

94 The applicants claims that, since SMAC is an undertaking engaged in an economic activity, the Commission was required, in accordance with the judgment of 16 May 2002, *France* v *Commission* (C-482/99, EU:C:2002:294), to confirm the existence of several indicators in order to establish that public authorities were involved in one way or another in the adoption by SMAC of measures in favour of the applicants. The applicants claim, however, that the Commission, disregarding that judgment, applied criteria based purely on the nature of the entity, such as the composition and powers of the SMAC committee approving the agreements, the provision of administrative services by members of SMAC and the fact that SMAC is owned by public-law entities including regional, local and municipal authorities and two CCIs. The Commission did not examine the involvement of public authorities in SMAC's decision to enter into the 2008 agreements.

95 At the outset, it must be noted that, in the context of the present complaint, the applicants do not call into question the Commission's findings concerning the CCIs which are members of SMAC. It is only in the context of the third complaint, formulated in the alternative, that the applicants maintain that the Commission incorrectly considered the CCIs to form part of the public administration, whose decisions are necessarily imputable to the State.

96 Next, it should be noted that, under 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 is, in so far as it affects trade between Member States, incompatible with the internal market.

97 In that regard, for advantages to be capable of being categorised as aid within the meaning of Article 107(1) TFEU, they must be granted directly or indirectly through State resources and be imputable to the State (see judgment of 15 July 2004, *Pearle and Others*, C-345/02, EU:C:2004:448, paragraph 35 and the case-law cited).

98 Furthermore, intervention by a Member State or through State resources is not necessarily effected by the central State authority of the respective Member State. It may equally be effected by an authority situated below the national level. According to settled case-law, a measure adopted by a regional or local authority and not the central authorities can constitute aid if the conditions laid down by Article 107(1) TFEU are satisfied (judgments of 14 October 1987, *Germany* v *Commission*, 248/84, EU:C:1987:437, paragraph 17, and of 6 September 2006, *Portugal* v *Commission*, C-88/03, EU:C:2006:511, paragraph 55). In other words, measures adopted by infra-State entities (decentralised, federated, regional or other) of the Member States, whatever their status and description, fall, in the same way as measures taken by the federal or central authority, within the ambit of Article 107(1) TFEU, if the conditions laid down by that provision are satisfied (see judgment of 12 May 2011, *Région Nord-Pas-de-Calais and Communauté d'agglomération du Douaisis* v *Commission*, T-267/08 and T-279/08, EU:T:2011:209, paragraph 108 and the case-law cited).

99 In the present case, it must be noted that the Commission noted, in recitals 206 to 210 and 297 of the contested decision, that SMAC was a public body including local authorities and CCIs and that, moreover, Angoulême CCI formed part of the public administration.

100 In addition, the Commission found, in recital 297 of the contested decision, that 'SMAC's decision authorising signature of the 2008 agreements' was approved unanimously by the public bodies that are members of SMAC, which is itself directly or indirectly composed of local authorities and CCIs.

101 In particular, it is commonly accepted that the four members of SMAC which make up its committee dealing with Angoulême airport have 13 votes between them, while the Department of Charente, the Urban Community of Greater Angoulême and Angoulême CCI have four votes each and the Communal Community of Braconne and Charente has one vote and that those four members unanimously voted in the committee in favour of the decision to enter into the 2008 agreements.

102 The Commission inferred, in recital 298 of the contested decision, that the 'decisions to conclude' the 2008 agreements are imputable to the State.

103 Since the four members of SMAC are sub-national entities within the meaning of the case-law referred to in paragraphs 97 and 98 above, that finding must be upheld.

104 That finding is not vitiated by the applicants' argument that since SMAC is an undertaking engaged in an economic activity, the Commission was required, in accordance with the judgment of 16 May 2002, *France* v *Commission* (C-482/99, EU:C:2002:294), to confirm on the basis of several indicators whether public authorities were involved in the adoption by SMAC of measures in favour of the applicants, namely the conclusion of the 2008 agreements.

105 Without there being any need to specify whether SMAC was a public undertaking within the meaning of the judgment of 16 May 2002, *France* v *Commission* (C-482/99, EU:C:2002:294), it must be noted that the Commission inferred the imputability to the State of the 2008 agreements directly in so far as the local authorities and CCIs unanimously approved the signature of those agreements.

106 In those circumstances, it must be held that the Commission did not err, in any event, in establishing the involvement of public authorities in SMAC's decision to enter into the 2008 agreements.

107 Thus, contrary to what the applicants claim, the Commission did not base its examination of imputability to the State merely on criteria allegedly based purely on the nature of the entity, namely the composition and powers of the SMAC committee of representatives and the control of SMAC by local authorities and CCIs. It only considered that the measures in question were imputable to the State after finding that the local authorities and Angoulême airport CCI had exercised their decision-making power within SMAC with regard to the 2008 agreements.

108 For that same reason, the applicants' reasoning cannot be followed, where they claim in essence that the unanimous vote of the members within the SMAC committee reflects their total control over that body and therefore indicates the application of a criterion based purely on the nature of the entity, which was condemned in the judgment of 16 May 2002, *France* v *Commission* (C-482/99, EU:C:2002:294). That reasoning does not take into account the fact that the members of SMAC exercised their decision-making power within that committee.

109 In addition, for the purposes of its analysis of the imputability to the State of the 2008 agreements, it is without committing any error that the Commission was entitled to refer, in recital 207 of the contested decision, to the administrative integration of SMAC in the local authorities. The case-law considers integration in the structures of the public administration to be a relevant indicator, among others, which may be taken into account in concluding that an aid measure is imputable to the State (see, by analogy, judgment of 16 May 2002, *France* v *Commission*, C-482/99, EU:C:2002:294, paragraph 56).

110 It is also necessary to reject the other arguments raised by the applicants in the context of their second complaint.

111 In the first place, the applicants claim that the initiative for entering into the 2008 agreements lies with SMAC's management and not with the State. According to the applicants, the approval of those agreements by the SMAC committee merely constitutes *ex post* confirmation of the decision of the President of SMAC, who took the initiative for those agreements alone. The members of that committee were not involved in the agreements themselves and they were not informed of their content in advance.

112 In that regard, it suffices to point out that, as follows from the foregoing, the members of SMAC played a direct and explicit role in SMAC's decision, which was approved unanimously, to enter into the 2008 agreements, with the result that they must be considered to have been involved in that decision. Consequently, the fact that SMAC's management was entitled to take the initiative to enter into those agreements is no obstacle to their imputability to the State, since the local authorities and Angoulême CCI took part in approving, as the case may be, without even discussing it, the conclusion of those agreements.

113 In the second place, the applicants claim that, in any event, the unanimous vote in the SMAC committee is merely one of several indicators and is by no means sufficient to establish imputability to the State within the meaning of the judgment of 16 May 2002, *France* v *Commission* (C-482/99, EU:C:2002:294).

114 In that regard, it suffices to recall that the Commission found that the public authorities were involved in adopting SMAC's decision to enter into the 2008 agreements directly on the basis of the unanimous vote of the three local authorities and Angoulême CCI in favour of signing those agreements. Thus, the Commission performed its duty to provide evidence of the involvement of those entities in the adoption of that decision to the requisite legal standard.

115 The fact that the contested decision did not take into account the draft resolution of the SMAC committee and does not refer to any steps taken by the members regarding their preference or opposition to SMAC's management's entering into the 2008 agreements does not affect that finding. In accordance with what was stated in paragraph 112 above, the fact that the participation of the members in that committee was focused primarily on the approval of the proposal made by SMAC's management, even if it were not discussed, sufficed to conclude that the members should be regarded as being involved in SMAC's decision to enter into those agreements.

116 Moreover, the Commission was not required to follow the analytical approaches it used in other decisions when finding that aid existed. Each case must be assessed separately according to the circumstances of the particular case (judgment of 9 December 2014, *Netherlands Maritime Technology Association* v *Commission*, T-140/13, not published, EU:T:2014:1029, paragraph 110).

117 In the third place, the applicants claim that the Commission should have included both SMAC's decisions and those of Angoulême CCI, taken into consideration as CCI-airport, in its analysis of the imputability to the State of the 2008 agreements.

118 In that regard, while recognising that Angoulême CCI, taken into consideration as CCI-airport, plays a dominant role compared with the three local authorities in the decisions concerning the applicants, as they claim, the fact remains that SMAC was the sole signatory of the 2008 agreements with the applicants. Accordingly, the Commission did not err in examining the imputability to the State of the 2008 agreements by means of SMAC.

119 In the light of the foregoing, the second complaint of the second plea in law must be rejected.

(c) **The third complaint, alleging an error of assessment concerning the nature of Angoulême CCI**

120 The applicants claim that the Commission erred in considering French CCIs to be public authorities whose decisions are necessarily imputable to the State, when they are hybrid entities whose statutory and actual role is that of undertakings which are independent of the State and that Angoulême CCI, in particular, performs airport management activity.

121 In that regard, it must be noted that it is not disputed that the unanimous decision of the SMAC committee to sign the 2008 agreements was the result, on the one hand, of the nine votes cast by the local authorities and, on the other hand, the four votes cast by Angoulême CCI.

122 Consequently, even if the Angoulême CCI's approval of SMAC's decision to enter into the 2008 agreements was not imputable to the State, it must be held that the votes of the three local authorities were necessary, or even sufficient, for SMAC to be able to include those agreements.

123 Even supposing that the approval of the decision to enter into the 2008 agreements required a qualified majority of two thirds within the SMAC committee, it must be held that the votes of the three local authorities constituted such a qualified majority and that those entities accordingly had the power to approve the conclusion of those 2008 agreements without the assent of Angoulême CCI. In any event, those votes were necessary into order to make it possible to enter into those agreements.

124 It follows that, for that reason alone, as the Commission notes, public authorities must be considered to have been involved, in one way or another, in the adoption of SMAC's decision to enter into the 2008 agreements, irrespective of any involvement on the part of Angoulême CCI in SMAC.

125 Consequently, SMAC's decision to enter into the 2008 agreements was imputable to the State, irrespective of any involvement on the part of Angoulême CCI.

126 Accordingly, it must be held that the third complaint is ineffective in so far as it criticises the Commission for having considered that the decisions taken by Angoulême CCI concerning the conclusion of the 2008 agreements were imputable to the State.

127 In the light of the foregoing, the first complaint of the second plea in law must be rejected.

(d) **The fourth complaint, alleging contradictory reasoning**

128 The applicants claim that the Commission gave contradictory reasons in the contested decision in finding, in the context of the examination of the imputability to the State of the 2008 agreements that Angoulême CCI, in its capacity as CCI-airport, not only was part of the public administration (recitals 210 and 297 of that decision) but constituted an undertaking to which State aid had been granted (recital 178 of that decision). The same entity could not be part of the public administration and an undertaking in receipt of aid at the same time, since the two characterisations are mutually exclusive.

129 The applicants add that, by failing to classify Angoulême CCI either as an undertaking or another entity, the contested decision prevents the applicants from determining whether the Commission based the criterion of imputation to the State of the 2008 agreements, which was applied in the case of Angoulême CCI, on the indicators referred to in the judgment of 16 May 2002, *France* v *Commission* (C-482/99, EU:C:2002:294), or on the mere fact that it belonged to the public administration. The contested decision is therefore vitiated by a flaw in the statement of reasons concerning the classification of Angoulême CCI.

130 In that regard, it must be noted that, first, in the context of examining the aid measures granted to the operators of Angoulême airport, the Commission found that SMAC and CCI-airport had jointly carried out, for the period in question, the economic operation of that airport and that the financial support given to CCI-airport constituted State aid within the meaning of Article 107(1) TFEU (recitals 18, 19, 21, 178, 182 and 211 to 275 of the contested decision).

131 It must be noted that, next, in the context of examination of the 2008 agreements, the Commission relied on certain factors, such as the legal status of Angoulême CCI, the nature of its activities and the intensity of the supervision provided by the State, in concluding that that entity, taken into consideration as CCI-airport, formed part of the public administration whose decisions were necessarily imputable to the State.

132 It must be held that the Commission considered that, by its business activity within the framework of CCI-airport, Angoulême CCI received State aid — the financial support in question in the present case — and was, moreover, an entity that formed part of the public administration and had agreed to grant aid to the applicants, in the present case the conclusion of the 2008 agreements by SMAC.

133 Nevertheless, since the State aid in question is distinct and was moreover examined separately in the contested decision, it cannot be considered, as the applicants claim, that the classifications as a recipient of aid and as an entity forming part of the public administration are incompatible in the present case. A public entity can be the recipient of State aid once the undertaking is active in the marketplace. However, nothing prevents a public body, which has been invested with general interest missions and, in that context, exercising an economic activity under the supervision of the State, which forms part of the public administration, from also granting aid to undertakings, such as the applicants, by way of a separate measure (see, to that effect, judgment of 24 March 2011, *Freistaat Sachsen and Land Sachsen-Anhalt* v *Commission*, T-443/08 and T-455/08, EU:T:2011:117, paragraphs 143 and 145).

134 In that regard, it should be borne in mind that nothing prevents the exercise of an economic activity from being integrated in public administration organisations (see, to that effect, judgment of 23 April 1991, *Höfner and Elser*, C-41/90, EU:C:1991:161, paragraph 21). Similarly, the fact that an entity is engaged in economic and non-economic activities at the same time does not prevent it from being classified as an undertaking within the meaning of the State aid rules as regards the first activities (see, to that effect, judgment of 24 October 2002, *Aéroports de Paris* v *Commission*, C-82/01 P, EU:C:2002:617, paragraph 74).

135 In addition, the inclusion of an entity, such as the operator of an airport, in the public administration does not preclude that entity from being able to be a beneficiary of State aid. It should be recalled that the existence or otherwise of legal personality distinct from that of the State, conferred by national law on a body carrying out economic activities, does not prevent the existence of financial relations between the State and that body and, consequently, the possibility that that body will benefit from State aid within the meaning of Article 107(1) TFEU (see, to that effect, judgment of 24 March 2011, *Freistaat Sachsen and Land Sachsen-Anhalt* v *Commission*, T-443/08 and T-455/08, EU:T:2011:117, paragraphs 128 and 129 and the case-law cited).

136 It follows that, contrary to what the applicants claim, the contested decision is not vitiated by contradiction in so far as it classifies CCI-airport as a recipient of aid and as an entity forming part of the public administration at the same time.

137 The fourth complaint of the second plea in law must therefore be rejected.

138 In the light of the foregoing, the second plea in law must be rejected in its entirety.

3. **The third plea in law, alleging incorrect application of the market economy operator test**

139 By the third plea in law, the applicants claim that the Commission misapplied the market economy operator test and thereby infringed Article 107(1) TFEU.

140 The third plea in law is divided into two parts. In the first place, the applicants submit that the Commission was wrong to refuse to carry out a comparative analysis, whereas the carrying out of such an analysis would have led it to conclude that there was no aid. According to the applicants, the contested decision is also vitiated by failure to state reasons on that point. In the second place,

the applicants submit that the Commission made manifest errors of assessment in its analysis of incremental profitability and failed to give sufficient reasons for it.

141 The Commission disputes that line of argument.

142 Before examining the two parts of this plea, it should be borne in mind as a preliminary point that, according to the settled case-law of the Court of Justice, State aid, as defined in the FEU Treaty, is a legal concept which must be interpreted on the basis of objective factors. For that reason, the EU Courts must in principle, having regard both to the specific features of the case before them and to the technical or complex nature of the Commission's assessments, carry out a comprehensive review as to whether a measure falls within the scope of Article 107(1) TFEU (see judgment of 30 November 2016, *Commission* v *France and Orange*, C-486/15 P, EU:C:2016:912, paragraph 87 and the case-law cited).

143 The Court of Justice has nevertheless held that judicial review was limited with regard to whether a measure came within the scope of Article 107(1) TFEU, in a case where the appraisals by the Commission were technical or complex in nature (judgment of 30 November 2016, *Commission* v *France and Orange*, C-486/15 P, EU:C:2016:912, paragraph 88).

144 In that regard, where, in order to determine whether a measure comes within the scope of Article 107(1) TFEU, the Commission must apply the criterion of the prudent private investor in a market economy, as a rule, the application of that test requires the Commission to make a complex economic assessment (judgment of 30 November 2016, *Commission* v *France and Orange*, C-486/15 P, EU:C:2016:912, paragraph 89).

145 However, although the General Court must not substitute its own economic assessment for that of the Commission, it is apparent from now well-settled case-law that not only must the EU judicature establish, among other things, whether the evidence relied on is factually accurate, reliable and consistent but also whether that evidence contains all the relevant information which must be taken into account in order to assess a complex situation and whether it is capable of substantiating the conclusions drawn from it (see, to that effect, judgment of 30 November 2016, *Commission* v *France and Orange*, C-486/15 P, EU:C:2016:912, paragraph 91 and the case-law cited).

(a) **The first part, alleging errors of assessment and failure to state reasons concerning the decision to depart from the comparative analysis in the present case**

146 The applicants argue that the Commission wrongly refused to have recourse to a comparative analysis and that, had it carried out such an analysis, it would have found an absence of aid, with regard to both the airport services agreement and the marketing services agreement.

147 In the contested decision, the Commission noted that point 53 of the 2014 Guidelines provided for two alternative methods of assessment for the purposes of applying the market economy operator test:

– the comparative analysis under which aid to an airline using an airport could, in principle, be excluded where the price charged for the airport services corresponded to the market price;

– the incremental profitability analysis under which such aid could be excluded if it could be demonstrated through an *ex ante* analysis that the airport/airline arrangement would lead to a positive incremental profit contribution for the airport (recital 339 of the contested decision).

148 The Commission also noted that, in the 2014 Guidelines, it expressed doubts that, at that time, an appropriate benchmark could be identified to establish a true market price for the services provided by airports. The Commission had therefore considered an incremental profitability analysis to be the most relevant criterion for the assessment of arrangements concluded by airports with individual airlines (recital 340 of the contested decision).

149 In the contested decision, the Commission also relied essentially on the following considerations in order to reject the comparative analysis:

– the revenue and cost structure tended to differ significantly from airport to airport (recital 341 of the contested decision);

– the liberalisation of the air transport market complicated any purely comparative analysis; commercial arrangements between airports and airlines varied widely and it was therefore difficult to compare them based on a price per rotation or per passenger (recital 342 of the contested decision);

– the findings of a comparative analysis submitted by Ryanair during the administrative procedure ('the study of 25 June 2012') cannot be accepted, because the method adopted was limited to the benefits and payments resulting from the airport services agreement without taking into account the marketing services agreement (recitals 343 and 344 of the contested decision);

– thus, the charges paid by Ryanair for airport services at other airports cannot serve as benchmark for the application of the market economy operator principle (recital 345 of the contested decision);

– the price actually paid by Ryanair for use of the airport services of Angoulême airport was negative during the years 2008 and 2009 (recital 346 of the contested decision);

– the airports included in the sample of comparator airports contained in the study of 25 June 2012 were not sufficiently comparable (recitals 347 and 348 of the contested decision).

150 In those circumstances, the Commission considered that, in the present context, taking into account all the information available to it, there were no grounds for departing from the approach recommended in the 2014 Guidelines, namely the incremental profitability analysis (recital 349 of the contested decision).

151 It is necessary to examine, in the light of the applicants' complaints, whether the Commission was entitled, without making an error, to depart from the comparative analysis and whether it gave sufficient reasons in the contested decision in that regard.

(1) *The rejection of the comparative analysis as a method of application of the market economy operator test*

152 The applicants argue that the Commission failed to have regard to the fact that the comparative analysis was the main method of assessment for the purposes of the application of the market economy operator test to determine whether the arrangement had conferred an advantage on the private party, since that method is indeed consistent with the principle of legal certainty. Relying on the judgment of 3 July 2003, *Chronopost and Others* v *Ufex and Others* (C-83/01 P, C-93/01 P and C-94/01 P, EU:C:2003:388, paragraphs 38 and 39), they submit that, as a general EU law principle, it is only in cases where a comparative analysis, in particular a 'private investor'

comparator, is not available that the Commission may rely on an incremental profitability analysis, which is not the case for airport or marketing services.

153 In this regard, it is settled case-law that the conditions which a measure must meet in order to be treated as 'aid' for the purposes of Article 107 TFEU are not met if the recipient undertaking could, in circumstances which correspond to normal market conditions, have obtained the same advantage as that which has been made available to it through State resources (judgments of 5 June 2012, *Commission* v *EDF*, C-124/10 P, EU:C:2012:318, paragraph 78, and of 24 January 2013, *Frucona Košice* v *Commission*, C-73/11 P, EU:C:2013:32, paragraph 70). That assessment is made, in principle, by the application of the market economy operator test (see, to that effect and by analogy, judgment of 24 January 2013, *Frucona Košice* v *Commission*, C-73/11 P, EU:C:2013:32, paragraph 71).

154 In order to ascertain whether a State measure constitutes aid, it is necessary to determine whether, in similar circumstances, a market economy operator of a size comparable to that of the bodies managing the public sector might have been prompted to conclude the agreements concerned (see, to that effect, judgments of 21 March 1990, *Belgium* v *Commission*, C-142/87, EU:C:1990:125, paragraph 29, and of 3 July 2014, *Spain and Others* v *Commission*, T-319/12 and T-321/12, not published, EU:T:2014:604, paragraphs 40 and 42).

155 However, determining whether a market economy operator would have made an arrangement such as that in question cannot necessarily imply for the Commission the obligation to use the comparative analysis. That method is merely one analytical tool amongst others to determine if the recipient undertaking has received an economic advantage which it would not have obtained under normal market conditions (see, to that effect and by analogy, judgments of 6 March 2003, *Westdeutsche Landesbank Girozentrale and Land Nordrhein-Westfalen* v *Commission*, T-228/99 and T-233/99, EU:T:2003:57, paragraphs 250 and 254, and of 3 July 2014, *Spain and Others* v *Commission*, T-319/12 and T-321/12, not published, EU:T:2014:604, paragraphs 43 and 44).

156 The selection of the appropriate tool is a matter for the Commission within the framework of its obligation to conduct a complete analysis of all factors that are relevant to the transaction at issue and its context, including the situation of the recipient undertaking and of the relevant market, to determine whether the recipient undertaking has received an economic advantage which it would not have obtained under normal market conditions (see, to that effect, judgments of 6 March 2003, *Westdeutsche Landesbank Girozentrale and Land Nordrhein-Westfalen* v *Commission*, T-228/99 and T-233/99, EU:T:2003:57, paragraphs 251 and 258, and of 3 July 2014, *Spain and Others* v *Commission*, T-319/12 and T-321/12, not published, EU:T:2014:604, paragraph 45).

157 In the present case, without it being necessary to consider at this stage the merits of the grounds relied on by the Commission in order to depart from the comparative analysis in the present case, it must be held that the Commission could therefore, without committing an error, examine, in recitals 339 to 349 of the contested decision, what was in the present case the most appropriate assessment method to choose for the purposes of the application of the market economy operator test. Thus, questioning whether it is currently possible to define an appropriate benchmark to establish a true market price for the airport services and taking into account considerations relating to the divergence of costs and revenues between airports, the low comparability of the transactions between airports and airlines, the existence of a negative price actually paid by Ryanair for the airport services in question and the inadequacy of the study of 25 June 2012, the Commission opted for the incremental profitability analysis method and departed from the comparative analysis.

158 That approach of the Commission is not undermined by the case-law relied on by the applicants, namely the judgment of 3 July 2003, *Chronopost and Others* v *Ufex and Others* (C-83/01 P, C-93/01 P and C-94/01 P, EU:C:2003:388, paragraphs 38 and 39), according to which, in the absence of any possibility of comparing the situation of a public undertaking with that of a private undertaking not operating in a reserved sector, normal market conditions, which are necessarily hypothetical, must be assessed by reference to the objective and verifiable elements which are available, such as the costs incurred by the public undertaking. That case-law must be read in the context of the circumstances of the case which gave rise to that judgment, namely the impossibility of applying a comparative analysis and therefore the lack of choice between such analysis and other methods. Consequently, in the abovementioned judgment, contrary to what the applicants essentially argue, the Court of Justice did not rule on the existence of a hierarchy between the comparative analysis and other methods, but merely stated that it was not possible to have recourse to a comparative analysis in the present case.

159 It follows that the applicants' argument concerning the existence of a general principle of EU law allegedly referred to in the judgment of 3 July 2003, *Chronopost and Others* v *Ufex and Others* (C-83/01 P, C-93/01 P and C-94/01 P, EU:C:2003:388), which is said to establish a hierarchy between the comparative analysis and other methods, cannot succeed.

160 Similarly, the applicants cannot properly rely on the fact that the judgments of 6 March 2003, *Westdeutsche Landesbank Girozentrale and Land Nordrhein-Westfalen* v *Commission* (T-228/99 and T-233/99, EU:T:2003:57), and of 3 July 2014, *Spain and Others* v *Commission* (T-319/12 and T-321/12, not published, EU:T:2014:604), concerned the analytical tool of an average return in the sector, given that, in those judgments, the General Court held that the use of an average return in the sector is only one analytical tool amongst others in the context of the application of Article 107(2) TFEU.

161 Nor can the applicants properly rely on the case-law according to which the fact that the transaction at issue is reasonable for the public authority does not exempt the Commission from ascertaining whether the measure in question conferred on the recipient undertaking an economic advantage which it would not have obtained under normal market conditions (judgment of 13 September 2010, *Greece and Others* v *Commission*, T-415/05, T-416/05 and T-423/05, EU:T:2010:386, paragraph 213). The incremental profitability analysis aims precisely at establishing whether, by the conclusion of the agreement, the public authority acting as a market economy operator finding itself, to the extent possible, in the same situation conferred an economic advantage on the other party to the agreement which it could not have obtained under normal market conditions.

162 It follows that the applicants' argument that the Commission was required to carry out a comparative analysis in the case of marketing or airport services must be rejected.

(2) *The complaints concerning the grounds relied on in the contested decision to depart, in the present case, from the comparative analysis*

163 The applicants dispute the specific reasons on which the Commission relied in recitals 340 to 348 of the contested decision to depart, in the present case, from the comparative analysis as an assessment method for the purposes of applying the market economy operator test.

164 In particular, the applicants essentially put forward four complaints that the grounds in question contain errors of assessment and failures to state reasons.

(i) *The complaint, alleging that the Commission erred in finding that diversity among airports justified its departure from the comparative analysis*

165 The applicants maintain that the Commission was wrong to find that the diversity among airports' conditions invalidated the study of 25 June 2012.

166 In the first place, as regards the ground relating to the difference in the cost and revenue structure between airports (recital 341 of the contested decision), the applicants assert that the Commission has not provided any data or examples to explain the degree and importance of those differences. It was for the Commission to put forward arguments specific to the case in order to justify the rejection of the comparative analysis, which is the main method of assessment for the purposes of applying the private investor test.

167 In that regard, it is sufficient to note that the Commission found, in recital 341 of the contested decision, that the cost and revenue structure tends to differ significantly from airport to airport and, in support of that finding, the Commission listed a series of indicators of cost and revenue discrepancy. Furthermore, the applicants have not put forward any specific argument permitting the inference that the account of those indicators is vitiated by a manifest error of assessment.

168 In the second place, as for the ground relating to the low comparability of the transactions between airports and airlines (recital 342 of the contested decision), the applicants argue that the Commission incorrectly maintained that airport charges were generally not comparable between airports.

169 In this respect, it should be noted that the applicants make an incorrect reading of the contested decision when they claim that the Commission considered that airport charges between airports were not comparable. In recital 342 of that decision, the Commission explained that, as shown in the present case, commercial relationships between airports and airlines were not based on a list of public prices for individual services, but varied widely and therefore it was difficult to compare them based on a price per rotation or per passenger.

170 Furthermore, the file shows that the 2008 agreements went well beyond a mere application of the general schedule of charges in force at Angoulême airport in terms of airport charges and included the conclusion of an airport services agreement and a marketing services agreement.

171 Moreover, so far as concerns the applicants' argument that the Commission could not invoke the liberalisation of the air transport sector in Europe to justify its departure in the present case from the comparative analysis without providing evidence to substantiate it, it should be noted that the Commission alluded, in recital 342 of the contested decision, to the liberalisation to explain the heterogeneity of commercial practices among airports, which makes it more complicated to carry out a purely comparative analysis. Contrary to what the applicants claim, that decision does not accordingly aim to exclude the comparative analysis in determining whether a market economy operator would have made a specific arrangement in liberalised sectors, or in all sectors.

172 In the third place, as regards the applicants' argument that the fact that the Commission departed, in the present case, from the comparative analysis in order to determine whether a market economy operator would have made a specific arrangement in the air transport sector in Europe is contrary to the approach previously taken by that institution in respect of other sectors, it must be noted that the concept of State aid is a legal concept and must be interpreted solely on the basis of Article 107(1) TFEU, and not on the basis of any previous administrative practice of the

Commission, assuming that it is established (see, to that effect, judgments of 30 September 2003, *Freistaat Sachsen and Others* v *Commission*, C-57/00 P and C-61/00 P, EU:C:2003:510, paragraphs 52 and 53, and of 3 July 2014, *Spain and Others* v *Commission*, T-319/12 and T-321/12, not published, EU:T:2014:604, paragraph 46).

173 Moreover, as regards the applicants' argument that the Commission is not 'credible' when it maintains that the comparative analysis 'has no role to play' in respect of airport services, even though it collected information relating to the comparison of airports during the administrative procedure following requests for information, it suffices to note that the Commission considered, ultimately, that that information was irrelevant for the purposes of applying the market economy operator test. In addition, as it found in recital 348 of the contested decision, Ryanair failed to establish that the comparator airports it proposed were sufficiently comparable to Angoulême airport with regard to a certain number of parameters.

174 Accordingly, in view of all of the foregoing, it must be held that the complaint alleging that the Commission was wrong to find that the diversity among airports justified its departure, in the present case, from the comparative analysis must be rejected.

(ii) *The complaint alleging that the Commission was wrong to find that the comparative analysis should be based on a comparison of the 2008 agreements together with other similar transactions*

175 At the outset, it must be noted that, in the contested decision, the Commission rejected the study of 25 June 2012 (recitals 343 to 348).

176 The study of 25 June 2012, first, identifies four comparator airports on the basis of a previously defined methodology.It then compares the charges paid by Ryanair to Angoulême airport with the charges it pays to the comparator airports. Finally, the study concludes that the charges paid by that airline to that airport are substantially higher than those paid on average to those comparator airports, both on the basis of a price per rotation and on the basis of a price per passenger. According to that study, those results suggest that the charges paid by Ryanair to Angoulême airport are consistent with those that it would have been offered in similar circumstances by a private market economy investor owning an airport.In addition, that study indicates that the analysis carried out does not take into account the marketing agreements, that is to say the marketing services agreement established between SMAC and AMS.

177 The applicants claim that the marketing services agreement concluded by SMAC and AMS should not be part of a joint comparison of the 2008 agreements with the charges of the comparator airports.

178 According to the applicants, the Commission erred in rejecting, in recitals 344 and 345 of the contested decision, the conclusions drawn in study of 25 June 2012 on the ground that it merely concerns benefits and payments under the airport services agreement and disregards the payments to AMS under the marketing services agreement. They maintain that the price of the services provided in performance of that agreement reflects their value, as was shown by several economic studies which they produced during the administrative procedure. The airport services agreement and the marketing services agreement are two separate agreements each providing for adequate consideration in exchange for the services provided. The applicants submit that the fact that the 2008 agreements were signed at the same time by companies belonging to the same group do not suffice to justify the Commission's approach of treating payments under the marketing services agreement as a rebate on the airport charges provided for in the airport services agreement. Consequently, if it were necessary to analyse them together in a comparative analysis, the value of

the marketing services, which is equal to the price to be paid under the marketing services agreement, should be added to that of the airport services, which cancels out the effect on the prices of Angoulême airport compared to those of the comparator airports.

179 In that regard, it must be borne in mind that, when the Commission reviews whether a specific transaction contains State aid elements, it is required to take into account the context in which that transaction takes place (see, to that effect, judgment of 13 December 2011, *Konsum Nord* v *Commission*, T-244/08, not published, EU:T:2011:732, paragraph 57). The examination of a transaction outside its context could lead to purely formal results which do not correspond to economic reality (judgment of 8 January 2015, *Club Hotel Loutraki and Others* v *Commission*, T-58/13, not published, EU:T:2015:1, paragraph 91).

180 When applying the private investor test, it is necessary to envisage the commercial transaction as a whole in order to determine whether the public entity has acted as a rational operator in a market economy. When assessing the measures at issue, the Commission must examine all the relevant features of the measures and their context (judgment of 17 December 2008, *Ryanair* v *Commission*, T-196/04, EU:T:2008:585, paragraph 59; see also, to that effect, judgment of 6 March 2003, *Westdeutsche Landesbank Girozentrale and Land Nordrhein-Westfalen* v *Commission*, T-228/99 and T-233/99, EU:T:2003:57, paragraph 270).

181 In the present case, in the contested decision, the Commission considered that it was necessary to carry out a joint analysis of the 2008 agreements, which constituted a single transaction, in order to determine whether they constituted State aid (recitals 304 to 313 of the contested decision). In reaching that conclusion, first, it stated that those agreements had been concluded on the same date and by the same parties, which constituted a single economic entity (recital 307 of the contested decision). Moreover, the Commission stated that the marketing services agreement was linked to Ryanair's operation of air routes to Angoulême airport (recital 308 of the contested decision). According to the Commission, the commercial relationship between SMAC and the applicants could be envisaged only in the unique context of Ryanair's launch of the route linking Angoulême airport and London Stansted airport. In that regard, it referred to an audit carried out on behalf of the Charente local authorities and the statements of the French authorities declaring that those agreements constituted a coherent and comprehensive contractual arrangement that is indivisible. Moreover, it explained that the assessment of the inseparable link between the marketing services agreement and the route operated by Ryanair was reinforced by the provisions of that agreement, in which the clause relating to its object stipulated that it was based on Ryanair's commitment to operate an air route between that airport and London (United Kingdom) (recital 309 of the contested decision). In addition, it stated that the purpose of the marketing services agreement was to provide advertising space on the Ryanair website in order to promote Angoulême (France) as a travel destination among visitors to that website and hence among the customers of the airline (recital 310 of the contested decision). It concluded that the costs associated with the agreement in question were, for SMAC, attributable to the opening of the route between London and Angoulême and the benefits of that agreement could derive only from additional revenues linked to the passenger traffic on that route (recital 311 of the contested decision). Finally, it found that the agreement in question was inseparable from the airport services agreement and the air transport services that constitute its subject matter (recital 312 of the contested decision). It noted that the facts presented above showed that, in the absence of that route, and hence of the airport services agreement, the marketing services agreement would not have made sound economic sense for Angoulême airport and consequently would not have been concluded. It stated that at that time Ryanair was the only large airline serving that airport and which could have increased traffic. According to the Commission, if the airport wanted to promote traffic on other routes served by

other competitor airlines, it is reasonable to assume that it would not have advertised on that website.

182 The applicants have failed to call that analysis into question. The Commission did not merely rely on the fact that the 2008 agreements had been signed on the same day by parties belonging to the same group of companies, but it considered those factors in relation to others such as the subject matter and terms and conditions of the marketing services agreement and the fact that it did not make sound economic sense for Angoulême airport to enter into that agreement without Ryanair's providing a route. In that regard, it must be noted that the agreement in question expressly provided, however, that it was based on Ryanair's commitment to operate a route between Angoulême and London.

183 Moreover, the applicants have not adduced any evidence to invalidate the Commission's assessment that the marketing services agreement was inseparable from the airport services agreement and the air transport services covered by it.

184 It follows that the Commission was entitled to consider without committing any error that it was necessary to analyse the 2008 agreements jointly, as a single transaction.

185 Consequently, the Commission was entitled, without committing any error, to reject the findings of the study of 25 June 2012 as irrelevant and to rely on a joint analysis of the 2008 agreements (recital 344 of the contested decision). That study merely compared the airport charges imposed by Angoulême airport with the airport charges imposed by certain airports in Europe selected for the purposes of comparison, whereas the correct application of the market economy operator test meant that, in the present case, those agreements had to be taken into account as a single transaction.

186 The applicants' argument that the price paid under the marketing services agreement corresponded to the actual value of the services to be performed under that agreement must be rejected. That argument is based on the unsubstantiated assumption that the marketing services and airport services are distinct and independent (see paragraphs 179 to 184 above) and that, therefore, the price to be paid for marketing services cannot be considered to be a cost attributable to the opening of the route between Angoulême airport and London Stansted that should be deducted from additional revenues, including airport charges, linked to the passenger traffic on that route.

187 It follows that the applicants' claim that the price paid under the marketing services agreement corresponded to the actual value of the services to be performed under that agreement must be rejected.

188 Accordingly, the complaint alleging that the Commission was wrong to find that the comparative analysis should be based on a comparison of the 2008 agreements viewed as a whole must be rejected.

(iii) *The complaint alleging that the Commission incorrectly considered that Ryanair paid a negative price*

189 The applicants claim that the Commission erred in rejecting the study of 25 June 2012 on the ground that Ryanair had paid a 'negative price' in 2008 and 2009 for the use of the airport services of Angoulême airport. The finding of a negative price is irrelevant with regard to the comparative analysis and at best has a role to play only in the context of the incremental profitability analysis.

190 In that regard, it is true that the Commission stated, in recital 346 of the contested decision, among the factors of its examination of the appropriateness of the comparative analysis, that the price actually paid by Ryanair for the use of those airport services had been negative in 2008 and 2009 and that the expected non-aeronautical revenues were not sufficient or likely to be developed during the term of the airport services agreement to the extent necessary to offset the negative price.

191 However, it should be noted that the comparative analysis is only one analytical tool amongst others for the purposes of applying the private investor test for the purpose of Article 107(1) TFEU and that the use of the comparative analysis cannot relieve the Commission of its obligation to make a complete analysis of all factors that are relevant to the transaction at issue and its context. It was therefore entitled to take into account the fact that a negative return was foreseeable in a given transaction (see, to that effect, judgment of 3 July 2014, *Spain and Others* v *Commission*, T-319/12 and T-321/12, not published, EU:T:2014:604, paragraphs 44 and 45).

192 Therefore, the Commission did not err in referring to the negative price paid by Ryanair in its examination of the appropriateness of the study of 25 June 2012.

193 Accordingly, the complaint alleging that the Commission incorrectly considered that Ryanair paid a negative price must be rejected.

(iv) *The complaint alleging that the Commission erred in finding that the evidence provided by Ryanair failed to demonstrate that the airports selected in the study of 25 June 2012 were sufficiently comparable to Angoulême airport and a failure to state reasons in that regard*

194 The applicants submit that the Commission was wrong to find that Ryanair had failed to show that the four airports chosen in the study of 25 June 2012 were sufficiently comparable to Angoulême airport. In that regard, first, they claim that the Commission failed to examine, let alone refute, the method used in that study to identify those selected airports. The Commission failed to establish that those airports did not constitute appropriate points of comparison. It wrongly criticised that study for the fact that one of the comparison criteria selected was based on belonging to the category of airports with a traffic volume of less than 1 000 000 passengers per year. In the reply, the applicants add that, in rejecting the study in question, the Commission incorrectly referred to the negative fee paid by Ryanair on account of the marketing fees paid by Angoulême airport.Consequently, the Commission failed to give reasons and committed a manifest error of assessment. Second, the applicants argue that the Commission did not approach privately owned or privately operated airports in order to find out what prices they charged and therefore made no attempt to find comparison criteria.

195 In that regard, as regards the line of argument that the Commission erred in considering that the evidence submitted by Ryanair did not show that the airports selected in the study of 25 June 2012 were sufficiently comparable to Angoulême airport, it should be noted that, as the Commission states, the fact that the marketing services agreement was not taken into account was sufficient to exclude the method used in that study (recital 344 of the contested decision). The application of the private investor test in the present case requires that the 2008 agreements, which constitute a single transaction, be analysed jointly (see paragraphs 179 to 184 above). Therefore, that argument must be rejected as ineffective.

196 In addition, it must be pointed out that the fact that the contested decision does not set out, for each of the airports selected in the study of 25 June 2012, the reasons why they could not be identified as comparators does not, by itself, allow the conclusion that there was a failure to provide a statement of reasons for the purpose of Article 296 TFEU.

197 It should be borne in mind in this regard that, according to settled case-law, the statement of reasons required by Article 296 TFEU must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the court having jurisdiction to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of that provision must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see judgment of 2 April 1998, *Commission* v *Sytraval and Brink's France*, C-367/95 P, EU:C:1998:154, paragraph 63 and the case-law cited).

198 In the present case, in recital 340 of the contested decision, the Commission recalled its doubts, as expressed in point 59 of the 2014 Guidelines, that, at that time, an appropriate benchmark could be identified to establish a true market price for the services provided by airports. In addition, it found, in recital 347 of that decision, that the airports for which a negative price could be justified were few in number and did not feature in the sample of comparator airports contained in the study of 25 June 2012 and that the characteristics of the airports making up that sample were too disparate to provide a satisfactory basis for analysis. It stated that one of the comparators chosen was based on classification in the category of airports with a traffic volume of less than 1 000 000 passengers per year and that, since the charges applied by Angoulême airport were compared to those applied by airports whose annual traffic was several hundred thousand passengers per year, the resulting comparative analysis was made on a basis that was not precise enough to be acceptable. Finally, with reference to the parameters set out in point 60 of those guidelines, the Commission found, in recital 348 of the contested decision, that Ryanair had not shown how the airports it referred to were sufficiently comparable in terms of traffic volume, type of traffic, type and level of airport services, the presence of a large city in the vicinity of the airport, the number of inhabitants in the catchment area, prosperity in the surrounding area, and the existence of different geographical areas likely to attract passengers.

199 Admittedly, in the contested decision, the Commission does not specify in more detail the reasons why it did not accept the sample of airports chosen in the study of 25 June 2012 as a valid benchmark.

200 However, it cannot be disputed that the determination of comparator airports is based on complex technical assessments. Since the contested decision clearly disclosed the Commission's reasoning, enabling the substance of that decision to be challenged subsequently before the competent court, it would be excessive to require a specific statement of reasons for each of the technical choices or each of the figures on which that reasoning was based (see, to that effect, judgments of 1 July 2008, *Chronopost and La Poste* v *UFEX and Others*, C-341/06 P and C-342/06 P, EU:C:2008:375, paragraph 108, and of 27 April 2017, *Germanwings* v *Commission*, T-375/15, not published, EU:T:2017:289, paragraph 45; see also, by analogy, judgment of 12 July 2005, *Alliance for Natural Health and Others*, C-154/04 and C-155/04, EU:C:2005:449, paragraph 134).

201 Therefore, an explanation, for each of the airports selected in the study of 25 June 2012, of the reasons why they could not be accepted was not necessary in the contested decision for the applicants to understand the reasoning followed by the Commission.

202 Thus, the applicants were in a position effectively to challenge before the Court the Commission's rejection of the sample of airports selected in the study of 25 June 2012.

203 Therefore, the line of argument alleging failure to state reasons must be rejected.

204 In addition, the applicants fail to demonstrate that the Commission made a manifest error of assessment concerning the method of selecting the comparator airports.

205 First, the applicants' argument concerning classification in the category of airports with a traffic volume of less than 1 000 000 passengers per year cannot succeed. The Commission explains in recital 347 of the contested decision that the study of 25 June 2012 compares the airport charges applied by Angoulême airport to those applied by airports whose annual traffic is several hundred thousand passengers per year, and concludes that the resulting analysis is made on a basis that is not precise enough to be acceptable.

206 In that regard, it must be held that, since, in recital 348 of the contested decision, the Commission also based its rejection of the study of 25 June 2012 on a number of other parameters, it has not been established that the finding relating to the parameter concerning the overall size of the airport was decisive in concluding that the comparator airports were not sufficiently comparable.

207 Second, the applicants do not call into question the Commission's finding, in recital 347 of the contested decision, that the airports for which a negative price could be justified were few in number and did not feature in the sample of comparator airports contained in the study of 25 June 2012.The Commission explained, without contradiction by the parties, that that study did not include airports for which a negative price would be justified.

208 Third, the applicants claim that they gave a very detailed explanation of the selection criteria used for the comparator airports, both generally and with specific reference to the airport. They refer inter alia to the study of 25 June 2012.

209 The Commission submits that the study of 25 June 2012 had no value for the purpose of establishing the market price of the 2008 agreements.

210 In this respect, the Commission maintains that Bournemouth airport is owned by a State-owned entity and that the study of 25 June 2012 does not claim that it is operated on a market economy basis, that Grenoble airport only operates in the winter ski season, that Maastricht airport had significant cargo operations, has received significant State aid since 2004 and was passed into public ownership in 2013, after it seemingly had to be rescued by the Netherlands State and that Knock airport, although privately owned, received considerable taxpayer support, namely grants of EUR 13 million between 1997 and 2012.

211 The applicants put forward a certain number of arguments, at the hearing, against that analysis carried out by the Commission.

212 As regards the applicants' argument that Bournemouth airport was profitable during the 12 years preceding 2012, it must be pointed out that, while it is true that that is a relevant factor in considering the conduct of that airport as being the conduct of a market economy operator, the fact remains that that airport belongs to a public entity.

213 As regards the applicants' argument that Ryanair operated multiple summer routes to and from Grenoble airport between 2006 and 2009, it must be pointed out that the Commission stated both in those written submissions and at the hearing that that airport had a business model focusing on the winter season which distinguished it from Angoulême airport and, accordingly, was not an appropriate benchmark for the purpose of establishing a true market price for airport services (see recital 340 of the contested decision).

214 As regards the applicants' argument that the State subsidies granted to Knock airport amounted only to 6% of the airport's assets for the period in question, it must be noted that the Commission was entitled to find, without committing any manifest error of assessment, that public funding of that magnitude was a relevant factor in its assessment of that airport's appropriateness as a comparator.

215 As regards the applicants' argument that Maastricht airport was privately owned during the period concerned, it must be noted that that does not call into question the Commission's finding, made on the basis of the study of 25 June 2012, that that airport had received subsidies of EUR 42.9 million since 2004.

216 In any event, it must be held that the applicants have not put forward any evidence, either in the application or in the reply, calling into question the Commission's finding that the airports selected in the study of 25 June 2012 were not sufficiently comparable in the light of the parameters set out in recital 348 of the contested decision.

217 Accordingly, despite the finding in paragraph 212 above, it must be held, in the light of all the evidence viewed as a whole, that the Commission did not commit a manifest error of assessment in rejecting the sample of comparator airports contained in the study of 25 June 2012.

218 As regards the applicants' argument alleging the lack of effort on the part of the Commission to make enquiries with privately owned or privately operated airports in order to find points of comparison, it must be noted that that complaint relates to the scope of the Commission's investigation obligations when it is called upon to apply the market economy operator test to the 2008 agreements.

219 In accordance with the case-law, in the context of applying the private investor test, the Commission must examine, when assessing a measure, all the relevant features of the measure and its context (see, to that effect, judgment of 17 December 2008, *Ryanair* v *Commission*, T-196/04, EU:T:2008:585, paragraph 59).

220 In that regard, all information liable to have a significant influence on the decision-making process of a normally prudent and diligent market economy operator, who is in a situation as close as possible to that of the Member State concerned, must be regarded as being relevant (see, by analogy, judgment of 20 September 2017, *Commission* v *Frucona Košice*, C-300/16 P, EU:C:2017:706, paragraph 60).

221 It should also be borne in mind that the lawfulness of a decision concerning State aid falls to be assessed by the European Union judicature in the light of the information available to the Commission at the time when the decision was adopted (judgment of 20 September 2017, *Commission* v *Frucona Košice*, C-300/16 P, EU:C:2017:706, paragraph 70).

222 The information 'available' to the Commission includes that which seemed relevant to the assessment to be carried out in accordance with the case-law referred to in paragraph 220 above and

which could have been obtained, upon request by the Commission, during the administrative procedure (see, to that effect, judgment of 20 September 2017, *Commission* v *Frucona Košice*, C-300/16 P, EU:C:2017:706, paragraph 71).

223 In the present case, in the first place, it must be noted that, in the contested decision, the Commission recalled its doubts, as expressed in the 2014 Guidelines, that it is currently possible to identify an appropriate benchmark for establishing a true market price for services provided by airports. The Commission refers in particular in points 56 to 58 of those guidelines to the fact that the vast majority of Union airports benefit from public funding, that public airports' charges tend not to be determined with regard to market considerations, but having regard to social or regional considerations, and that even the prices charged by private airports can be strongly influenced by the prices charged by the majority of publicly subsidised airports. Thus, even if it is conceivable that a sufficient number of suitable comparator airports can be found, as the Commission explained at the hearing, it found that, in accordance with point 61 of those guidelines, the incremental profitability analysis was the most relevant criterion for the assessment of the agreements concluded between airports and airlines.

224 In the second place, it must be recalled that the Commission referred, in the contested decision, to the difference in the cost and revenue structures between airports, the low comparability of transactions between airports and the existence of a negative price actually paid to Angoulême airport by Ryanair for use of its airport services as considerations which justify departure from the comparative analysis (recitals 341, 342 and 346 of the contested decision).

225 In the third place, it must be recalled that, in the opening decision, the Commission invited the interested parties to submit observations while further stating in the decision that the French authorities had not provided any basis for comparison which could be used to assess whether the price paid by Ryanair corresponded to the normal market price.

226 Thus, during the administrative procedure, Ryanair submitted the study of 25 June 2012 in which a sample of comparator airports was presented.

227 In answer to a question from the Court at the hearing, the Commission explained that, even if the 2014 Guidelines foresaw the possibility of conducting a comparative analysis, the information in the file did not allow such an analysis to be carried out effectively in the present case.

228 In those circumstances, the Commission was entitled, without committing any error, to choose, in the present case, to carry out the incremental profitability analysis rather than the comparative analysis, without having approached privately owned or privately operated airports with the aim of identifying possible airports which were sufficiently comparable to Angoulême airport.

229 In the light of the foregoing, the applicants' complaint alleging that the Commission erred in finding that the evidence provided by Ryanair failed to demonstrate that the airports selected in the study of 25 June 2012 were sufficiently comparable to Angoulême airport and a failure to state reasons in that regard must accordingly be rejected.

(3) *The complaint alleging that the comparative analysis shows that no advantage was conferred through the 2008 agreements*

230 The applicants claim, with reference to the economic reports and the other evidence on the case file, that the comparative analysis shows that the 2008 agreements conferred no economic

advantage. It is apparent from several economic reports that the price stipulated in the marketing services agreement was in line with the market price received by AMS from private customers or the market price paid by private customers for comparable services supplied by other service providers. The study of 25 June 2012 shows that the airport charges paid by Ryanair to Angoulême airport were compatible with the level of charges that would have been offered to Ryanair by an airport-owning market economy operator in similar circumstances.

231 In that regard, it must be stressed that, as the Commission states, the applicants' line of argument, which is based on the aforementioned economic reports and the study of 25 June 2012, is ineffective, since it starts from the incorrect premiss that the marketing services and the airport services are distinct and independent, whereas it was appropriate to analyse the 2008 agreements jointly in order to determine whether they constitute an advantage (see paragraphs 179 to 184 above).

232 So far as concerns the marketing services agreement, it must be borne in mind that the economic reports at issue do not take into account the fact that AMS's marketing services were acquired by Angoulême airport in order to promote the operation of the air route ensured by Ryanair. Thus, two economic reports compare the prices of advertising space and marketing on Ryanair's website with the prices charged by the websites of other airlines or other travel websites for advertisements on the internet. Similarly, another economic report compares the prices set by AMS in its rate cards with rate card prices for advertising services on a wide selection of other European travel websites. Those reports do not claim, in particular, that advertisers on other travel websites are comparable to airports which purchase marketing services linked to air transport services of an airline.

233 Moreover, the economic reports in question, which are based on the assumption of distinct and independent marketing services and airport services, make no attempt to call into question the Commission's analysis that the marketing services agreement is inseparable from the airport services agreement and the air transport services forming the subject matter thereof. The applicants cannot therefore rely on those economic reports in order to refute that analysis.

234 With regard to the examples of marketing services agreements by which certain private airports purchased AMS's services, it is sufficient to state that the applicants have failed to show that the private airports were in a situation comparable to that of Angoulême airport when they concluded the agreements.

235 So far as concerns the airport services agreement, the study of 25 June 2012 merely compares the airport charges imposed in Angoulême airport with the airport charges imposed in the comparator airports without taking account of the marketing services agreement, although the two types of agreement must be regarded as constituting a single transaction.

236 Accordingly, the applicants' complaint alleging that the comparative analysis shows that no advantage was conferred through the 2008 agreements must be rejected.

237 In the reply, the applicants contend that, in order to justify its departure from the comparative analysis, the Commission repeats, in the defence, its reservations about the unsubstantiated theory, expressed in the 2014 Guidelines, that even private airports cannot be used as valid comparators because their prices are 'polluted' by the prices charged by the majority of publicly subsidised airports against which they compete for agreements with airlines. According to the applicants, private airports are not prepared to enter into perpetually loss-making agreements in order to compete with subsidised public airports. Moreover, the airports experience only limited competitive

tension with one another to secure a contract with Ryanair, given that there are a substantial number of airports that Ryanair does not serve for operational reasons.

238 In this respect, it should be noted that, as the Commission rightly indicates, it did not state in the 2014 Guidelines that private airports were prepared to enter into perpetually loss-making agreements in order to compete with subsidised public airports.

239 Furthermore, the Commission did indeed state in point 58 of the 2014 Guidelines that the prices charged by airports which are privately owned or managed by private companies could be strongly influenced by the prices charged by the majority of publicly subsidised airports, as the latter prices are taken into account by airlines during their negotiations with the privately owned or managed airports. It identified that risk, which the applicants mention by referring to 'polluted prices', as one of the reasons why it has serious doubts whether it is currently possible to identify an appropriate benchmark for establishing a true market price for services provided by airports.

240 The existence of limited competition between the airports to secure a contract with Ryanair, even if established, is insufficient to call into question the Commission's conclusions, in points 56 to 59 of the 2014 Guidelines, concerning the EU airport industry.

241 Moreover, at the hearing, the Commission also stated that it was open to a comparative analysis in so far as it is possible to find comparator airports.

242 In the present case, it is apparent from paragraphs 204 to 217 above that no valid sample of comparator airports was available on the date of the contested decision.

243 Therefore, it is necessary to reject the applicants' line of argument, since, even if there is no risk of 'polluted prices', it is established that the Commission was entitled to consider, without committing a manifest error of assessment, that a valid sample of comparator airports was not available.

244 Having regard to all of the foregoing, the first part of the present plea in law must be rejected.

(b) **The second part, alleging errors of assessment and insufficient reasoning as regards the incremental profitability analysis**

245 The applicants argue that the incremental profitability analysis on which the Commission relied in order to apply the market economy operator test and reach a finding of the existence of State aid, within the meaning of Article 107(1) TFEU, is vitiated by manifest errors of assessment and a failure to state reasons.

246 In that regard, it is appropriate to observe, as a preliminary point, that, in the contested decision, the Commission underlined that, in order to apply the market economy operator test to the 2008 agreements, it had to analyse those agreements together and assess whether such an operator, motivated by the prospect of profits and operating Angoulême airport in place of CCI-airport and SMAC, would have entered into those agreements (recital 350 of the contested decision). In the Commission's view, to that end, it had to determine the incremental profitability of those agreements for their entire duration as it would have been assessed by a market economy operator at the time of their conclusion.

247 In the present case, it is not disputed that SMAC launched a forward study dated 14 June 2006. However, the Commission considered in recital 356 of the contested decision that that study

did not correspond to a relevant business plan for the purpose of analysing compliance with the market economy operator test. Furthermore, it found in recital 357 of that decision that it was clear from that study that SMAC could not have been unaware at that time that the opening of a route between Angoulême and London operated by a low-cost airline would translate into significant operating losses and consequently high financing needs. It added in recital 358 of that decision that, despite that information, SMAC did not consider it necessary to commission a business plan or any other equivalent prior economic analysis of the agreements to be concluded by the applicants, in order to support, from an economic point of view, its decision to undertake those commitments.

248 In reply to a written question of the Court, the Commission submitted a copy of the forward study of 14 June 2006. The applicants did not adduce, at the hearing, any evidence indicating that the Commission had committed a manifest error of assessment in finding that that study, first, did not correspond to a business plan for the purpose of analysing compliance with the market economy operator test and, second, called into question the economic profitability of opening a route connecting Angoulême and London.

249 The Commission carried out the incremental profitability analysis on the basis of the incremental costs and revenues of the 2008 agreements, as a market economy operator would have calculated them at the time of their conclusion (recital 363 of the contested decision).

250 Thus, the Commission assessed, in the contested decision, the incremental profitability of the 2008 agreements for their entire duration, which was five years (2008 to 2012), taking into account the following:

– the future incremental traffic (number of additional passengers) expected from the implementation of those agreements, taking into account the possible positive effect of the marketing services on the load factors of the route between Angoulême and London; in that regard, the Commission made the assumption of a load factor of 85% per flight (recitals 369 to 372 of the contested decision);

– the future incremental revenues expected from the implementation of those agreements, including revenues from airport charges and ground-handling services, generated by that route, as well as non-aeronautical revenues from the additional traffic generated by the implementation of those agreements (recitals 373 to 380 of the contested decision);

– the future incremental costs expected from the implementation of those agreements, including the costs of marketing services and the incremental operating costs (staff costs and others) (recitals 381 to 386 of the contested decision).

251 In recitals 387 to 389 of the contested decision, the Commission presented the results of its assessment, displaying, for each year (from 2008 to 2012), the incremental traffic, the incremental revenues and the incremental costs associated with the 2008 agreements in Table 12 of that decision. It found that all the anticipated annual incremental flows (revenues less costs) were negative. Therefore, it considered that those agreements conferred an economic advantage on the applicants.

252 In that regard, the applicants essentially put forward six complaints the validity of which is contested by the Commission.

(1) *The complaint alleging reliance on insufficient, unverified, unclear and unreliable data*

253 The applicants claim that the Commission's incremental profitability analysis, the figures for which are set out in Table 12 of the contested decision, is based on data that are manifestly insufficient, unverified and unreliable.

254 First, the applicants maintain that it appears that the Commission used the forward study of 14 June 2006 commissioned by Angoulême airport as its only source of data for the calculations in Table 12 of the contested decision, in particular in so far as concerns incremental operating costs, even though it itself acknowledged that that study could not constitute a reliable business plan because its data were not precise enough and were unreliable and it referred to agreements that were not final.In their reply, the applicants add that the figures for non-aeronautical revenues and for incremental operating costs raise questions concerning the accuracy of the assessment of the quantum of aid to be recovered, inasmuch as that decision does not allow the Member State to make adjustments for the difference between the forecasts for those revenues and costs and the amounts actually paid (recital 415 of the contested decision). The applicants have finally produced a note prepared by their economic adviser which indicates that the amount of aid payable could be less than the amount estimated in the contested decision, because the actual costs are lower than the estimated costs.

255 In that regard, first, it must be held that it is by no means apparent from the contested decision that the Commission relied solely on the forward study of 14 June 2006. It is apparent from recitals 355 to 363 of that decision that, in the absence of a business plan, the Commission carried out the incremental profitability analysis which relied on the information concerning the incremental operating costs provided by the French authorities and reproduced in recitals 88 and 89 of that decision. The applicants' argument alleging that that study alone was used as a source of data for the calculations in Table 12 of the contested decision must therefore be rejected.

256 Second, it must be pointed out that the applicants' argument concerning the allegedly too narrow scope of the *ex post* adjustments that the Member State may make in order to take into account actual payments once they have been recorded is irrelevant for the purposes of assessing the economic advantage gained by the 2008 agreements. According to settled case-law, for the purposes of applying the private investor test, the only relevant evidence is the information which was available, and the developments which were foreseeable, at the time when the decision to make the investment was taken. That is especially so where the Commission is examining whether there is State aid in relation to an investment which was not notified to it and which, at the time when the Commission carries out its examination, has already been made by the Member State concerned (see, to that effect, judgment of 1 October 2015, *Electrabel and Dunamenti Erőmű* v *Commission*, C-357/14 P, EU:C:2015:642, paragraph 103). In order to assess the value of the economic advantage in the context of the incremental profitability analysis, it is therefore necessary to endorse the Commission's approach which consisted in taking into account expected revenues and costs at the time when Angoulême airport decided to enter into the 2008 agreements, and not the payments actually made subsequently.

257 Likewise, in so far as the note prepared by the applicants' economic consultants makes calculations on the basis of traffic data and incremental operating costs established *ex post* in order to determine the amount of the aid, it is not relevant for the purpose of assessing the economic advantage gained by the 2008 agreements.

258 The applicants' argument that the amount of aid payable could be less than the amount estimated in the contested decision, because the actual costs were lower than the estimated costs must therefore be rejected.

259 Second, the applicants call into question the reliability of the figures for incremental operating costs as forecast in the contested decision, which assumes, without any explanation, that those costs would increase from [*confidential*] in 2008 to [*confidential*] in each of the following years. The fact that Ryanair was an operational airline only a few months after the beginning of 2008 does not justify the lower figure for 2008, since the seasonal route was not supposed to start until the summer of each year. The applicants fear that incremental staff costs were imputed to them, for the period concerned, for the half of each year during which Ryanair was not operating from the airport. Furthermore, since SMAC's expansion plan included the operation of several regular routes, the Ryanair-specific operating costs were minimal, given that the incremental operating costs would have been the same if Ryanair had not been operating from the airport.

260 In that regard, it must be pointed out that, first, in order to estimate the future incremental operating costs expected from the implementation of the 2008 agreements, the Commission should have relied on the estimates made by CCI-airport and SMAC before those agreements were signed, since it was not able to estimate itself how a given agreement might affect the different cost items of Angoulême airport (recitals 385 and 386 of the contested decision).

261 Those cost items of Angoulême airport relating to Ryanair's activity, which are contained in recitals 88, 89 and 387 of the contested decision, show a level of estimated incremental operating costs (handling and reception of passengers) in 2008 of EUR [*confidential*] to EUR [*confidential*] in each of the following years. Moreover, it is apparent from that decision that those overall incremental costs were divided into 'staff costs' and 'other costs'. As regards staff costs, it was inter alia stated in recital 88 of the contested decision that the forecast additional staff numbers, needed for the handling and reception of passengers of Ryanair flights amounted to 0.3 full-time equivalent in 2008 and 0.5 full-time equivalent in 2009 and 2010 and that the associated additional costs reached EUR 20 000 in 2008 and EUR 30 000 in 2009 and 2010.

262 The Commission submitted that Ryanair was the only airline operating a regular route to Angoulême airport and that no other agreement was planned at the time the 2008 agreements were signed, with the result that the incremental operating costs forecast by the French authorities were attributed to Ryanair, since those costs were specific to it. Moreover, it maintained that the incremental operating costs had been estimated by the manager of Angoulême airport when those agreements were signed, that is to say when he had assumed that Ryanair would conclude those agreements and ensure flights for five years. Finally, the Commission submitted that, in 2007, Angoulême airport accommodated only 2 362 passengers and no regular flights, whereas, in 2008, the number of Ryanair passengers using the route between Angoulême and London was estimated at 29 946 passengers (recitals 16 and 387 of the contested decision), namely a figure 13 times higher than that previously recorded.

263 In those circumstances, the Commission relied on objective evidence in order to accept that the predicted growth in the number of passengers in the period under consideration is accompanied by a significant increase in the estimated operating costs of Angoulême airport for the handling and reception of additional Ryanair passengers. Accordingly, the Commission made no manifest error of assessment in relying on the information concerning costs provided by the French authorities in order to carry out the incremental profitability analysis concerning the 2008 agreements.

264 In reply to a question of the Court, the Commission acknowledged that the French authorities did not explain directly, in their forecast why the expected additional handling costs for 2008 were lower than those for subsequent years. However, as the Commission correctly maintained, the figures concerning the incremental operating costs provided by the French authorities were based on estimates made by CCI-airport and SMAC before the signing of the 2008 agreements. It follows

that they relied on objective evidence and not simply on unsubstantiated statements made by the French authorities. In those circumstances, the Commission did not err in relying on the figures concerning the incremental operating costs provided by the French authorities and did not have to ascertain the reasons why the expected additional handling costs for 2008 were lower than those of subsequent years.

265 Finally, as regards the applicants' argument that the operational costs specific to Ryanair were very low on account of SMAC's expansion plan including the operation of several routes, it must be pointed out that that plan, referred to by the applicants, related to the call for tenders launched by SMAC, published on 9 March 2011, and cannot therefore, in accordance with the case-law cited in paragraph 256 above, be taken into consideration to evaluate the economic rationality of the 2008 agreements from the perspective of a market economy operator. Moreover, the applicants do not call into question, by that argument, the French authorities' estimate, as acknowledged by the Commission, of the incremental operating costs for Angoulême airport on account of Ryanair's launching the air route between Angoulême and London.

266 Accordingly, the applicants' argument calling in question the reliability of the figures for the estimated operating costs must be rejected.

267 Third, the applicants argue that there is nothing to suggest that the Commission verified whether the category of 'other' incremental costs for ground handling and reception included in Table 12 of the contested decision includes activities falling within the scope of the State's exercise of official powers, part of which at least appears to have been funded by SMAC.

268 In this regard, it should be noted, as the Commission states, that, in the system established by the French legislation in force, sovereign tasks are financed by the State through the airport tax levy (recitals 184 to 198 of the contested decision), so that the increase in air transport services at a given airport should not, logically, result in additional costs borne by the airport operator for performing these tasks.

269 Moreover, it follows from the contested decision that the Commission used, in its analysis, information concerning costs which excludes the implementing costs of sovereign tasks. Recitals 88 and 89 of that decision contain separate cost tables concerning safety and security and assistance and reception, whereas, in the incremental profitability analysis, the Commission relied on the sole costs relating to assistance and reception (recital 387 of that decision).

270 Fourth, the applicants complain that the Commission did not verify whether part of the incremental costs used in the incremental profitability analysis in order to calculate any aid that they might have received did not mistakenly include an element of aid to Angoulême airport that was approved as compatible with the internal market in accordance with the rules on service of general economic interest ('SGEI'). There is nothing to indicate that the distinction between SGEI activities and non-SGEI activities was planned and taken into account in the allocation of the budget and the approval procedures followed by Angoulême airport during the period in question (2007 to 2011). It is impossible to ascertain whether part of the incremental costs used by the Commission in the incremental profitability analysis was covered by the payments linked to SGEIs.

271 In that regard, it follows first from the contested decision that the Commission considered that, during the period in question, the tasks of Angoulême airport's managers relating solely to keeping the airport operational and to infrastructure accessibility could be classified as an SGEI (recitals 225 and 231 to 233 of the contested decision) and that the public compensation for the performance of those tasks was compatible with the internal market in the light of Article 106(2)

TFEU, its communication of 11 January 2012 entitled ‘European Union framework for State aid in the form of public service compensation’ (OJ 2012 C 8, p. 15) and its Decision 2005/842/EC of 28 November 2005 on the application of Article [106(2) TFEU] to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ 2005 L 312, p. 67) (recital 291 of the contested decision). By contrast, it considered that, during that period, the development of commercial flights cannot meet the general interest criterion justifying the classification as an SGEI and that the compensation by SMAC of the additional costs incurred by the 2008 agreements should therefore be analysed as part of the assessment of any State aid elements contained in those agreements (recitals 225 and 234 of that decision).

272 Moreover, the Commission explained, in reply to a written question put by the Court, that, in its assessment of the compatibility with the internal market of the public compensation for the SGEI, it found, in recital 282 of the contested decision, that the procedure for adopting the budget allocated to Angoulême airport guaranteed that the aid granted was limited to compensation for the deficit associated with the management of the airport, regarded as an SGEI. Furthermore, it referred to recital 283 of that decision, according to which the costs relating to the management activity of that airport had been kept separate from an accounting point of view and reviewed by the civil aviation authority. It added that the costs incurred by Ryanair’s activity were part of the commercial development of that airport and, accordingly, were not covered by the public compensation in respect of the SGEI.

273 Without there being any need to determine whether the mechanisms provided for in recitals 282 and 283 of the contested decision sufficed to ensure that the public compensation granted to the manager of Angoulême airport did not cover the costs associated with the 2008 agreements, it must be held that, as the Commission correctly stated, the precise arrangements for the financing of those costs are irrelevant for the purpose of assessing whether those agreements constituted State aid. All that is relevant is whether a market economy operator in similar circumstances, motivated by the prospect of profits, would have entered into those agreements. Accordingly the applicants could have benefited from State aid even if part of that aid had been financed by public compensation received by that airport for performance of an SGEI**.**

274 Accordingly, the applicants’ argument that the Commission did not verify whether part of the incremental costs used in the profitability analysis in order to calculate any aid that they might have received did not mistakenly include an element of aid to Angoulême airport that was approved as compatible with the internal market in accordance with the rules on SGEIs must be rejected.

275 Fifth, the applicants maintain that the Commission did not explain why the incremental operating costs contained in Table 12 of the contested decision were exclusively linked to Ryanair’s activities, rather than being part, at least to some extent, of the Angoulême airport’s overhead costs.

276 In that regard, it must be recalled that it is apparent from recitals 88, 89, 385 and 387 of the contested decision that the French authorities provided the Commission with information relating to the incremental operating costs. They indicated, inter alia, that the operator of Angoulême airport had to incur staff costs and other additional costs on account of its commercial relationship with Ryanair (see tables in recitals 88 and 89 of that decision).

277 It must therefore be held that the contested decision is sufficiently reasoned as regards the imputability of the additional costs to the 2008 agreements.

278 Accordingly, it is necessary to reject the applicants' argument that the Commission failed to explain why the incremental operating costs contained in Table 12 of the contested decision were exclusively linked to Ryanair's activities, rather than being part, at least to some extent, of Angoulême airport's overhead costs.

279 Sixth, as regards the applicants' argument that the Commission incorrectly added, in Table 10 of the contested decision the airport charges paid by Ryanair to the payments made by Angoulême airport to AMS for marketing services for the calculation of the net transfer, it must be held that the net figures contained in that table, which is reproduced in recital 40 of that decision, were not used to assess the existence or the amount of aid in that decision. Accordingly, that error, while regrettable, cannot affect the legality of the decision in question.

280 In the light of the foregoing, it is necessary to reject the applicants' complaint that the Commission used insufficient, unverified, unclear and unreliable data in its incremental profitability analysis.

(2) *The complaint alleging that the information sent by Angoulême airport was not verified and not compared with an average or well-run and efficient airport*

281 The applicants argue that the Commission did not verify whether Angoulême airport's projected non-aeronautical costs and revenues corresponded to those which an average airport, still less a well-run and efficient airport, might expect to incur. They claim that an airport that operates below an average level of efficiency does not act like a market economy operator. In the present case, the high incremental operating costs of Angoulême airport which the Commission assumed are significantly higher than those found in other cases and are not the market costs which an efficiently run airport would incur, cannot be taken into consideration in the context of applying the market economy operator test.

282 In that regard, it must be noted that, according to the case-law, it is for the Commission to assess whether a rational market economy operator in a situation as close as possible to that of the public entity concerned would have been prompted to take the measure in question (see, to that effect, judgment of 5 June 2012, *Commission* v *EDF*, C-124/10 P, EU:C:2012:318, paragraph 84). In that regard, it is necessary to take into account the structure of the actual costs and revenues of the public entity whose conduct is being compared to that of a market economy operator.

283 It follows that, contrary to what the applicants claim, it was not for the Commission, in the present case, to verify, in the context of applying the market economy operator test, whether the incremental operator costs and non-aeronautical revenues of Angoulême airport corresponded to those which might have been expected of an average airport or a well-run and efficient airport. Accordingly, the Commission was entitled, without committing any error, to apply the actual provisional costs and revenues of Angoulême airport in order to assess whether the applicants had obtained an economic advantage.

284 For the same reasons, nor was the Commission required to take into account the costs found in airports other than Angoulême airport or the comparative analysis of the incremental operating costs of certain airports, as submitted by the applicants.

285 Moreover, the downward revision of the actual figures of the costs and revenues of a public undertaking would be contrary to the rule in Article 107(1) TFEU, which does not make a distinction on the basis the causes or aims of State interventions but defines them in relation to their effects (judgment of 5 June 2012, *Commission* v *EDF*, C-124/10 P, EU:C:2012:318, paragraph 77).

286 Consequently, the Commission did not err in failing to verify whether the actual expected costs and revenues of Angoulême airport corresponded to those generally associated with a well-run or efficient airport.

287 That conclusion is not affected by the other arguments put forward by the applicants.

288 As regards the applicants' argument that its litigious relationship with the manager of Angoulême airport should have led the Commission to be particularly circumspect about information originating from that source, it must be held that that fact is not a relevant factor in establishing the existence of aid. Moreover, it must be noted that, in the light of the Member State's duty to cooperate in good faith laid down in Article 4(3) TFEU (see, to that effect, judgments of 9 June 2011, *Diputación Foral de Vizcaya and Others* v *Commission*, C-465/09 P to C-470/09 P, not published, EU:C:2011:372, paragraph 152, and of 25 June 2015, *SACE and Sace BT* v *Commission*, T-305/13, EU:T:2015:435, paragraph 112), the Commission could legitimately expect that the French authorities, including the manager of Angoulême airport, would provide reliable information, while reserving the right to examine it diligently and impartially.

289 Likewise, the applicants have not demonstrated that the Commission was not prudent when verifying the information provided by the French authorities in the light of the fact that SMAC kept Angoulême airport open all year round despite the seasonal operation of the Ryanair route. It follows inter alia from paragraphs 261 to 264 above that the Commission relied on objective factors when verifying the information concerning costs produced by those authorities.

(3) *The complaint alleging that the scope of the analysis carried out for the purposes of applying the market economy operator test was too narrow*

290 The applicants claim that the Commission limited its analysis in the context of applying the market economy operator test, first, by restricting itself to a five-year time horizon, that is to say the initial term of the 2008 agreements, next, by relying solely on the route between Angoulême and London and, finally, by failing to take into account wider benefits such as the network effects that Angoulême airport could hope to benefit from as a result of its relationship with Ryanair.

(i) *The time horizon*

291 The applicants argue that, by restricting its analysis to the duration of the 2008 agreements, the Commission selected too short a time horizon in the context of applying the market economy operator test.

292 In that regard, in the first place, the applicants claim that the Commission's approach in the contested decision to the effect that a market economy operator would have evaluated the incremental costs and revenues during the term of the 2008 agreements is contradicted by the commercial reality of large airports, which do not often receive any commitment from airlines and operate on the basis of general commercial terms and conditions which allow those airlines immediately to cease their services to the airport. The applicants submit that business plans of airports cover several decades and their revenue and cost projections are based on a reasonable analysis of the airport's capacity, without any contractual commitment on the part of airlines. The Commission's approach leads to the business plans of those airports having to cover only the calendar seasons determined by the International Air Transport Association (IATA) for which the airlines sell flights and the airports have certainty regarding traffic levels.

293 In the second place, the applicants argue that the Commission was wrong to consider that a market economy operator would not have counted on the renewal of 2008 agreements or have been unaware that low-cost airlines like Ryanair were known to be very dynamic in the way they conduct their business. Rationally managed airports aspire to enter into a long-term commercial relationship with airlines going well beyond the duration of the initial agreement. Market economy operators are willing to take risks and to conclude agreements that may be loss making for an initial period, in the expectation that the business will be successful and that the agreements will be renewed at the end of their term and the route will continue beyond that period. For Ryanair, the commitment to open a new route constitutes only a justified risk in the expectation of a future growth and a long-term commercial relationship, which is confirmed by the specific clauses in the airport services agreement. Moreover, most airports negotiating with Ryanair expect their commercial relationship to extend beyond the duration of the initial agreement. Accordingly, on the whole, commercial relationships between Ryanair and airports develop over the long term and typically last longer than five years.

294 In the third place, the applicants claim that the Commission's mistaken assumption as to the time horizon also led it to give contradictory reasons, since, in the contested decision, without providing any explanation, it applied the 85% load factor per flight for the duration of the airport services agreement, namely five years, whereas that load factor was ensured as a result of the marketing services agreement, which lasted for only three years.

295 The Commission contends that the Court should reject the applicants' line of argument.

296 It is apparent from the case-law cited in paragraph 154 above that it is necessary to examine whether the Commission was entitled to find, without erring, in the analysis of incremental profitability that a market economy operator acting in place of CCI-airport and SMAC would have assessed the value in entering into the 2008 agreements by choosing a time horizon of five years, in accordance with the duration of those agreements.

297 The conduct of a market economy operator is guided by prospects of profitability in the longer term (judgment of 21 March 1991, *Italy* v *Commission*, C-305/89, EU:C:1991:142, paragraph 20). Such an operator wishing to maximise profits is prepared to take calculated risks in determining the appropriate return to be expected for its investment.

298 In the present case, in the contested decision, the Commission found that, when assessing the value in entering into an airport services agreement or a marketing services agreement, a market economy operator would have chosen the term of the 2008 agreements as the time horizon for its assessment (recital 365 of the contested decision). It also considered that such an operator would not have counted on the renewal of those agreements, whether under the same terms or under different terms, particularly as a prudent manager could not have been unaware that low-cost airlines such as Ryanair were known for being very responsive to market developments in their business dealings, both when starting up or shutting down air routes and when increasing or decreasing the number of flights (recital 366 of the contested decision).

299 Moreover, it is not disputed that the 2008 agreements were concluded for a period of five years with regard to the route between Angoulême and London.

300 It is also common ground, as the Commission stated without being contradicted by the applicants, that, before the conclusion of the 2008 agreements, the managers of Angoulême airport had not drawn up a business plan, which was at the very least robust, for the launch of the route between Angoulême and London.

301 In that context, the Commission was entitled to find, and did not err in so doing, that a market economy operator would have assessed the profitability of the 2008 agreements in the light of the expected costs and revenues for the planned period of their performance, that is to say for five years.

302 Likewise, it must be held that the Commission was entitled to find, without committing a manifest error of assessment, that it was very difficult for an airport operator to assess the likelihood of an airline continuing to operate a route on the expiry of the term to which it had committed itself in the airport services agreement, in the knowledge that airlines, in particular low-fare ones, have proven to be very dynamic in terms of launching and withdrawing routes (recitals 335 and 365 of the contested decision). In those circumstances, the Commission was entitled to find, without committing an error, that a normally prudent and diligent market economy operator, acting in place of the managers of Angoulême airport, would not have counted on Ryanair's willingness to extend the operation of the route in question on expiry of the 2008 agreements.

303 The fact that the airport services agreement considered the route between Angoulême and London to be the initial flight programme and provided, moreover, that Ryanair should make an effort to [*confidential*], does not in itself permit the assumption that a market economy operator would have counted on the renewal of the 2008 agreements beyond the term planned at the time they were entered into. Moreover, it must be noted, as the Commission stated without being contradicted by the applicants, that Ryanair could have abandoned that route relatively easily even before the end of that agreement by paying a limited penalty (recitals 37 and 38 of the contested decision).

304 Indeed, a normally prudent and diligent market economy operator which operates an airport may be willing to take a commercial risk by concluding an agreement which is loss making throughout its planned duration, in the real expectation of renewing the agreement and continuing to operate the route and, thus, of making future profits to offset those losses. That behaviour seeking long-term profitability may correspond with economic rationality. However, it is clear from the foregoing that the Commission was entitled to find, without making a manifest error of assessment, that such an operator would not, in the present case, have counted on renewal of the 2008 agreements on their expiry. In addition, the Commission found in recitals 314 to 338 of the contested decision that the same operator, acting in place of the manager of Angoulême airport, would have considered that, except for the possible positive effect of the marketing services on the number of passengers using the air routes covered by those agreements for the operating period of the route between Angoulême and London, the other benefits in the longer term were too uncertain to be taken into account in a quantifiable manner. The applicants have failed to demonstrate that that finding of the Commission is vitiated by a manifest error of assessment (see paragraphs 327 to 332, 349 to 351 and 360 below).

305 Lastly, the evidence adduced by Ryanair to show that the average duration of the commercial links between it and the airports where it is active exceeds five years does not make it possible to establish the duration of the air routes from or to Angoulême airport. Indeed, as the Commission rightly explains, the total duration of the commercial links between Ryanair and those airports does not guarantee the durability of other individual air routes. In addition, the conduct of a market economy operator must be assessed by placing it in a situation as close as possible to that of the manager of Angoulême airport. As the Commission rightly observes, the maintaining of Ryanair operations at an airport depends on the specific situation of the airport in question and the specific conditions offered.

306 Similarly, the evidence produced by Ryanair concerning the average duration of its commercial relationships with the airports where it is present does not invalidate the finding made by the Commission that low-cost airlines are known to be very dynamic both in terms of launching and withdrawing air routes and in terms of increasing and reducing frequencies. That evidence makes it possible, at most, to establish the durability of certain individual air routes.

307 As regards the complaint alleging contradictory reasoning, it suffices to point out that, in the contested decision, the Commission applied an 85% load factor per flight for the duration of the airport services agreement. While acknowledging that the marketing services agreement has a shorter term than the airport services agreement, it correctly stated however that marketing services were likely to boost passenger traffic on the routes covered inter alia by the airport services agreement and that a market economy operator would have assessed the positive effect of marketing services on its revenues in the context of the airport services agreement (recitals 316 and 317 of the contested decision). In addition, it maintained that that load factor constituted a hypothesis which is favourable to Ryanair but justified in order to reflect a possible beneficial effect of those services on the passenger traffic of air routes and in the absence of other elements quantifying the foreseeable impact of these services (recital 372 of the contested decision).

308 It follows that the contested decision contains no contradiction on that point.

309 In the light of the foregoing, it must be concluded that the Commission did not commit any manifest error of assessment or infringed its obligation to state reasons, for the purposes of the incremental profitability analysis, when it found that a market economy operator would not, when entering into the 2008 agreements, have chosen a time horizon exceeding the period of five years provided for in those agreements.

(ii) *The number of routes*

310 The applicants claim, relying solely on the basis of the route connecting Angoulême and London, that the Commission incorrectly applied the market economy operator test. The applicants maintain that it is widely known that Ryanair operates several routes in the vast majority of the airports it serves in France and that it seeks constantly to increase the number of routes beyond the air route initially launched. Such an operator would have assumed at the time of entering into the 2008 agreements that the route to London consisting of three flights a week during the summer season would constitute the start of a relationship with Ryanair and would be followed by increased traffic or the opening of further lines if that route was successful. Such reasonable expectation of growth is reflected in the clauses of the airport services agreement, which show that Angoulême airport's intentions were not limited to a single route.

311 The Commission contends that the applicants' line of argument should be rejected.

312 It is apparent from the case-law (see paragraph 154 above) that it is necessary to examine whether the Commission was entitled to find, without erring, in the context of the incremental profitability analysis, that a market economy operator acting in place of the manager of Angoulême airport would have assessed the value in entering into the 2008 agreements by merely taking into account the route between Angoulême and London.

313 In the present case, it is common ground that, by the contested decision, the Commission based the incremental profitability analysis solely on the route between Angoulême and London, thereby limiting the forecasts for aeronautical and non-aeronautical revenues (recitals 369, 370, 378, 380, 385 and 387).

314 In that regard, it must be noted that the conduct of a market economy operator must be assessed by placing it in a situation as close as possible to that of the manager of Angoulême airport.

315 The Commission submitted, without being contradicted by the applicants, that the 2008 agreements were concluded after publication of the European project call for tenders by Angoulême airport and that no comparable agreement was entered into with another airline after the publication. In those circumstances, it is plausible that a normally prudent and diligent market economy operator would not base an assessment of the profitability of the agreements to be entered into with the applicants on the prospect of one or more additional routes.

316 Moreover, the fact that the airport services agreement referred to the initial flight programme and provided for [*confidential*] and a best endeavours clause does not suffice to undermine the Commission's assumption that a market economy operator, acting in place of the manager of Angoulême airport, would not have counted on several routes before the expiry of the period provided for in the 2008 agreements.

317 In those circumstances, it must be held that the Commission did not commit a manifest error of assessment in assuming that, when assessing the value in concluding the 2008 agreements, a market economy operator would only have taken into account the route between Angoulême and London.

(iii) *The wider benefits*

318 The applicants submit that the Commission wrongly failed to take account, in its incremental profitability analysis, of the positive network externalities that a market economy operator could expect from Ryanair's operations and the longer-term effects achieved through AMS's marketing services. According to the applicants, an increase in passenger numbers at Angoulême airport due to Ryanair's presence improves the appeal of that airport and opens up possibilities of launching new routes and of other airlines and commercial outlets arriving.

319 In this respect, it should be noted that, as the Commission states, the concept of network externalities, as invoked by the applicants, is linked to the prospect of a greater number of passengers.

320 It follows from the foregoing (see paragraphs 312 to 317 above) that the Commission was entitled, without committing any error, to consider that a market economy operator acting in place of the manager of Angoulême airport would expect the commercial relationship with Ryanair to be limited to the operation of a single route during the summer season during the period provided for in the 2008 agreements. Consequently, it is reasonable to assume that such an operator would not have made its calculations of the revenues and costs on the basis of a greater number of passengers arising from an increased frequency of existing air routes or the setting up of additional routes. Likewise, it is reasonable to assume that, in the absence of specific information, such an operator would not count on the arrival of other airlines or businesses in that airport.

321 As the Commission maintains, without contradiction by the applicants, the 2008 agreements were the result of a single proposal by an airline, following publication of a call for European projects seeking applications to relaunch air activities from Angoulême airport. Moreover, those agreements only concerned a single route on a seasonal basis and just three days a week.

322 The hypothesis that Ryanair's presence as an 'anchor airline at a small, underutilised, local airport'served to attract other airlines to Angoulême airport as the applicants claim does not in itself imply that a normally prudent and diligent market economy operator, acting in place of the manager of Angoulême airport, would, in the light of the particular circumstances of the airport, have counted on the arrival of other airlines.

323 In those circumstances, the Commission did not commit a manifest error of assessment by not taking into account network effects that were too uncertain.

324 In the light of all the foregoing, the applicants' complaint concerning the overly narrow scope of the analysis carried out for the purposes of applying the market economy operator test must be rejected.

(4) *The complaint alleging that the assessment of the popularity and impact of Ryanair's website was incorrect*

325 The applicants claim that the Commission erred in its assessment of the popularity and impact of Ryanair's website when it rejected the grounds underlying the decision made by Angoulême airport to enter into the marketing services agreement.

326 In particular, they maintain that the Commission did not examine the evidence which Ryanair provided, which proved the enormous popularity of its website. It simply stated that that website was not as frequently visited as others and that television advertisements and posters would reach more consumers. Thus, relying on a flawed assessment of the allegedly modest popularity and effectiveness of Ryanair's website, the Commission wrongly concluded that the site could only be useful for advertising Ryanair's own routes and could only offer viable short-term marketing. Similarly, as a result, the Commission wrongly asserted that it was difficult to quantify with certainty the broader long-term benefits of AMS's marketing.

327 In that regard, first, it must be pointed out that, by assessing the sustainability of the positive effects of the marketing services agreement which a market economy operator would have envisaged, the Commission did not call into question the popularity of Ryanair's website, as is apparent from the evidence provided, in terms of the number of visits, direct or by search engine, but examined the impact of that website on the purchasing behaviour of the persons who had just visited it. The Commission considered, in particular, that it was highly unlikely that the memory which persons visiting Ryanair's website would retain of the advertising of Angoulême and its region as a travel destination would last or have an influence on their airline ticket purchases for more than a few weeks (recital 322 of the contested decision).

328 Consequently, the applicants' argument that the Commission incorrectly assessed the popularity of Ryanair's website must be rejected.

329 Moreover, in so far as concerns the impact of Ryanair's website, it must be noted that, to assess the effects on consumer behaviour, the Commission found, in recital 322 of the contested decision, that an advertising campaign was likely to have a sustainable effect when the promotional activities involved one or more advertising media to which consumers were regularly exposed over a given period. By way of example, it referred to an advertising campaign on general television channels and radio stations, very popular websites or various billboards displayed outdoors or inside public places. Such a campaign could produce a long-term effect on consumers if they were passively and repeatedly exposed to those media. However, it considered that a promotional activity limited merely to Ryanair's website was unlikely to have an effect lasting much past the end of the

promotional campaign. According to the Commission, it was highly unlikely that visitors to that website would have a recollection of the advertising of Angoulême and its region which was sustainable and capable of influencing their ticket purchases for more than a few weeks. In that regard, the Commission considered, in recital 323 of the contested decision, that it was likely that consumers did not visit the website in question often enough to leave them with a lasting memory that that site offered a promotion on a certain destination.

330 It follows that, in order to assess the effects of the marketing services, the Commission relied principally on the distinction between, first, the effects of campaigns to which consumers are frequently exposed, that is to say passively and repetitively, which are likely to have a long-lasting impact and, second, the effects of promotional activity limited solely to Ryanair's website, which are accordingly devoid of long-lasting impact beyond the period of that promotion.

331 It must be found that the applicants have not adduced any evidence capable of calling into question that analysis. Although the passage from the economic report relied on by the applicants explains that the advertising on Ryanair's website via AMS enables the airport to avoid incurring expenditure linked to traditional forms of marketing communication, it does not allow sufficient conclusions to be drawn concerning the long-term effects of AMS's marketing services on the use of the route between Angoulême and London covered by the airport services agreement.

332 Therefore, it follows that the applicants have failed to show that the Commission committed a manifest error of assessment in considering, in recital 324 of the contested decision, that, although the marketing services could have boosted passenger traffic on the routes covered by the marketing services agreement during the implementation period of those services, it is very likely that such an effect was zero or negligible after that period or on other routes.

333 For the same reasons, it is necessary to reject the applicants' argument that the Commission was wrong not to examine whether the advertising on Ryanair's website had increased the general visibility of Angoulême airport in relation to all potential Ryanair passengers and companies specialising in airport retail.

334 In the light of the foregoing, the applicants' complaint concerning the assessment of the popularity and impact of Ryanair's website must be rejected.

(5) *The complaint alleging failure to allocate an appropriate value to AMS's marketing services in the incremental profitability analysis*

335 The applicants argue that the Commission allocated all of the costs of the marketing services agreement to the airport services agreement, while at the same time asserting that the only benefit that SMAC could expect from the former agreement was an increase in traffic on the route between Angoulême and London to an 85% load factor per flight for the duration of 2008 agreements, and that the other benefits were too uncertain to be taken into account and included in the analysis of the profitability of those agreements. The Commission thereby spread the entirety of the cost of the marketing services over the airport services agreement, without including any of the other benefits of the marketing services agreement.

336 In particular, in the first place, the applicants maintain that, in the absence of evidence of overpricing, the proper value of a service, including a marketing or advertising service, is its market price. Consequently, given that the Commission had included the sums paid by Angoulême airport to AMS on the costs side of the incremental profitability analysis, the value of the services provided

by AMS, which correspond to their market price, should have been included on the benefits side, producing a net zero result.

337 The Commission made a manifest error of assessment and failed to state reasons by not attributing an appropriate value to AMS's marketing services on the basis of the market price.

338 In the second place, in the context of their complaint alleging that the grounds underlying the decision taken by Angoulême airport to enter into the marketing services agreement (see paragraph 371 below) were incorrectly rejected, the applicants put forward the argument, which must now be examined, that the marketing services agreement did not constitute a way for Angoulême airport to pay Ryanair's marketing costs and to ensure high load factors on the route between Angoulême and London. Angoulême airport secured the initial level of traffic that it wished to have by means of the airport services agreement, whereas the high load factors on Ryanair routes are due almost exclusively to its own marketing, and not to any marketing efforts on the part of airports.

339 In the third place, the applicants maintain in the reply that the Commission wrongly refrained from including the benefits of marketing services in the incremental profitability analysis on the ground that, as referred to in recital 352 of the contested decision, a market economy operator would be unwilling to enter into the 2008 agreements if the incremental costs incurred under the transaction exceeded the incremental revenues in discounted value terms, even if the price payable for such services on the market was at or above the level of prices under the proposed transaction.

340 According to the applicants, 'if private companies adhered to the Commission's logic, some of the world's most successful companies would not exist'. First, private companies often invest large sums in programmes for the development of their brand, while suffering incremental losses at first or in a start-up situation. The goal is not to achieve an immediate return on investment, but to achieve long-term benefits. Second, marginal losses are, according to the case-law, consistent with the market economy operator principle where there is no better alternative. A negative sale price may be consistent with the market economy operator principle unless other options such as bankruptcy are available and involve a lesser loss for the State that is the seller. However, the Commission failed to assess the losses that would have been caused by the closure of Angoulême airport.

341 The Commission disputes the arguments put forward by the applicants.

342 As a preliminary point, it should be noted that, by their arguments put forward in support of the present complaint, the applicants challenge the way in which the value of the marketing services was incorporated into the incremental profitability analysis concerning the 2008 agreements.

343 In that regard, it should be noted that the Commission analysed, in the contested decision, the benefits that a market economy operator acting in place of CCI-airport and SMAC could have expected from the marketing services agreement. In particular, it found that marketing services were capable of boosting passenger traffic on the routes covered by the 2008 agreements. It added that that effect benefited not only the airline, but also Angoulême airport, given that the increase in the number of passengers was capable of leading, for that airport operator, to an increase in airport and non-airport revenues. It concluded from this that, when assessing the value in entering into those agreements, a market economy operator would have taken that positive effect into account (recitals 314 to 318 of that decision). However, the Commission rejected as being too uncertain the full benefits of the marketing services agreement beyond the routes covered by those agreements and their duration (recitals 319 to 338 of that decision).Moreover, it incorporated, in the incremental

profitability analysis, that potential positive effect in the load factor of the route linking Angoulême and London used for the implementation period of those agreements. On the other hand, it included the sums paid by SMAC to AMS for the purchase of marketing services among the incremental costs to be deducted from the incremental revenues linked to that airline (recitals 372 and 387 of the contested decision).

344 It must be held that the line of argument alleging insufficient reasoning of the contested decision must, in the light of the above, be rejected. The way in which the Commission took into account the value of marketing services provided by AMS in the incremental profitability analysis clearly follows from that decision.

345 Furthermore, the Commission did not commit a manifest error of assessment.

346 In the first place, it must be pointed out that the applicants' argument that, since the value of the marketing services was equal to the market price, it offset the purchase price of those services as a cost in the incremental profitability analysis, is tantamount to considering that the marketing services and the airport services are distinct and independent and that the value of the marketing services must therefore be assessed independently of the operation by Ryanair of the air routes covered by the airport services agreements which concern them.

347 The applicants do not validly refute the opposite approach, adopted in the contested decision, that the marketing services agreement and the airport services agreement are closely linked in that the marketing services are essentially intended to promote the air routes (see paragraphs 179 to 184 above and paragraphs 353 and 354 below).

348 Furthermore, nor do the applicants validly refute the Commission's analysis that a market economy operator would have considered any other benefit than that resulting from the positive effect on the passenger traffic on the air routes operated by Ryanair as being too uncertain to be taken into account in a quantifiable manner (recitals 321 to 338 of the contested decision). By that approach, the Commission was entitled, without erring, to consider the purchase price of the marketing services as an incremental cost to be deducted from the incremental revenues deriving from the route between Angoulême and London.

349 On the one hand, the Commission found that, even though the marketing services might have boosted passenger traffic on the routes covered by the 2008 agreements during the term of those agreements, it was very likely that such an effect was zero or negligible after that period or on other routes (recitals 322 to 324 of the contested decision). The applicants have not succeeded in calling that finding into question (see paragraphs 327 to 332 above).

350 Moreover, the applicants have not provided any evidence to refute the Commission's analysis that the two methods proposed by Ryanair in the studies of 17 and 31 January 2014 during the administrative procedure for assessing the benefits of the marketing services agreement going beyond the air routes in question and the term of operation of those routes gave very uncertain and unreliable results (recitals 325 to 337 of the contested decision).

351 In those circumstances, the applicants have not established that the Commission committed a manifest error of assessment in basing the incremental profitability analysis on the assumption that a market economy operator would take into account the marketing services agreement only for the positive effect on the number of passengers using the route provided by Ryanair and, therefore, on the additional incremental revenues linked to passenger traffic on that route, while considering the purchase price of the marketing services to be paid to AMS as an incremental cost for the airport to

be deducted from the incremental revenues, and not as being offset by the value of the marketing services.

352 In the second place, the applicants' argument to the effect that the Commission incorrectly considered that the marketing services agreement sought to ensure high load factors on the route between Angoulême and London must also be rejected.

353 In that regard, it must be held that the Commission considered, in recitals 310 and 312 of the contested decision, that the purpose of the marketing services agreement was to provide advertising space on Ryanair's website in order to promote Angoulême as a travel destination to visitors to that website, and therefore to customers of that airline, and that the marketing services essentially sought to promote the route operated by Ryanair.

354 It is appropriate to uphold that analysis, which is based on the finding that the marketing services provided to the manager of Angoulême airport were addressed to the potential Ryanair passengers who would use the route operated by that airline towards or departing from that airport, even though those services promoted tourist attractions and businesses in the Angoulême region. Thus, those services proved to be closely linked to the operation of that route.

355 In addition, the promotion of Ryanair's air transport services by means of the marketing services purchased from AMS did not prevent Ryanair from itself ensuring high load factors through its own promotion.

356 In the third place, the applicants' argument that the Commission incorrectly stated that a market economy operator would not have entered into the 2008 agreements because the incremental costs incurred exceeded the incremental revenues in discounted value terms must be rejected.

357 In the present case, the Commission found, in recital 352 of the contested decision, that a market economy operator motivated by the prospect of profits would not be prepared to purchase marketing services if it were predicted that, despite the positive effect of such services on passenger traffic on the air routes concerned, the incremental costs incurred by the agreements would exceed the incremental revenues in discounted value terms.

358 However, without it being necessary to rule on the question whether, in the light of Article 107(1) TFEU, a market economy operator operating an airport would be likely to purchase marketing services while suffering an incremental loss in net present value, it must be held that, in any event, the applicants do not show that a market economy operator acting in place of the manager of Angoulême airport would have been prepared, in the present case, to act in such a way.

359 In the present case, the applicants confine themselves in their arguments to stating generally that private companies often invest large sums in developing their brands while suffering initial incremental losses, without obtaining an immediate return on investment, in order, however, to achieve long-term benefits. They do not show that the Commission committed a manifest error in finding in recitals 325 to 337 of the contested decision that the benefits of the marketing services agreements going beyond the routes covered by the agreements and the term of operation of those routes were extremely uncertain and could not be quantified with a degree of reliability that would be considered sufficient by a market economy operator.

360 In particular, the applicants have not provided any evidence to refute the Commission's analysis that the two methods proposed by Ryanair in the studies of 17 and 31 January 2014 during the administrative procedure for assessing the benefits of the marketing services agreements going

beyond the air routes in question and the term of operation of those routes, that is to say the future revenues resulting in particular from the prominence and the strong brand image due to the marketing services, gave very uncertain and unreliable results (recitals 327 to 330 and 333 of the contested decision).

361 It follows that the applicants have not established that a market economy operator, acting in place of the manager of Angoulême airport, would have taken the view that the marketing services purchased from AMS were an investment likely to generate profits in the longer term.

362 Finally, so far as concerns the applicants' argument relating to the least onerous solution, it must be pointed out that, in the contested decision, the Commission did not err in stating that a market economy operator placed in the situation of manager of Angoulême airport would have expected the 2008 agreements to be unprofitable. Therefore, as the Commission correctly states, it would have been a better alternative for such an operator not to sign those agreements, since they entailed negative incremental profitability and their conclusion would have accordingly led to deterioration of that airport's financial situation.

363 Therefore, even assuming that the closure of Angoulême airport led to a greater loss for its owner than the incremental loss expected from the implementation of the 2008 agreements, a market economy operator motivated by the prospect of profits, acting as the operator of that airport, would have rather preferred, in the present case, not to enter into those agreements.

364 In the light of all the foregoing, it must be concluded that, without committing a manifest error of assessment, the Commission was entitled to take into account, in the incremental profitability analysis, only revenues generated by the route between Angoulême and London during the planned duration of the 2008 agreements, even though it included the costs associated with the marketing services agreement, which were deemed to be generated in their entirety during that period.

365 It follows that all of the applicants' arguments that the Commission failed to attribute an appropriate value to AMS's marketing services must be rejected.

366 Finally, the applicants argue, in the reply, that the Commission's assertion in the defence that a market economy operator would not be prepared to pay its customer for a period of up to three years, in the expectation that it would recover the money spent in future years, is unfounded.

367 In particular, the applicants submit, first, that airports are large, long-term infrastructure projects whose investment horizon substantially exceeds three years and, second, that, according to the economic and financial literature, the profitability of an investment should not necessarily be restricted to the expected net present value of future cash flows generated by that investment, but could also include the value of strategic options. A market economy operator could make a loss-making investment in the short term, even with a zero or negative net present value, if it had a strategic value and provided the undertaking with an option to undertake more profitable investments in the longer run, which would compensate for the initial losses. Thus, a loss-making advertising campaign could be a strategic investment in that it increases the value of the brand and so increases the company's long-term profitability.

368 In that regard, first, it suffices to note that the Commission did not make a manifest error of assessment in considering that a market economy operator finding itself in the situation of the manager of Angoulême airport would not have counted on a renewal of the 2008 agreements and

would not have therefore agreed to incur losses during the planned duration of those agreements on the ground that it would obtain compensation for this by future benefits (see paragraph 304 above).

369 Second, it should be noted that, as stated by the Commission, the applicants have not demonstrated that the economic and financial literature which relates to the electricity sector and to capital investment projects would be relevant for assessing the conduct of the manager of Angoulême airport when it launches a route. In any case, with regard to the development of the value of the brand by the establishment of a marketing programme, it is sufficient to refer to paragraphs 359 and 360 above.

370 Accordingly, it is necessary to reject that argument and the complaint as a whole.

(6) *The complaint concerning the grounds underlying the decision of the manager of Angoulême airport to enter into the marketing services agreement*

371 The applicants argue that the Commission wrongly disregarded the rationale behind the decision of the manager of Angoulême airport to enter into the marketing services agreement. That manager thus took the rational business decision to make such a purchase on account of the numerous foreseeable benefits, which included enhancing the image of that airport and achieving several strategic goals, such as the diversification of airlines, increasing the airport's market value and increasing the proportion of inbound passengers. The applicants refer several times in their line of argument to the earlier decision-making practice of the Commission relating to aid measures for airports.

372 In that regard, it must be stressed at the outset that, according to the case-law, the classification of a measure as State aid cannot depend on a subjective assessment by the Commission and must be determined regardless of any previous administrative practice of that institution, assuming it to have been established (see judgment of 3 July 2014, *Spain and Others* v *Commission*, T-319/12 and T-321/12, not published, EU:T:2014:604, paragraph 46 and the case-law cited).

373 It follows that there is no need to examine whether the Commission's previous practice in taking decisions relied on by the applicants has been established.

374 In addition, it should be recalled that, in the context of applying the private investor test, the Commission must examine, when assessing a measure, all the relevant features of the measure and its context (see, to that effect, judgment of 17 December 2008, *Ryanair* v *Commission*, T-196/04, EU:T:2008:585, paragraph 59).

375 In the present case, it must be held, for the reasons referred to in paragraphs 376 to 389 below, that the applicants have failed to show that the Commission committed a manifest error of assessment in failing to take into account the advantages they invoked.

(i) *The need for regional airports to improve their image using marketing services*

376 The applicants claim that, relying on an economic report of 10 April 2013, the Commission should have concluded that the purchase of marketing services was justified, given that marketing was a necessary and legitimate tool for regional airports in order to improve their image and attract new customers and, in the particular case of SMAC, the aim of the marketing services agreement, in their own words, was to put Angoulême airport on the map for the United Kingdom public.

377 In that regard, it should be noted that, in the contested decision, the Commission did not dispute the usefulness or the necessity for regional airports to develop a marketing strategy, or the value of the image of regional airports. Nor did it consider that SMAC's purchasing of marketing services was unjustified.

378 On the other hand, the Commission considered, in the contested decision, that AMS's marketing services were not likely to enhance the brand image of Angoulême airport in the long term. The applicants have not succeeded in demonstrating that the Commission's analysis was vitiated by a manifest error of assessment in that respect (see paragraphs 327 to 332, 359 and 360 above).

379 It follows that the applicants' argument that the Commission committed a manifest error of assessment as regards taking into account the enhancement of the image of Angoulême airport thanks to the marketing services agreement must be rejected.

(ii) *The failure to take into account the strategic objectives of Angoulême airport*

380 Second, the applicants claim that the Commission failed to take account of the strategic benefits that, leaving aside any incremental profitability analysis, SMAC could expect from the marketing services agreement, which included the diversification of airlines, increasing Angoulême airport's market value and increasing the proportion of inbound passengers.

381 In the first place, the applicants claim that, by means of the marketing services agreement, SMAC was pursuing the strategic objective of diversifying the airlines operating from Angoulême airport. Relying on an economic report, they explain that demonstrated success by an airport which has engaged in advertising to promote itself could encourage other airlines to include it on their schedules. For an airport, a demonstrated ability to enhance its image through advertising would incentivise airlines to begin serving it. According to the applicants, SMAC's goal of attracting other airlines operating from Angoulême airport in addition to Ryanair's summer seasonal route derives, first, from its initiatives, in 2007, second, from the promotion of its new image as an international airport to court other airlines, inter alia by participating in trade fairs, and, third, from the normal level of operation of that airport at that time in terms of staff and equipment outside the summer months, which reflected the desire to attract another airline to operate a winter route.

382 However, it must be held that those factors fail to establish that the marketing services provided by AMS would have allowed a market economy operator acting in place of the manager of Angoulême airport to attract other airlines at Angoulême airport. It follows in particular from recitals 321 to 338 of the contested decision that the Commission found that the only certain and quantifiable benefit that a normally prudent and diligent market economy operator could expect from the marketing services agreement consisted in an increase in the number of passengers on the route between Angoulême and London and that any benefit going beyond those routes was too uncertain to be taken into account in a quantifiable manner. The applicants have adduced no evidence to call into question that assessment of the Commission.

383 Accordingly, the applicants' complaint that the Commission failed to take into account the aim of diversification of airlines at Angoulême airport must be rejected.

384 In the second place, the applicants claim that the enhancement of Angoulême airport's image was such as to increase the market value and equity value of that airport. Airports are assets that are increasingly sold by the State to private investors.

385 In that regard, it suffices to recall that the Commission was entitled, without committing any error, to observe that the marketing services were not such as to reinforce the brand image of Angoulême airport in the long term (see paragraphs 327 to 332 and 360 above).

386 Accordingly, the applicants' complaint concerning failure to take into account the aim of increasing the value of Angoulême airport must be rejected.

387 In the third place, the applicants claim that the Commission failed to take a position on the argument that advertising on Ryanair's website would increase the proportion of inbound traffic from the United Kingdom, even though increasing traffic was one of the main aims of the marketing services agreement. An increase in inbound traffic would be likely to generate higher non-aeronautical revenues than outbound traffic, and so the Commission's incremental profitability analysis probably underestimated the non-aeronautical revenues which Angoulême airport could reasonably expect from that agreement.

388 In that regard, it must be observed that, as the Commission stated, the contested decision implicitly included, by means of a load factor of 85% per flight, the effect of the marketing services agreement on the number of inbound passengers and the related non-aeronautical revenues. It is apparent from that decision that the Commission applied that load factor to the incremental overall traffic, including both outbound and inbound passengers, in order to then calculate the expected incremental non-aeronautical revenues resulting from the 2008 agreements.

389 In those circumstances, it must be held that the Commission did not commit a manifest error of assessment in taking into account the effect of the marketing services agreement on the number of inbound passengers and the related non-aeronautical revenues.

390 In view of the above, the Court must reject the applicants' complaint regarding the grounds underlying the decision of Angoulême airport to enter into the marketing services agreement.

391 The third plea in law must be rejected as unfounded.

392 The action must therefore be dismissed in its entirety and it is not necessary to rule on the applicants' application for measures of organisation of procedure in so far as it concerns measures other than those already ordered.

IV. **Costs**

393 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the applicants have been unsuccessful, they must be ordered to pay their own costs together with those of the Commission, in accordance with the form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (Sixth Chamber, Extended Composition)

hereby:

1. **Dismisses the action;**

2. **Orders Ryanair DAC and Airport Marketing Services Ltd to bear their own costs and to pay those incurred by the European Commission.**

Berardis Papasavvas Spielmann

Csehi Spineanu-Matei

Delivered in open court in Luxembourg on 13 December 2018.

E. Coulon G. Berardis

Registrar President

Table of contents

(a) The first part, alleging errors of assessment and failure to state reasons concerning the decision to depart from the comparative analysis in the present case

(1) The rejection of the comparative analysis as a method of application of the market economy operator test

(2) The complaints concerning the grounds relied on in the contested decision to depart, in the present case, from the comparative analysis

(i) The complaint, alleging that the Commission erred in finding that diversity among airports justified its departure from the comparative analysis

(ii) The complaint alleging that the Commission was wrong to find that the comparative analysis should be based on a comparison of the 2008 agreements together with other similar transactions

(iii) The complaint alleging that the Commission incorrectly considered that Ryanair paid a negative price

(iv) The complaint alleging that the Commission erred in finding that the evidence provided by Ryanair failed to demonstrate that the airports selected in the study of 25 June 2012 were sufficiently comparable to Angoulême airport and a failure to state reasons in that regard

(3) The complaint alleging that the comparative analysis shows that no advantage was conferred through the 2008 agreements

(b) The second part, alleging errors of assessment and insufficient reasoning as regards the incremental profitability analysis

(1) The complaint alleging reliance on insufficient, unverified, unclear and unreliable data

(2) The complaint alleging that the information sent by Angoulême airport was not verified and not compared with an average or well-run and efficient airport

(3) The complaint alleging that the scope of the analysis carried out for the purposes of applying the market economy operator test was too narrow

(i) The time horizon

(ii) The number of routes

(iii) The wider benefits

(4) The complaint alleging that the assessment of the popularity and impact of Ryanair's website was incorrect

(5) The complaint alleging failure to allocate an appropriate value to AMS's marketing services in the incremental profitability analysis

(6) The complaint concerning the grounds underlying the decision of the manager of Angoulême airport to enter into the marketing services agreement

(i) The need for regional airports to improve their image using marketing services

(ii) The failure to take into account the strategic objectives of Angoulême airport

IV. Costs

---

* Language of the case: English.

---

1 Confidential data omitted.