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

13 May 2020 (*)

(State aid — Aviation sector — Aid granted by Italy to Sardinian airports — Decision declaring the aid compatible in part and incompatible in part with the internal market — Whether imputable to the State — Recovery — Beneficiaries — Advantage to co-contracting airlines — Market economy operator principle — Selectivity — Effect on trade between Member States — Adverse effect on competition — Recovery — Legitimate expectations — Obligation to state reasons)

In Case T-607/17,

Volotea, SA, established in Barcelona (Spain), represented by M. Carpagnano and M. Nordmann, lawyers,

applicant,

v

European Commission, represented by D. Recchia, D. Grespan and S. Noë, acting as Agents,

defendant,

APPLICATION under Article 263 TFEU seeking the annulment of Commission Decision (EU) 2017/1861 of 29 July 2016 on State aid SA 33983 (2013/C) (ex 2012/NN) (ex 2011/N) — Italy — Compensation to Sardinian airports for public service obligations (SGEI) (OJ 2017 L 268, p. 1).

THE GENERAL COURT (First Chamber, Extended Composition),

composed of S. Papasavvas, President, J. Svenningsen (Rapporteur), V. Valančius, Z. Csehi and P. Nihoul, Judges,

Registrar: P. Cullen, Administrator,

having regard to the written part of the procedure and further to the hearing on 2 October 2019,

gives the following

Judgment

I. Background to the dispute

A. The measures at issue

1 The island of Sardinia (Italy) has five airports, including Alghero, Cagliari-Elmas and Olbia airports.

2 Alghero airport is operated by So.Ge.A.AL SpA (‘SOGEAAL’), whose capital was entirely subscribed by local public bodies and the majority of whose shares is held by the Regione autonoma della Sardegna (Autonomous Region of Sardinia, Italy; ‘the Autonomous Region’), including indirectly through Società Finanziaria Industriale Regione Sardegna (SFIRS). Cagliari-Elmas airport for its part is operated by So.G.Aer SpA (‘SOGAER’), a company the majority of whose shares is owned by the chamber of

commerce of Cagliari, while Olbia airport is operated by GEASAR SpA ('GEASAR'), a company registered in Olbia, the majority of whose shares is owned by a private company, Meridiana SpA.

1. The provisions adopted by the Autonomous Region

(a) Article 3 of Law No 10/2010

3 On 13 April 2010, the Autonomous Region adopted legge regionale n. 10 — Misure per lo sviluppo del trasporto aereo (Regional Law No 10 — Measures for the development of air transport) (*Bollettino ufficiale della Regione Autonoma della Sardegna* No 12, of 16 April 2010) ('Law No 10/2010').

4 Article 3 of Law No 10/2010, entitled 'Incentives to seasonal adjustments of the island's air routes' (Incentivi alla destagionalizzazione dei collegamenti aerei isolani), reads as follows:

'1. Expenditure of [EUR] 19 700 000 for the year 2010 and of [EUR] 24 500 000 for each of the years 2011 to 2013 shall be authorised to finance the island's airports with a view to strengthening and developing air transport as a service of general economic interest, including seasonal adjustments of air routes, in accordance with Communication from the Commission 2005/C 312/01 — Community guidelines on financing of airports and start-up aid to airlines departing from regional airports.

2. The criteria, nature and duration of the transport offer, together with the guidelines for the drafting of plans of activities by the airport management companies, which must take into account the measures relating to territorial continuity referred to in Article 2, shall be defined by decision of the Regional Executive to be adopted on the proposal of the Member of the Regional Executive responsible for transport, in agreement with the Members of the Regional Executive responsible for planning, the budget, credit and regional development, tourism, handicrafts and trade, agriculture and agricultural and livestock reform, cultural heritage, information, recreation and sport.

3. The decision referred to in paragraph 2 and the plans of activities, including those already defined by the airport management companies on the date of entry into force of the present Law, together with the corresponding measures and contracts, shall be financed if they are drawn up in accordance with the criteria, nature and duration of the transport offer and with the guidelines referred to in paragraph 2 and shall first be submitted for a binding opinion to the competent committee.'

(b) The measures implementing Law No 10/2010

5 In accordance with Article 3(2) of Law No 10/2010, the Executive of the Autonomous Region adopted several acts implementing the measures provided for in Article 3 of that law ('the implementing measures'), in particular deliberazione della Giunta regionale n. 29/36 (Regional Council Decision No 29/36), of 29 July 2010 ('Regional Decision No 29/36'), deliberazione della Giunta regionale n. 43/37 (Regional Council Decision No 43/37), of 6 December 2010 ('Regional Decision No 43/37'), and deliberazione della Giunta regionale n. 52/117 (Regional Council Decision No 52/117), of 23 December 2011 ('Regional Decision No 52/117') (together with Article 3 of Law No 10/2010, 'the measures at issue').

6 Those implementing measures define three types of 'activities' for which airport operators could receive compensation from the Autonomous Region for the years 2010 to 2013, namely:

– increase of air traffic by airlines ('activity 1');

– promotion of the island of Sardinia as a touristic destination by airlines ('activity 2');

– further promotional activities entrusted by airport operators to third service providers other than airlines on behalf of the Autonomous Region, ('activity 3').

7 Regional Decision No 29/36, on the one hand, specified that, in the implementation of Article 3 of Law No 10/2010, the objective of reducing the seasonality of air routes involved increasing the frequency of flights during the mid-season and the winter season and opening up new air routes. On the other hand, that decision stated that the ultimate objective pursued by the measures provided for in Article 3 of Law No 10/2010 for the promotion of a regional air transport policy was the strengthening of economic, social and territorial cohesion, as well as the development of the local economies, tourism and culture of the island of Sardinia.

8 In that regard, Regional Decision No 29/36 defined the criteria, nature and duration of the transport services for which compensation could be provided during the period 2010-2013 as well as guidelines for the development and evaluation of the 'plans of activities' drawn up by the airport operators.

9 Specifically, in order to receive financing provided for by Law No 10/2010, an airport operator had to submit for approval to the Autonomous Region a detailed plan of activities. That plan had to identify which of the activities, of those numbered 1 to 3, the airport operator intended to implement in order to attain the objectives of Law No 10/2010. That plan was to be achieved through specific agreements between the airport operator and airlines.

10 Where an airport operator wished to receive financing for activity 1, the plan of activities which it submitted to the Autonomous Region had to identify the 'routes of strategic interest' (domestic and international) and define the targets per year concerning flight frequency, new routes and number of passengers.

11 According to the Italian authorities, the operation of those routes of strategic interest thus constituted the service of general economic interest ('SGEI') which the airlines provided in exchange for compensation.

12 A plan of activity implementing activity 2 had to define specific marketing and advertising activities aimed at increasing the number of passengers and at promoting the catchment area of the airport.

13 Regional Decision No 29/36 provided that the plans of activities had to be backed up by forecasts of the prospects for the profitability of the activities they identified.

14 According to Regional Decision No 29/36, the plans of activities had to respect certain principles:

– the routes of strategic interest established by the plans could not overlap with routes already operated under a public service obligation;

– the financing for each of the subsidised routes had to decrease over time;

– the financial agreement concluded with the airlines was to include a plan for promotion of the territory.

15 If the Autonomous Region noticed inconsistencies between, on the one hand, the plans of activities submitted by the airport operators and, on the other hand, the provisions of Law No 10/2010 and its implementing measures, it could require that changes be made to those plans of activities.

16 After having approved the various plans of activities submitted to it by the airport operators, the Autonomous Region distributed among the airport operators the financial resources available for each of the years 2010 to 2013.

17 The amount of that compensation was calculated on the basis of the difference between, on the one hand, the estimated costs borne by airlines for flying the strategic routes and meeting the passenger targets per year and, on the other hand, the actual or presumed revenues from the sale of passenger tickets.

18 Where the total compensation requested by the airport operators exceeded the amount provided for by Law No 10/2010, Regional Decision No 29/36 laid down preferential award criteria.

19 Finally, the implementing measures provided that airport operators were to monitor the performance of airlines. In particular, they required that the specific agreements concluded between airport operators and airlines provide for the imposition of penalties on airlines for non-fulfilment of pre-defined targets, inter alia in terms of frequency of flights and number of passengers.

2. Implementation of the measures at issue

20 The applicant, Volotea SA, is an airline established in Spain, which operates a network of short-haul routes to and from airports within the European Union, including Alghero, Cagliari-Elmas and Olbia airports.

(a) Implementation of Law No 10/2010 with regard to Olbia airport

21 The operator of Olbia airport published on its website a call for expressions of interest with a view to concluding marketing and advertising contracts.

22 In response to that call for expressions of interest, the applicant submitted a business plan for the development of air routes to and from Olbia and a marketing and advertising programme. The airline invited GEASAR to participate in the investment required to implement the marketing and advertising programme.

23 GEASAR examined the applicant's business plan and prepared its own business plan, from which it was clear that participation in the investment as proposed by the applicant would be profitable for the airport operator.

24 GEASAR submitted to the Autonomous Region plans of activities for 2010 and for the three-year period 2011-2013, together with corresponding funding applications. The Autonomous Region approved those plans of activities and determined the amounts granted to GEASAR for 2010 and for the 2011/2013 period by Regional Decisions No 43/37 and No 52/117.

25 GEASAR and the applicant, on 4 April 2012 and 31 March 2013, entered into two agreements relating to the operation by the applicant of air routes to Bordeaux (France), Genoa (Italy), Nantes (France), Palermo (Italy) and Venice (Italy), as well as marketing and advertising services relating to establishment of new air routes and the increase in capacity of passenger seat numbers.

(b) Implementation of Law No 10/2010 with regard to Cagliari-Elmas airport

26 SOGAER, the operator of Cagliari-Elmas airport, published on its website a notice inviting airlines to submit to it business plans for air routes to and from that airport and for the conclusion of marketing contracts to promote the Region of Sardinia.

27 The applicant submitted to SOGAER a three-year business plan for the development of air routes to and from Cagliari-Elmas and a marketing and advertising programme.

28 SOGAER submitted to the Autonomous Region plans of activities for 2010 and for the three-year period 2011-2013, together with corresponding funding applications. Those plans were approved and the amounts allocated to SOGAER for 2010 and for the period 2011-2013 were determined by Regional Decisions No 43/37 and No 52/117, respectively.

29 On 26 February 2012, the applicant and SOGAER entered into an agreement for marketing activities concerning the setting up of new air routes and the increase of in capacity of passenger seat numbers.

(c) Implementation of Law No 10/2010 with regard to Alghero airport

30 With regard to Alghero airport, contracts concluded between SOGEAAL and Ryanair Ltd — already in 2003 and since extended — were the subject of a complaint lodged by an Italian airline. This led to the

opening by the European Commission, on 12 September 2007, of the formal investigation procedure provided for in Article 108(2) TFEU in relation to alleged State aid granted to and by Alghero airport in favour of Ryanair and other air carriers (OJ 2008 C 12, p. 7). On 27 June 2012, that procedure was extended to include further measures taken by the Italian Republic which were not the subject of the original complaint (OJ 2013 C 40, p. 15), such as 'all measures granted to Ryanair and its subsidiary AMS, as well as to the other airlines using the airport from 2000 … in particular … includ[ing] grants of financial contributions granted directly from SOGEAAL or transited through it by means of several airport services agreement[s] and marketing services agreements entered upon with Ryanair and other air carriers as from 2000'.

31 That procedure led to the adoption by the Commission of Decision (EU) 2015/1584 of 1 October 2014 on State aid SA.23098 (C 37/07) (ex NN 36/07) implemented by Italy in favour of Società di Gestione dell'Aeroporto di Alghero So.Ge.A.AL SpA. and various air carriers operating at Alghero airport (OJ 2015 L 250, p. 38; 'the Alghero decision'), in which the Commission inter alia found, applying the market economy operator principle, that the measures implemented by the Autonomous Region — in particular the contracts that SOGEAAL, which is controlled by the Autonomous Region, concluded with certain airlines — and relating to the promotion or start-up of new air routes to and from Alghero airport and to marketing and advertising activities did not constitute aid within the meaning of Article 107(1) TFEU.

B. The contested decision

32 On 30 November 2011, the Italian Republic, in accordance with Article 108(3) TFEU, notified the Commission of Law No 10/2010, which was examined in accordance with Chapter III of 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).

33 By letter dated 23 January 2013, the Commission informed the Italian Republic of its decision to initiate the formal investigation procedure provided for in Article 108(2) TFEU concerning the notified scheme ('the aid scheme at issue'). By the publication of that decision in the *Official Journal of the European Union* on 30 May 2013 (OJ 2013 C 152, p. 30), the Commission invited interested parties to submit their comments on the purported aid scheme.

34 The Italian authorities and interested parties, including the operators of Alghero, Cagliari-Elmas and Olbia airports, submitted written comments.

35 By letters dated 24 February 2014, the Commission informed interested parties of the adoption, on 20 February 2014, of a Commission communication entitled 'Guidelines on State aid to airports and airlines' (OJ 2014 C 99, p. 3; 'the 2014 Guidelines') and of the fact that those guidelines would become applicable to the case at hand from the moment of their publication in the *Official Journal*. On 15 April 2014, a notice was published in the *Official Journal* inviting Member States and interested parties to submit comments on the application of the 2014 Guidelines to this case within one month of their publication date (OJ 2014 C 113, p. 30).

36 On 29 July 2016, the Commission adopted Decision (EU) 2017/1861 on State aid SA 33983 (2013/C) (ex 2012/NN) (ex 2011/N) — Italy — Compensation to Sardinian airports for public service obligations (SGEI) (OJ 2017 L 268, p. 1; 'the contested decision'), the operative part of which reads as follows:

'*Article 1*

1. The scheme that Italy established by … Law [No 10/2010] does not involve State aid within the meaning of Article 107(1) [TFEU] in favour of SOGEAAL …, SOGAER … and GEASAR …

2. The scheme that Italy established by Law No 10/2010 constitutes State aid for the purposes of Article 107(1) of the Treaty in favour of Ryanair/AMS, easyJet, Air Berlin, Meridiana, Alitalia, Air Italy,

[the applicant], Wizzair, Norwegian, JET2.COM, Niki, Tourparade, Germanwings, Air Baltic and Vueling, in so far as it relates to the operations of those airlines at Cagliari-Elmas airport and Olbia airport.

3. The State aid referred to in paragraph 2 has been put into effect by Italy in breach of Article 108(3) [TFEU].

4. The State aid referred to in paragraph 2 is incompatible with the internal market.

Article 2

1. Italy shall recover the State aid referred to in Article 1(2) from the beneficiaries.

2. Taking into account that Ryanair and AMS constitute a single economic unit for the purpose of the present decision they shall be jointly liable for repayment of the State aid received by either of them.

3. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiaries until their actual recovery.

…

5. Italy shall cancel all outstanding payments of the aid referred to in Article 1(2) with effect from the date of adoption of this Decision.

Article 3

1. Recovery of the aid referred to in Article 1(2) shall be immediate and effective.

2. Italy shall ensure that this Decision is implemented within 4 months following the date of its notification of this Decision.

Article 4

1. Within 2 months following notification of this Decision, Italy shall submit the following information:

– the list of beneficiaries that have received aid under the scheme referred to in Article 1(2) and the total amount of aid received by each of them under the scheme,

– the total amount (principal and recovery interests) to be recovered from each beneficiary,

– a detailed description of the measures already taken and planned to comply with this Decision,

– documents demonstrating that the beneficiaries have been ordered to repay the aid.

2. Italy shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 2 has been completed. It shall immediately submit, on simple request of the Commission, information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiaries.

Article 5

This Decision is addressed to the Italian Republic.’

37 With regard to the scope of the contested decision, the Commission stated, in recitals 344 to 346 of that decision, that the decision should not cover the aid measures already subject to the separate investigation referred to in paragraph 30 above. While not all of the payments by SOGEAAL for activities 1 and 2

provided for under Law No 10/2010 by the implementing measures had been made under contracts examined in the separate investigation relating exclusively to Alghero airport, the Commission considered that the large majority of those payments had been assessed in that other case. Moreover, the Commission pointed out that 'it [was] not straightforward in all cases to make a clear distinction given that the financial relationship between SOGEAAL and a given airline in the relevant period [could] be governed by various contracts only some of which [were] considered in [that other case]'. The Commission therefore considered that it was appropriate to exclude from the scope of the contested decision all agreements with airlines concluded by SOGEAAL under the aid scheme at issue or, in other words, the element of the measures at issue relating to Alghero airport.

38 Finally, the Commission considered in the contested decision that the procedure initiated in the present case did not relate to possible aid granted by the airport operators to service providers other than airlines and corresponding to activity 3. Thus, in recital 346 of the contested decision, it considered that it could not take a view on that issue.

39 On 4 August 2016, the Autonomous Region sent the applicant excerpts of the contested decision, which had been notified by the Commission to the Italian Republic, so that the applicant could submit its comments on the confidentiality of certain data, which it did on 21 August 2016.

40 On 11 October 2016, the applicant made a request to the Commission for access to the file relating to the contested decision. On 27 October 2016 the Commission rejected that request, informing the applicant that, since that decision had not yet been published in the *Official Journal*, the applicant's time limit for bringing an action for annulment against that decision had not yet started to run.

41 On 30 June 2017, the applicant brought an action before the Tribunale Amministrativo Regionale per la Sardegna (Regional Administrative Court, Sardinia, Italy) against the decision of the Autonomous Region of 5 June 2017 ordering it to repay an amount of EUR 262 297.54. The application for interim measures lodged in the context of that action was dismissed by a decision of 7 August 2017, in which that court noted that the Autonomous Region had, on 5 June 2017, sent the contested decision to the applicant. The applicant brought an appeal against that decision before the Consiglio di Stato (Council of State, Italy).

II. Procedure and forms of order sought by the parties

42 By application lodged at the Court Registry on 6 September 2017, the applicant brought the present action.

43 On 18 April 2018 and following a double exchange of pleadings, the written part of the procedure was closed.

44 On 18 May 2018, having heard the parties, the Court decided to suspend proceedings pending the closure of the written part of the procedure in related cases *Ryanair and Airport Marketing Services* v *Commission* (T-833/17) and *easyJet Airline* v *Commission* (T-8/18), which took place in those cases on 21 September and 23 July 2018, respectively.

45 On a proposal from the Judge-Rapporteur, the Court then decided to open the oral part of the procedure. In view of that, the applicant and the Commission were requested to provide documents and to respond in writing to questions made by the Court by way of measures of organisation of procedure and to take a position on the possibility of joining the present case with the case *easyJet Airline* v *Commission* (T-8/18), a joinder with which the Court ultimately decided not to proceed for issues relating to the confidentiality of certain information. The applicant and the Commission complied with those measures within the periods prescribed.

46 On 19 June 2019, the Court, during its plenum, decided, on a proposal from the First Chamber and the Vice-President, pursuant to Article 28 of its Rules of Procedure, to refer the case to the First Chamber

sitting in extended composition of five judges.

47 The parties presented oral argument and answered questions put by the Court at the hearing on 2 October 2019, at the end of which the oral part of the procedure was closed.

48 On 7 November 2019, the Court decided to reopen the oral part of the procedure. On 12 November 2019, it requested the Commission to provide certain documents, which it did within the period prescribed. On 20 December 2019, the applicant submitted its observations in that regard. On 22 January 2020, the Court closed the oral part of the procedure.

49 The applicant claims that the Court should:

– annul the contested decision in part, to the extent that:

  – it finds, in Article 1(2) thereof, that the scheme introduced by Law No 10/2010 constitutes State aid granted to the applicant for its activities at Cagliari-Elmas and Olbia airports;

  – it finds, in Article 1(3) thereof, that the scheme established by Law No 10/2010 constitutes State aid in favour of the applicant, which is unlawful for the purposes of Article 108(3) TFEU;

  – it finds, in Article 1(4) thereof, that that aid is incompatible with the internal market;

  – it orders the Italian Republic to recover the aid in question from the applicant;

– order the Commission to pay the costs.

50 The Commission contends that the Court should:

– dismiss the application;

– order the applicant to pay the costs.

III. Law

51 In support of the action, the applicant puts forward five pleas in law for the annulment of the contested decision, alleging, respectively:

– first, a misinterpretation of the concept of State aid within the meaning of Article 107(1) TFEU;

– second, an error as to the possibility of justifying the aid at issue;

– third, an error of law in the order for recovery of the aid at issue;

– fourth, mismanagement of the investigation;

– fifth, a failure to state reasons and contradictory reasoning.

A. First plea: misinterpretation of the concept of State aid within the meaning of Article 107(1) TFEU

52 By its first plea, which comprises four parts, the applicant disputes the categorisation of the aid scheme at issue under Article 107(1) TFEU as ‘State aid’ granted to it.

53 The Commission contends that the plea should be rejected as unfounded.

1. Admissibility of certain arguments

54 The Commission takes the view that the arguments, put forward by the applicant under the first plea, seeking to demonstrate that the Commission erred in law in finding in the contested decision that the airport operators were not beneficiaries of State aid, are inadmissible and, in any event, ineffective. The action is directed against the contested decision only in so far as the applicant is concerned. Moreover, the conclusion that the applicant benefited from State aid was not based on the fact that the airport operators were regarded as not being beneficiaries of the aid scheme at issue. Therefore, the applicant cannot call into question the findings in Section 7.2.2 of the contested decision.

55 The applicant counters that it intentionally restricted the subject matter of its action for annulment of the contested decision to those aspects which concern it. From that point of view, it is entitled to demonstrate that the airport operators were the beneficiaries of aid from the Autonomous Region, as the contested decision relies specifically on the fact that the funds from the Autonomous Region were transferred to the airlines via the airport operators. Therefore, the challenge to that decision must necessarily demonstrate that those operators did not act as 'puppets' of the Autonomous Region but, on the contrary, benefited from aid which reduced the marketing costs which they would normally have had to bear.

56 In that regard, it should be pointed out that the applicant is identified, in Article 1(2) of the contested decision, as a beneficiary of the aid scheme at issue. Accordingly, it is directly and individually concerned both by Article 1(2) and by Article 1(3) and (4) of that decision. In addition, pursuant to Article 2 of that decision, it is required to repay the Italian authorities the amounts it received under the aid scheme at issue. It is therefore also directly and individually concerned by Article 2 of that decision.

57 In those circumstances, in so far as it seeks the annulment, in respect of the applicant, of Article 1(2) to (4) and of Article 2 of the contested decision, the present action is admissible in view of the fourth paragraph of Article 263 TFEU.

58 In the present action, the applicant may raise, in support of its claim for annulment of the two provisions referred to, any plea which is capable of demonstrating that it was not a beneficiary of the aid scheme at issue, including, in that regard, arguments seeking to demonstrate that the airport operators were the true beneficiaries of that aid scheme at issue and not the airlines, such as the applicant.

59 In those circumstances, it is appropriate to reject the inadmissibility arguments raised by the Commission, it being clarified however that, in the petitum, the application does not seek annulment of Article 1(1) of the contested decision and that, in any event, not being, in its capacity as airline, in competition with the airport operators and, therefore, not directly and individually concerned by that Article 1(1), the applicant cannot have standing to seek annulment of that provision.

2. First part of the first plea: incorrect determination of the beneficiaries of the aid scheme at issue, and second part of the first plea: absence of advantage for the applicant

60 In support of the first part of the first plea, the applicant claims that it is the airport operators who are the sole beneficiaries of the aid scheme at issue whilst, in the second part of that plea, it seeks to demonstrate that it has not benefited from an advantage for the purposes of Article 107(1) TFEU.

61 The Commission contends that the two parts of the first plea should be rejected as unfounded.

62 As the arguments set out in the two parts of the first plea overlap in part, it is appropriate to consider them together.

63 In that regard, the Court finds that, first of all, in denying that it could be a beneficiary of the aid scheme at issue and in claiming that the airport operators were the sole beneficiaries, the applicant is disputing that, once granted to those airport operators, the amounts originating from State resources, from the Autonomous Region in this case, could still be categorised as State aid when they were subsequently used

by those operators to remunerate it. Moreover, the applicant disputes that the airport operators' role was limited to that of intermediary between the Autonomous Region and the airlines. In so doing, it is disputing that the airport operators' commercial decisions can be imputed to the Autonomous Region.

(a) Use of 'State resources' by the airport operators

64 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, declared incompatible with the internal market. Thus, categorisation as 'State aid' within the meaning of Article 107(1) TFEU requires four conditions to be satisfied, namely, that there be intervention by the State or through State resources, that the intervention be liable to affect trade between Member States, that it confer a selective advantage on the beneficiary and that it distort or threaten to distort competition (see judgment of 13 September 2017, *ENEA*, C-329/15, EU:C:2017:671, paragraph 17 and the case-law cited).

65 As regards the first condition requiring intervention by the State or through State resources for advantages to be capable of being categorised as State 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 judgments of 16 May 2002, *France* v *Commission*, C-482/99, EU:C:2002:294, paragraph 24 and the case-law cited, and of 13 September 2017, *ENEA*, C-329/15, EU:C:2017:671, paragraph 20 and the case-law cited), those two subconditions being cumulative (see, to that effect, judgments of 28 March 2019, *Germany* v *Commission*, C-405/16 P, EU:C:2019:268, paragraphs 48 and 63 and the case-law cited, and of 5 April 2006, *Deutsche Bahn* v *Commission*, T-351/02, EU:T:2006:104, paragraph 103 and the case-law cited).

66 In that respect, intervention by the State or through State resources need not necessarily be a measure adopted by the central power of the State concerned. It can equally be effected by an authority situated below the national level, such as the Autonomous Region. Indeed, a measure adopted by a regional authority and not the central power is likely to constitute State 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 of that provision are satisfied (judgments of 6 March 2002, *Diputación Foral de Álava and Others* v *Commission*, T-92/00 and T-103/00, EU:T:2002:61, paragraph 57, 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, paragraph 108).

67 Furthermore, it must be recalled that in State aid matters, the objective pursued by State measures is not sufficient to exclude those measures outright from classification as 'aid' for the purposes of Article 107 TFEU. That article does not distinguish between the causes or the objectives of State aid, but defines them in relation to their effects (see judgment of 22 December 2008 in *British Aggregates* v *Commission*, C-487/06 P, EU:C:2008:757, paragraphs 84 and 85 and the case-law cited; judgment of 26 November 2015, *Spain* v *Commission*, T-461/13, EU:T:2015:891, paragraph 39).

68 Thus, an advantage granted directly to certain natural or legal persons can constitute an indirect advantage, hence State aid, for other legal persons who are undertakings (see judgments of 19 September 2000, *Germany* v *Commission*, C-156/98, EU:C:2000:467, paragraphs 22 to 35; of 13 June 2002, *Netherlands* v *Commission*, C-382/99, EU:C:2002:467, paragraphs 38 and 60 to 66; and of 15 June 2010, *Mediaset* v *Commission*, T-177/07, EU:T:2010:233).

69 In the case at hand, under the aid scheme at issue, it is not disputed that the Autonomous Region made funds available to the airport operators — named in Law 10/2010 and in the implementing measure as 'beneficiaries' — over a number of years in order that they take steps to promote Sardinia as a touristic destination, which involved both meeting targets for the island's air services to and from its various

airports and providing marketing services. The applicant does not dispute that those funds, originating from the Autonomous Region and paid first to airport operators, are State resources and that the decision to grant such funds to those airport operators was imputable to the Italian State. The question arises, however, as to whether, as the applicant submits, the amounts it received from those airport operators in performance of the contracts it had concluded with them were or remained ‘State resources’ and were imputable to the Italian State for the purposes of Article 107(1) TFEU.

70 In that respect, it is clear both from the mechanism put in place by the Autonomous Region by means of the aid scheme at issue and from its implementation in practice that the funds transferred by that region to the airport operators were those used by the airport operators to remunerate co-contracting companies, such as the applicant.

71 First, it must be noted that the aid scheme at issue provided for a sort of clearance mechanism. In particular, Regional Decision No 29/36 prescribed that selected airport operators were to receive an advance of 20% on the funds due for the reference year, followed by a second tranche payment of 60% which was staged and conditional on presenting quarterly reports, and, finally, a last tranche of 20% on presentation of documents enabling the Autonomous Region to verify that the activity had been implemented correctly, that targets had been met and that the costs incurred were genuine. That verification mechanism was therefore intended to prevent each airport operator from obtaining reimbursement of amounts other than those incurred by it to remunerate the co-contracting airlines, such as the applicant, and which are subject to the recovery obligation laid down in Article 2 of the contested decision. The existence of that mechanism also confirms that those airlines’ services were financed by that region, since the amounts advanced by the airport operators in remuneration of the co-contracting airlines corresponded to the funds they received at the end of the process from the Autonomous Region.

72 Second, as is apparent from recitals 242 to 246 and 313, 314 and 317 of the contested decision, setting out the comments they had submitted in the context of the administrative procedure before the Commission, the operators of Olbia and Cagliara-Elmas airports themselves explained that they had, in fact, advanced the amounts corresponding to the payment of the co-contracting airlines providing the services requested by the Autonomous Region to promote tourism in Sardinia and that they had, next, presented the Autonomous Region with their accounting reports setting out the costs actually incurred in order to obtain reimbursement by that region. In that context, the operator of Cagliari-Elmas airport even claimed that the Autonomous Region had required it to demonstrate that the airlines providing the services had received the regional contributions in full and that it was therefore merely an intermediary which had passed on to them the amounts received from the Autonomous Region. In addition, the Italian Republic itself claimed, as is apparent from recital 340 of the contested decision, that, in essence, the operator of Olbia airport had transferred to the airlines the full amount of the contributions which that operator had received from the Autonomous Region.

73 It is therefore clear that the funds used by the airport operators to remunerate the applicant under the contracts those operators had concluded with the applicant originated from the Autonomous Region’s budget and thus constituted State resources within the meaning of Article 107(1) TFEU. Contrary to what the applicant claims, given that that correspondence enabled it to be established that the amounts it received constituted State resources, it is a relevant factor in assessing whether it benefited from aid within the meaning of Article 107(1) TFEU.

74 Furthermore, as regards the fact, noted by the applicant, that, in 2013, the airport operators continued to remunerate it even though they were no longer receiving funds from the Autonomous Region, it should be stated that, as the Commission has explained, when the Autonomous Region ceased those payments owing to its decision to suspend the aid scheme at issue, the airport operators were merely honouring their contractual obligations in so far as the contracts at issue did not provide for the termination of those contracts in the event of loss of financing from the Autonomous Region. In any event, if, in certain cases, they had to bear cash advance costs, including via SFIRS, on the amounts subsequently reimbursed by the Autonomous Region, that in no way detracts from the fact that, according to their own statements and in accordance with what was prescribed by the aid scheme at issue, the airport operators used the entirety of

the funds that had been granted to them by that region to remunerate the co-contracting airlines, such as the applicant, which are exclusively subject to the repayment obligation laid down in Article 2 of the contested decision.

75 Apart from the statements of the Italian Government and of the airport operators themselves during the administrative procedure preceding the adoption of the contested decision and the tables contained in the contested decision, the correspondence between the funds provided by the Autonomous Region to the airport operators and those used by those operators to remunerate the co-contracting airlines is corroborated, in the particular case of the applicant and contrary to which it claims, by the very content of the agreements it signed with the operators of Cagliari-Elmas and Olmas airports.

76 The preamble of the contract it had concluded on 26 February 2012 with SOGAER expressly stated that the Autonomous Region had decided to increase its marketing investments in the transport and tourism industries; that, to that end, it was providing SOGAER on an annual basis with an amount which that airport provider had to spend to achieve that objective, and that, in the light of the Autonomous Region's commitment, SOGAER had published an advertisement on its website for investment in marketing activities designed to promote tourist attractions in the south of Sardinia. As to the contract concluded on 31 March 2013 between the applicant and GEASAR, it stated that that airport operator, in agreement with the Autonomous Region, actively promoted Olbia and Sardinia as holiday destinations, implementing all appropriate marketing, advertising and communications actions, and that, to that end, the Autonomous Region was providing GEASAR on an annual basis with an amount which that airport operator had to spend to achieve those objectives.

77 It is therefore appropriate to reject the line of argument of the applicant that, in essence, it was not remunerated by the airport operators by means of funds originating from the Autonomous Region.

78 The applicant further contends that the alleged correspondence between the two flows of funding is not sufficient evidence to rule out that the payments made to it were made as actual consideration for the services it had provided to the airport operators.

79 It must again be recalled in that regard that, in State aid matters, the objective pursued by State measures is not sufficient to exclude those measures outright from classification as 'aid' for the purposes of Article 107 TFEU. That article does not distinguish between the causes or the objectives of State aid, but defines them in relation to their effects (see judgment of 22 December 2008 in *British Aggregates* v *Commission*, C-487/06 P, EU:C:2008:757, paragraphs 84 and 85 and the case-law cited; judgment of 26 November 2015, *Spain* v *Commission*, T-461/13, EU:T:2015:891, paragraph 39).

80 Given that, when examining a measure, the Commission can find it necessary to examine whether an advantage can be considered to be granted indirectly to operators other than the immediate recipient of the transfer of State resources (see, to that effect, judgment of 13 June 2002, *Netherlands* v *Commission*, C-382/99, EU:C:2002:363, paragraphs 61 and 62), it must be held that, in so far as can be determined, as in the present case, an advantage originating from State resources has been transferred by the immediate recipient to a final beneficiary, it is irrelevant that that transfer was made by the immediate recipient in accordance with commercial principles or, on the contrary, that that transfer met an objective of general interest.

81 That is supported by the case-law holding that an advantage granted directly to certain natural or legal persons can constitute an indirect advantage, hence State aid, for other legal persons who are undertakings (see, to that effect, judgments of 19 September 2000, *Germany* v *Commission*, C-156/98, EU:C:2000:467, paragraphs 22 to 35; of 13 June 2002, *Netherlands* v *Commission*, C-382/99, EU:C:2002:363, paragraphs 38 and 60 to 66; of 4 March 2009, *Associazione italiana del risparmio gestito and Fineco Asset Management* v *Commission*, T-445/05, EU:T:2009:50, paragraph 127; and of 15 June 2010, *Mediaset* v *Commission*, T-177/07, EU:T:2010:233). Indeed, in the cases which gave rise to those judgments, the transfer of an advantage by natural or legal persons who were immediate recipients of State resources, formed part of a commercial relationship, confirming that the existence of an underlying commercial

reason for the transfer is of no relevance to the assessment under Article 107(1) TFEU of the flows taken by the State origin resources to reach the final beneficiary.

82 In those circumstances, the Commission did not err in law in holding that the payments made by the airport operators to the airlines as part of activities 1 and 2 corresponded to State resources.

(b) Imputability to the Autonomous Region of decisions and payments made to the applicant by the airport operators

83 Concerning whether the airport operators' decisions to conclude the contracts at issue with the applicant can be imputed to the Autonomous Region, the applicant disputes that those operators had a role only as intermediaries. Despite there being a procedure for the approval of their plans of activities by the Autonomous Region, the airport operators retained a wide discretion in their decisions on how to distribute the funds received from the Autonomous Region.

84 In that regard, even if it concerns cases in which the funds at issue, unlike those in the present case, did not emanate directly from the State budget or had not been channelled through the State budget, the case-law confirms, as regards the condition in Article 107(1) TFEU relating to the existence of an advantage granted directly or indirectly through State resources, that the decisive criterion is the degree of State control exerted over the grant of the advantage, in particular over the channel through which that advantage is transmitted (judgments of 16 May 2000, *France* v *Ladbroke Racing and Commission*, C-83/98 P, EU:C:2000:248, paragraph 50; of 16 May 2002, *France* v *Commission*, C-482/99, EU:C:2002:294, paragraph 37; and of 19 December 2013, *Association Vent De Colère ! and Others*, C-262/12, EU:C:2013:851, paragraph 33), and that that is so even where the grant of that advantage does not involve a formal transfer of State resources (see judgment of 19 December 2013, *Association Vent De Colère ! and Others*, C-262/12, EU:C:2013:851, paragraph 19 and the case-law cited).

85 To the extent that the degree of State control over the grant of an advantage enables an assessment of whether it can be regarded as mobilising 'State resources', it is appropriate, in order to confirm the condition relating to the imputability of the measure concerned to the State, laid down in Article 107(1) TFEU, also to take into account that degree of control in the examination of whether the public authorities must be regarded as having been involved in the adoption of that measure (see, to that effect, judgments of 16 May 2002, *France* v *Commission*, C-482/99, EU:C:2002:294, paragraph 52, and of 28 March 2019, *Germany* v *Commission*, C-405/16 P, EU:C:2019:268, paragraph 49 and the case-law cited), involvement which may be inferred from a set of indicators arising from the circumstances of the case and the context in which that measure was taken and, in particular the compass of the measure, its content and the conditions which it contains (see, to that effect, judgments of 16 May 2002, *France* v *Commission*, C-482/99, EU:C:2002:294, paragraphs 52 to 56, and of 17 September 2014, *Commerz Nederland*, C-242/13, EU:C:2014:2224, paragraphs 31 to 33).

86 In the case at hand, the Commission found, in the contested decision, that the funds made available to the airport operators by the Autonomous Region had to be and were actually used in accordance with the instructions prescribed by that region, in this case as remuneration for services provided by the airlines, namely the opening of new air routes, the increase in frequencies, meeting of passenger volume targets and extension of operation periods of existing routes and the provision of marketing services.

87 As regards the applicant's taking issue with the Commission's findings in recitals 357 to 359 of the contested decision that the behaviour of the airport operators was determined by the Autonomous Region by means of Law No 10/2010 and the plans of activities, which had to be approved by the Region before entering into force, it must be stated that Law No 10/2010 does indeed mention the airport operators as formally being the beneficiaries of the payments prescribed by that law.

88 However, Article 3(2) of Law No 10/2010 expressly provided that the criteria, nature and duration of the transport offer and the guidelines for the drafting of plans of activities by the airport operators had to be adopted by decision of the Regional Executive, whilst Article 3(3) of that law provided, also expressly,

that the plans of activities drawn up by the airport operators had to be accompanied by the corresponding measures and contracts and that they would be financed only if they were drawn up in accordance with the criteria, nature and duration of the transport offer and with the guidelines adopted by the Regional Executive and only if they had first been submitted to the competent committee for a binding opinion.

89 In that respect, it is apparent from the mechanism put in place by Law No 10/2010 that the provisions of that law must necessarily be read in conjunction with the texts whose adoption by the Regional Executive was prescribed by that law and on which the payments by the Autonomous Region to the airport operators at issue in this case depended. Those texts, in particular Regional Decision No 29/36, expressly provided that the airport operators had to submit their plans of activities to the Autonomous Region for approval and that those plans, in order to be eligible for the financing provided by that region, had to be drafted in accordance with the criteria, nature and duration of the transport offer and with the guidelines adopted by the Regional Executive.

90 In addition, the mechanism for reimbursement of the costs paid by the airport operators was such as to enable the Autonomous Region to monitor the airport operators' initiatives, since only those established in accordance with its guidelines and justified by the submission of relevant contractual and accounting documents could give rise to the financing provided for under the aid scheme at issue. The plans of activities were submitted prior to the approval process by the Autonomous Region and the airport operators also had to provide quarterly reports for the purpose of payment of 60% of the aid and they were not able to receive the final tranche of the payment, of 20%, until they had proved that they had complied with the Autonomous Region's instructions.

91 The Autonomous Region's control over the content and scope of the airport operators' initiatives is corroborated by the operators themselves. Indeed, as is apparent from recital 237 of the contested decision, GEASAR stated that it had negotiated the proposals for marketing activities, with the airlines that had responded to the call for expressions of interest which that airport operator had published on its website, taking into account the tourism marketing plan drawn up by the Autonomous Region among its planning instruments. SOGAER, for its part, maintained, as is apparent from recital 313 of the contested decision, that, under the aid scheme at issue, that region was providing compensation which was merely channelled through the airport operator 'as part of a plan decided, financed and monitored by the [Autonomous] Region'.

92 It is true, as the applicant asserts, that Law No 10/2010 did not mention the specific actions that had to be offered by the airport operators in the plans of activities, nor did it identify which airlines were to be solicited. Furthermore, the initiative of submitting plans of activities to the Autonomous Region in order to request the funds provided for under the aid scheme at issue and, as the applicant notes, selecting the co-contracting airlines formally lay with the airport operators, in particular since Law No 10/2010 and its implementing measures did not mention by name airlines with which they necessarily had to enter into commercial relations. That being said, once the airport operators had taken the decision to participate in the financing programme put in place by the Autonomous Region by means of the aid scheme at issue, their discretion in defining their operating plans and in selecting co-contracting service providers was significantly reduced by the criteria and guidelines established by the Autonomous Region.

93 In particular, the reference in Article 3(3) of Law No 10/2010 to contracts having to be provided by the airport operators and the reference in Regional Decision No 29/36 to the situations in which the plans of activities are carried out by airlines confirm, contrary to the applicant's assertions, that the Autonomous Region induced the airport operators to use airlines, since they are the sole entities capable of engaging with airlines on the opening or maintenance of air routes, their frequencies and passenger targets, and that that region decided which air routes would be deemed eligible. Furthermore, as regards marketing activities, the Autonomous Region drew a distinction between those offered by airlines, confirming the airport operators' necessary use of such companies, and those offered by service providers other than airlines, which, as the Commission notes, are not at issue in the present case and whose existence, in any event, is not liable to affect the question of whether the funds received by the applicant originated from the budget of the Autonomous Region and were imputable to it.

94 By closely monitoring, at the upstream level, the plans of activities submitted by the airport operators, in particular the air routes concerned and the marketing services envisaged, as well as, at the downstream level, the amounts committed by the airport operators in remuneration of those services offered by the airlines in the context of promoting the island of Sardinia as a touristic destination, the Autonomous Region assumed sufficient control, over the contractual behaviours of the airport operators that decided to request the financing measures provided for under the aid scheme at issue, to the point that those behaviours could be considered imputable to it.

95 Moreover, in Decisions No 300 and No 322 of the Autonomous Region, of 16 June 2014 and 13 June 2013, respectively, fixing the definitive annual amounts, the Autonomous Region itself considered that 'the intervention referred to in [Law No 10/2010] [was] achieved through the airport operators, which [had] the role of intermediaries and operational precursors of the transfer of resources to airlines, according to the route determined by the Autonomous Region, such as is laid down by the aforementioned [Law No 10/2010] and the implementing measures' (*che l'intervento di cui alla LR. n. 10/2010 si realizza attraverso le societa di gestione aeroportuale, che fungono da tramiti operativi e da soggetti anticipatori del trasferimento di risorse a favore dei vettori, secondo il percorso dalla Regione stessa disegnato con la sopraccitata legge regionale n. 10/2010 e con e delibere di attuazione della stessa*) and that 'the airlines should be regarded as the actual and sole recipients of the flows of financial resources under [Law No 10/2010]' (*che i vettori debbano considerarsi i reali ed unici destinatari dei flussi delle risorse di cui alla predetta legge regionale*).

96 In addition, as the Commission notes, the preamble of the contract of 26 February 2012 concluded between the applicant and the operator of Cagliari-Elmas airport demonstrates, in a clear manner, the extent of the control exercised by the Autonomous Region, since it actually states that it was 'in line with the directives issued by the [Autonomous] Region, [that SOGAER] ha[d] drawn up a Plan of Activities in which, the strategy and the actions which [had to be] pursued in order to reach the objectives of traffic development [were] described' and that 'such plan has been approved by the Regional Council Committee as per art.3, comma 3 [of Law No 10/2010]', and that 'the [Autonomous] Region and [SOGAER] expect[ed] an increase of the general publicity of Cagliari, [of] the airport and [of] South Sardinia. As a result of these marketing services, both the [Autonomous] Region and [SOGAER] expect a growth in passenger traffic and a positive economic return for Cagliari Airport and its catchment area'.

97 As to the fact that those operators monitored the realisation of the plans of activities, that did not mean that they had autonomy over the implementation of the aid scheme at issue. Indeed, the insertion of penalty clauses into the contracts concluded with the partner airlines is explained above all by the airport operators' concern about complying with their obligations, as are set out in Regional Decision No 29/36, so as to ensure that they would actually obtain the financing requested from the Autonomous Region which they had advanced in performance of those contracts. From the point of view of the Autonomous Region's interest and as the Commission submits, the obligation imposed on the airport operators to include a penalty mechanism sought to protect public investment, by ensuring that the funds granted would be used correctly and give rise to the expected services so as to promote tourism in Sardinia. The same is true for the monitoring mechanism, in terms of the provision by the airport operators to the Autonomous Region of both quarterly reports and all the accounting and contractual supporting documents in order to obtain the final tranches of the financing payments offered by that region.

98 In the light of all those factors, the line of argument of the applicant regarding the airport operators' alleged decision-making autonomy in defining their contractual relationships with co-contracting airlines under the aid scheme at issue must be rejected as unfounded. Accordingly, the Commission did not err in law in finding, in recitals 355 to 361 of the contested decision, that the airport operators could be considered as intermediaries between the Autonomous Region and the airlines, having transferred in full the funds received from the Autonomous Region and therefore acted in accordance with the instructions received from that region through the plans of activities approved by that region.

(c) Misidentification of the beneficiaries of the aid scheme at issue and absence of advantage for the airlines

99 The applicant claims that the airport operators were the beneficiaries of the aid scheme at issue in that they were relieved of costs they would normally have had to bear to obtain the services which were the subject of the contracts at issue, both those concerning air route frequency and passenger volume targets and those concerning marketing services. Therefore, the scheme at issue constitutes a mechanism for subsidising airport operators with a view to the acquisition by those operators of services relating to activities 1 and 2 from the airlines. That mechanism reduced costs that airport operators would normally have had to bear to develop their own activities. Accordingly, those airport operators obtained an economic return by concluding agreements with the applicant, in particular as regards the extension of their catchment area and the increase in passenger traffic.

100 The fact that the applicant, as an airline, in performance of those contracts, provided marketing services promoting the air routes it operated does not eliminate the airport operators' economic interest in obtaining such services under contract. The contracts concluded between the airport operators and the applicant were indicative of those operators' genuine economic interest in obtaining the services at issue, an interest which the Commission acknowledged in previous decisions and which prompts many airports to use similar services from airlines. Those agreements are, after all, common in the aeronautical sector, as is confirmed by the fact that, in the present case, the airport operators at issue partially financed those contracts from their own funds. Therefore, the services the applicant provided under those contracts were genuine and, even if the activities covered by them corresponded to its own economic interests, the fact that it was able to derive an economic advantage from those commercial agreements cannot prove that the applicant received illegal State aid from the Autonomous Region.

101 In any event, according to the applicant, the Commission could not rule out the possibility that the airport operators were beneficiaries of the aid scheme at issue, even though they were the direct recipients of the payments from the Autonomous Region, not least by the illogical argument that the scheme was not intended to channel its secondary effects towards the airports.

102 In that regard, it is true that the airport operators had an interest in participating, as intermediaries, in the implementation of the aid scheme at issue, since the effect of the airlines' performance of their obligations on air route frequency and passenger volume targets and providing marketing services was to increase the number of persons using the airports concerned and, necessarily, those operators' airport and non-airport revenues.

103 However, as the Commission stressed during the hearing in particular, it is unlikely that, without financing from the Autonomous Region, airport operators would have enough funds at their disposal — tens of millions of euros in the case at hand — to undertake such significant acquisitions, from airlines, as obligations of opening air links and attaining passenger traffic objectives as well as marketing services, nor would they necessarily, in their expansion strategies, have concluded agreements of those types. It appears on the contrary that those operators entered into contracts with the airlines only with the guarantee of the Autonomous Region that they would receive the corresponding funds from it.

104 That is corroborated by the fact that, in the present case, the operators of Cagliari-Elmas and Olbia airports did not use the applicant's marketing services nor did they conclude agreements on air service frequencies or on passenger targets before the implementation of the aid scheme at issue and the fact that, following the suspension of that scheme, those operators did not, in the absence of funding from the Autonomous Region, decide with the applicant to conclude new contracts covering similar services. Ultimately, as the Commission has observed, the purchase of those services was less a commercial need on the part of the airport operators than the decision of the latter to assist in implementing the aid scheme established by the Autonomous Region. Thus, the applicant cannot maintain that, by the aid scheme at issue, the Autonomous Region alleviated costs which the operators of Cagliari-Elmas and Olbia airports would normally have had to bear.

105 That conclusion is not called into question by the applicant's claim that the airport operators remunerated the airlines also from their own funds. First, the applicant fails to demonstrate which amounts the airport operators paid from their own funds without obtaining or requesting the subsequent reimbursement thereof

of the Autonomous Region under the aid scheme at issue, even though the Commission maintains, without the applicant providing evidence to the contrary, that the airport operators used their own funds only to a very limited extent and only in order to meet their residual contractual commitments following the Autonomous Region's suspension of the aid scheme at issue. Second, it must be recalled that, in any event, those alleged own investments of the airport operators do not fall under the repayment obligation laid down in Article 2 of the contested decision and do not reflect an assumption of significant commercial risk in connection with the use of funds originating from the Autonomous Region.

106 As to the services which were the subject of the contracts at issue, in addition to the fact, which will be examined in the assessment of the application of the market economy operator principle, that the co-contracting airlines were not selected following a procedure such as to ensure that the Autonomous Region, through the airport operators, remunerated them at market price, it must be pointed out that, when requested by the Court to produce supporting documents in that regard, the applicant submitted advertising and contractual material confirming that, as the Commission itself held in recital 368 of the contested decision, the promotion of certain cities and regions served by the applicant is usually intrinsically linked, on its website, to the promotion of the flights it itself operates. Accordingly, contrary to what it argues, in the absence of marketing contracts signed with SOGAER and GEASER, it is not ruled out that the applicant would still have organised the promotion of its air routes to and from Sardinia just as it is not established that, in performance of those contracts, the applicant carried out a significantly greater promotional activity than it usually did with a view to promoting its own flights directly.

107 The Commission therefore committed no error in law in noting, in the contested decision, that the marketing services were purchased by the airport operators at issue — in this case with the funds made available to them by the Autonomous Region — to promote the operation of the air routes offered by the co-contracting airlines and for the opening or maintenance of which they were remunerated under activity 1.

108 Similarly, the Commission was entitled to conclude that the airlines were remunerated by the Autonomous Region in order to promote their own services as airlines (see, to that effect, judgments of 13 December 2018, *Ryanair and Airport Marketing Services* v *Commission*, T-53/16, not published, EU:T:2018:943, paragraph 271; of 13 December 2018, *Ryanair and Airport Marketing Services* v *Commission*, T-165/16, not published, EU:T:2018:952, paragraph 167; of 13 December 2018, *Ryanair and Airport Marketing Services* v *Commission*, T-165/15, not published, EU:T:2018:953, paragraph 230; and of 13 December 2018, *Ryanair and Airport Marketing Services* v *Commission*, T-111/15, not published, EU:T:2018:954, paragraph 232), as that involved marketing and advertising costs which the airlines at issue, including the applicant, had in principle to bear.

109 By the same token, the Commission was able to conclude that the airport operators were not beneficiaries of the aid scheme at issue. The co-contracting airlines' performance of the services desired and funded by the Autonomous Region indeed had the effect of increasing air traffic and the volume of passengers to and from the airports concerned, entailing an increase in the airport and non-airport resources of their operators. However, as the Commission contends, that is a secondary effect of the aid scheme at issue from which the entire Sardinian tourism sector benefited, including, moreover, the applicant, which, to some extent, also obtained such a secondary advantage in an increase in sales of the services offered on board its aircraft. Nevertheless, the immediate advantage forming the subject matter of the aid scheme at issue and which was not obtained under normal market conditions still consisted of the payments made to the airlines.

110 Having regard to the foregoing, the applicant's line of argument regarding the alleged error of the Commission in determining the beneficiaries of the aid scheme at issue and in finding an advantage for the applicant must be rejected.

(d) Market economy operator principle

111 The applicant criticises the Commission for not having correctly assessed the aid scheme at issue, since it did not apply — as it ought to have done — the market economy private investor test both at the level of the Autonomous Region and at the level of the airport operators. In addition, it criticises it for failing to state adequate reasons. In that regard, the applicant states that the activities it provided have made a significant contribution to the development of Cagliari-Elmas and Olbia airports and that, in any event, the fact that the airport operators continued in 2013 to finance the activities covered by the contracts at issue shows that the 2012 financial year also satisfied the private investor test.

112 The Commission takes the view that, in the contested decision, it took account of the market economy operator principle both at the level of the Autonomous Region and at the level of the airport operators. However, the application of that principle, derived from Article 345 TFEU, necessarily assumes that the public authority in question engages in an economic transaction and that it has a link with the beneficiary, by being its owner, shareholder or by holding shares in that entity.

113 First, the Commission notes that, during the administrative procedure, the Italian Republic had not suggested applying the market economy operator principle at the level of the Autonomous Region and that it was in any event clear that the Autonomous Region was seeking not to make a profit, but to achieve public policy objectives, in particular the strengthening of the economy in general by attracting more tourists. Such an objective would not be taken into account, however, by a private operator making an investment. In any event, the Autonomous Region could not have been regarded as an airport operator seeking to invest, especially since it controlled only Alghero airport, which is not at issue in this case. Thus, the adoption of the aid scheme at issue cannot be regarded as stemming from an investment decision by the State as a shareholder.

114 Second, as regards the airport operators, the Commission takes the view that the application of the market economy operator principle was not justified, either, since, in concluding their various agreements with the airlines, they were merely implementing the scheme at issue devised by the Autonomous Region to increase the number of tourists visiting the island by air. Thus, they did not use their own funds to pay for the services covered by those agreements, but instead used the funds provided by the Autonomous Region, thereby transferring State resources in accordance with the wishes and instructions of that autonomous region. Accordingly, those transactions were not effected under normal market conditions without the State intervention at issue, it being understood, moreover, that the airport operators at issue in the present case are not State-owned.

(1) Application of the market economy operator principle to the contractual relations between the airport operators and the airlines

115 In the contested decision, the Commission justified the inapplicability of the market economy operator principle at the level of the transactions between the airport operators and the airlines, on the ground, in essence, that the measures examined constituted an aid scheme established by a public authority for public policy reasons, covering several airports, only one of which was owned by the Autonomous Region, and not an individual agreement between an airport and an airline. In addition, for the Commission, it was clear that the airport operators had not been acting as market economy operators when entering into the various contracts with the airlines. They were merely implementing an aid scheme devised by the Autonomous Region to increase air transport for the general benefit of the territory of the island of Sardinia.

116 In that respect, so far as concerns the argument of the applicant relating to the application of the market economy operator principle in the light of the airport operators' autonomy in using the funds provided by the Autonomous Region and in defining their contractual relations with the airlines, it is appropriate to reject it for the reasons already set out in paragraphs 102 to 110 above.

117 Next, it must be stated that, as the applicant acknowledges and unlike the situation in the earlier Commission decisions cited by the applicant, the two airport operators concerned in the case at hand, namely, those of Cagliari-Elmas and of Olbia, are not in any event owned by the Autonomous Region. As

the Commission rightly maintains, to be able to envisage the application of the market economy operator principle to a financial transaction between two undertakings so as to know whether, in the light of Article 107(1) TFEU, read in conjunction with Article 345 TFEU (see, to that effect, judgments of 21 March 1990, *Belgium* v *Commission*, C-142/87, EU:C:1990:125, paragraph 29; of 21 March 1991, *Italy* v *Commission*, C-303/88, EU:C:1991:136, paragraph 20; and of 12 December 1996, *Air France* v *Commission*, T-358/94, EU:T:1996:194, paragraph 70), that transaction meets an economic rationality precluding it from giving rise to the grant by the former undertaking of an advantage to the latter, it will still be necessary that the former undertaking be owned by the State and that the State can be deemed to be acting like an investor expecting a medium- to long-term economic return on its investment.

118 In those conditions, irrespective of the establishment of business plans by the airlines and/or *ex ante* analysis of the profitability of the investments made by the airport operators, as is invoked by the applicant, it appears that, first, those operators were not owned by the Autonomous Region and that, second and in any event, they merely used the money made available to them by the Autonomous Region to acquire services in accordance with the latter's instructions.

119 It follows that, as the Commission rightly found in the contested decision, the airport operators were essentially limited to implementing the aid scheme at issue. Given, moreover, that those operators were not State-owned, the transactions between the airlines and the airport operators had not been intended to be examined in the light of the market economy operator test, even though those transactions were made using State resources, those of the Autonomous Region in the case at hand.

120 That finding is not called into question by the fact — assuming it were established — that the airport operators remunerated the airlines also from their own funds. First, the applicant fails to demonstrate which amounts the airport operators paid from their own funds without obtaining or requesting the subsequent reimbursement thereof of the Autonomous Region under the aid scheme at issue, even though the Commission maintains, without the applicant providing evidence to the contrary, that the airport operators used their own funds only to a very limited extent and only in order to meet their residual contractual commitments following the Autonomous Region's suspension of the aid scheme at issue. Second, it must be recalled that, in any event, those alleged own investments of the airport operators do not fall under the obligation of repayment laid down in Article 2 of the contested decision and does not reflect an assumption of significant commercial risk in connection with the use of funds originating from the Autonomous Region.

121 The applicant's line of argument concerning the application of the market economy operator principle at the level of the airport operators must therefore be rejected.

(2) Application of the market economy operator principle at the level of the Autonomous Region

122 In recitals 380 to 388 of the contested decision, the Commission noted, first of all, that the Italian Republic had not put forward an argument based on the market economy operator principle; that there was nothing to suggest that the Autonomous Region had acted in accordance with that principle when it had established the aid scheme at issue and that it was clear that it had sought, by implementing that scheme, to achieve public policy objectives, in particular the strengthening of the regional economy by attracting more tourists, rather than make profits in its capacity as owner. Then, the Commission examined the applicability of that principle at the level of the airport operators and of the Autonomous Region to conclude that it did not apply in the situation at hand.

123 The applicant considers erroneous the Commission's finding, set out in recital 380 of the contested decision, that the Autonomous Region did not act as a market economy investor.

124 However, in the case at hand, given that the Autonomous Region does not own Cagliari-Elmas and Olbia airports — the only ones at issue here — that region cannot be deemed to have acted as an investor. It appears on the contrary that the Autonomous Region put in place the aid scheme at issue solely with a view to the economic development of the island of Sardinia.

125 In those conditions, the Commission was right to conclude, inter alia in recitals 380 to 384 of the contested decision, that it was not required to analyse whether, by the financing forming the subject matter of the contested decision, the Autonomous Region had made an investment comparable to that of a private investor. Therefore, it was entitled to consider the *ex ante* analyses of the economic profitability of the service agreements concluded between the airport operators and the applicant irrelevant, since, in the case at hand, the Autonomous Region, acting exclusively as a public authority, could not expect dividends, capital gains or any other form of profit comparable to that which a private investor would obtain.

126 On that point, contrary to what the applicant maintains, on account of the adoption of public policy measures, any increase in the tax resources of a public entity, such as the Autonomous Region, cannot be equated — or even compared — with the gains expected by a private investor from his investments, since they are not of the same nature as a financial advantage expected by an operator from one from his investments. At issue here are macroeconomic benefits expected from public intervention in the context of an economic policy, which does not fall within the market economy operator principle but within the principles of rationalisation of public spending.

127 Accordingly, it is appropriate to reject the line of argument of the applicant seeking to deem the Autonomous Region, in the context of the aid scheme at issue adopted in the framework of a general economic policy, to have acted as an investor justifying the application of the market economy investor principle.

128 That being said, it must be noted that, in recital 377 of the contested decision, the Commission found that the payments made by the Autonomous Region via the airport operators to airlines in the context of both activity 1 and activity 2 had to be considered as subsidies to the airlines for operating more flights to and from the island of Sardinia.

129 It should also be noted that, given that the Autonomous Region does not own all the airports on the island of Sardinia, which are the sole entities capable of contractually agreeing on the use of the airport infrastructure that they manage, in particular the opening of new air routes, the Autonomous Region could not, as a public authority, acquire that type of services directly from the airlines. The operator of Cagliari-Elmas airport confirmed, as is apparent from recitals 312 and 314 of the contested decision, that, first, the Autonomous Region, by means of the aid scheme at issue, requested a service consisting in selecting airlines capable of meeting stated annual targets for frequency and passenger volume on strategic routes to and from Cagliari-Elmas airport and that, second, that service was provided by co-contracting airlines chosen by the airport operators.

130 It is apparent also from the aid scheme at issue that the objective of the marketing services provided by the airlines was to promote the island of Sardinia as a touristic destination.

131 Accordingly, while it cannot be accepted that, in adopting the aid scheme at issue, the Autonomous Region acted as an investor, it must nevertheless be found that that region acted as a service acquirer, particularly in respect of marketing services. That is moreover what the applicant highlighted, in particular in its reply, by stating that the Autonomous Region ‘used a market-oriented company to purchase services on a market, i.e. marketing services and passenger seats’.

132 First, the amounts received by the applicant corresponded to the provision of services in response to a commission by the Autonomous Region for which the airport operators acted only as intermediary between the contract awarder and the providers of those services. Second, as the applicant maintains, the airlines provided services, both in terms of commitments as regards air routes and volume of passenger traffic as well as marketing, which can be offered to airport operators in the air transport sector.

133 In that regard, a State measure in favour of an undertaking cannot be excluded as a matter of principle from the concept of State aid in the sense contemplated in Article 107 TFEU merely because the parties undertake reciprocal commitments (see, to that effect, judgment of 28 January 1999, *BAI* v *Commission*, T-14/96, EU:T:1999:12, paragraph 71).

134 Regarding in particular the acquisition of services through the exercise of public authority, that must in principle be done in compliance with the public procurement rules laid down by secondary EU law. In that case, the fact that such a tender procedure is conducted before a public authority of a Member State makes a purchase is normally considered sufficient to rule out the possibility that the Member State is seeking to grant an advantage to the chosen service provider that it would not have otherwise obtained under normal market conditions (see, to that effect, judgment of 5 August 2003, *P & O European Ferries (Vizcaya) and Diputación Foral de Vizcaya* v *Commission*, T-116/01 and T-118/01, EU:T:2003:217, paragraph 118).

135 In the case at hand, the acquisition of the services in question was not made by the Autonomous Region itself, which, as public authority, would have been subject to the same EU public procurement rules. That acquisition was actually made via other operators not subject in that situation to those rules: the airport operators in this case, which were responsible for obtaining on the market the services desired by the Autonomous Region and which the latter financed.

136 In such a situation, the mere fact that a Member State purchases services which, as the applicant maintains, were allegedly offered on market conditions is not sufficient for that transaction to constitute a commercial transaction concluded under conditions which a private operator would have accepted, or, in other words, a normal commercial transaction. In that type of situation, it is necessary, first, that the State had an actual need for those services and, second, that the acquisition of those services have been made by means of an open, transparent and non-discriminatory procedure such as to ensure equal treatment between the providers offering the services in question and guarantee that the services at issue are acquired at market price, which price ensures that, when those services are acquired, the public authorities do not confer an advantage on the provider chosen (see, to that effect, judgment of 5 August 2003, *P & O European Ferries (Vizcaya) and Diputación Foral de Vizcaya* v *Commission*, T-116/01 and T-118/01, EU:T:2003:217, paragraphs 112 to 120; see also, by analogy, judgments of 24 October 2013, *Land Burgenland and Others* v *Commission*, C-214/12 P, C-215/12 P and C-223/12 P, EU:C:2013:682, paragraphs 93 and 94, and of 16 July 2015, *BVVG*, C-39/14, EU:C:2015:470, paragraph 32).

137 In the case at hand, the Commission took the view, in recital 386 of the contested decision, that the financing provided by the aid scheme at issue did not constitute remuneration for goods or services fulfilling genuine needs of the Autonomous Region and that an open and transparent tender procedure had not been followed in providing financial support to the airlines concerned.

138 In that regard, contrary to what the Commission found, the Autonomous Region, as a public authority pursuing economic policy objectives, was entitled to consider that it had a need to promote the island of Sardinia as a touristic destination in order to contribute to the economic development of the island.

139 However, first, as the Commission maintains, the unprecedented volume of the marketing services funded under the aid scheme at issue is liable to cast into doubt the fact that those services met, in a proportionate manner and in accordance with the principles of rationalisation of public spending, the genuine needs of the Autonomous Region with a view to pursuing its objectives of economic development of the island of Sardinia.

140 Second and in any event, the contested decision addressed the matter of the organisation of calls for tenders with a view to the conclusion of agreements by the airport operators because the organisation of such calls for tenders could have proved the existence of market conditions and, consequently, the absence of any advantage within the meaning of Article 107(1) TFEU.

141 In that regard, however, it must be held, as the Commission maintains, that, with a view to acquiring the air traffic increase and marketing services, neither the Autonomous Region nor the airport operators, acting as intermediaries, organised open and transparent tender procedures such as to guarantee observance of the principle of equal treatment between providers and the acquisition of those services, by the Autonomous Region and by means of State resources made available to the airport operators, at market prices.

142 It is indeed common ground that the airport operators published on their respective websites calls for expressions of interest in the context of which those airlines interested in opening or seasonally adjusting certain of their air routes — other than those already subject to public service obligations — and supplying marketing services could offer their services to the airport operators.

143 However, those calls for expressions of interest cannot be regarded as equivalent to tender procedures. When requested by the Court to produce those calls for expressions of interest as well as the bids it had submitted to the operators of Cagliari-Elmas and Olbia airports, the applicant failed to produce them, explaining that it had not kept those documents. The Commission has not been able to produce those calls for expressions of interest, either. Moreover, it is not apparent from the file that precise criteria for selecting co-contracting airlines had been laid down. On the contrary, it appears that all those that had submitted bids were invited to enter into contracts with the airport operators concerned and that, in terms of pricing of the services offered, the fares applied by the airlines were divergent. Even though they came across as rough and rounded financial assessments, however, the airlines' financing requirements nevertheless gave rise to almost full reimbursements, by the Autonomous Region, to the operators that had advanced payments in respect of those services.

144 As regards whether the services offered were actually provided, the applicant has not truly demonstrated how it had provided the services at issue in practice, in particular the marketing services, which were specifically linked to the contracts concluded with the operators of Cagliari-Elmas and Olbia airports. Indeed, the advertising materials provided at the Court's request are not specific to the advertising campaigns at issue, but rather relate to campaigns from 2015 concerning airports in southern Italy. As to the invoices of the third-party service provider which it claims to have used in designing the bids to obtain contracts with those airport operators, the monthly amounts invoiced by that service provider are only a few thousand euros and, consequently, are modest compared to the financing obtained from the Autonomous Region and, in any event, do not prove that they related to services exclusively intended for the operators of Cagliari-Elmas and Olbia airports.

145 In those circumstances, the Commission was entitled, in Section 7.2.1.3 of the contested decision, entitled 'Economic advantage', to find that the payments received by co-contracting airlines, such as the applicant, could not be regarded as true consideration for the marketing services provided.

146 In addition, apart from the fact that the co-contracting airlines were not selected following a procedure such as to ensure that the Autonomous Region, through the airport operators, remunerated them at market price, it must be pointed out that, when requested by the Court to produce supporting documents in that regard, the applicant submitted advertising and contractual material confirming that, as the Commission itself held in recital 368 of the contested decision, the promotion of certain cities and regions served by the applicant is usually intrinsically linked, on its website, to the promotion of the flights it itself operates.

147 The Commission was therefore right to note, in the contested decision, that the marketing services in the context of activity 2 were purchased by the airport operators at issue — in this case with the funds made available to them by the Autonomous Region — to promote the operation of the air route or routes offered by the co-contracting airlines and for the opening or maintenance of which they were remunerated under activity 1.

148 In those circumstances, the Commission was entitled to conclude that the airlines were remunerated by the Autonomous Region in order to promote their own services as airlines (see, to that effect, judgments of 13 December 2018, *Ryanair and Airport Marketing Services* v *Commission*, T-53/16, not published, EU:T:2018:943, paragraph 271; of 13 December 2018, *Ryanair and Airport Marketing Services* v *Commission*, T-165/16, not published, EU:T:2018:952, paragraph 167; of 13 December 2018, *Ryanair and Airport Marketing Services* v *Commission*, T-165/15, not published, EU:T:2018:953, paragraph 229; and of 13 December 2018, *Ryanair and Airport Marketing Services* v *Commission*, T-111/15, not published, EU:T:2018:954, paragraph 232), as that involved marketing and advertising costs which the airlines at issue, including the applicant, had in principle to bear. Ultimately, achieving the air frequency and

passenger volume objectives, which were the subject of activity 1, had the effect, just like the provision of marketing services under activity 2, of increasing the applicant's economic activity.

149 In addition, it must also be stated that, as the Commission has argued, without the significant funding provided by the Autonomous Region, the airport operators would not necessarily, in their expansion strategies, have concluded agreements or of such a volume, or could not have done so financially. That is corroborated by the fact that, in the present case, the airport operators did not use the applicant's marketing services before the implementation of the aid scheme at issue and the fact that, following the suspension of that scheme, those operators did not, in the absence of funding from the Autonomous Region, decide to conclude new contracts covering similar services.

150 In those circumstances, the Commission could validly conclude, in recital 388 of the contested decision, that the financing provided by the Autonomous Region to airlines, such as the applicant, through the airport operators for the financing of activities 1 and 2 under the aid scheme at issue had conferred an economic advantage on the airlines concerned, in this case remuneration which they would not have obtained under normal market conditions.

151 It follows from the foregoing that the applicant's line of argument concerning the application of the market economy operator principle at the level of the Autonomous Region must be rejected as unfounded.

(3) Possibility of regarding the financing concerning Olbia airport as aid for marketing activities, investment or regional airports

152 The applicant queries why 'indirect [S]tate marketing support via [it]' becomes illegal aid while 'direct [S]tate marketing support for airport operators is no illegal aid under the most recent amendments' to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 [TFEU] (OJ 2014 L 187, p. 1). Moreover, the aid at issue could, in its view, have been regarded as investment aid, given that Olbia airport receives fewer than three million passengers per year.

153 The Commission, identifying the applicant's argument as referring to the possibility of exempting aid for marketing activities under Regulation No 651/2014, claims, first, that that possibility is limited to airports receiving fewer than 200 000 passengers per year, which is not the case with Cagliari-Elmas and Olbia airports, and, second, that it concerns aid granted to airport operators and not, as in this case, to airlines. Last, the amounts paid for the marketing activities could not be categorised as 'investment aid' since they were not intended to finance fixed assets and, in any event, the complaint is inadmissible, having been put forward for the first time by the applicant in the reply.

154 In that regard, in recital 408 of the contested decision, the Commission found that no block exemption regulation covered the aid scheme at issue, including, therefore, Regulation No 651/2014, relied on by the applicant.

155 Next, it is admittedly clear from Article 14(1) to (3) of Regulation No 651/2014 that regional investment aid measures are compatible with the internal market within the meaning of Article 107(3) TFEU and are exempted from the notification obligation laid down in Article 108(3) TFEU provided that, in particular, the conditions laid down in that article are met, including the requirement that aid be granted to assisted areas, namely, in accordance with Article 2(27) of that regulation to 'areas designated in an approved regional aid map for the period 1 [July] 2014 [to] 31 [December] 2020, in application of Article 107(3)(a) and (c) of the Treaty'. As regards Italy, however, the communication of the Commission entitled 'Guidelines on regional State aid for 2014-2020' (OJ 2013 C 209, p. 1) covered only Campania, Puglia, Basilicata, Calabria and Sicily. Since the region of Sardinia does not appear on the regional aid map for the period concerned, the applicant cannot rely on Article 14 of Regulation No 651/2014.

156 Similarly, the aid at issue cannot fall within the scope of Article 51 of Regulation No 651/2014 since that provision concerns only aid to airports located in remote regions, which is not necessarily the case with the

Sardinian airports, and it requires that aid to be entirely for the benefit of final consumers whose normal residence is in a remote region, which the aid scheme at issue clearly does not provide for.

157 Even assuming, like the Commission, that the applicant intended to rely on Article 56a of Regulation No 651/2014, it must be pointed out that that provision was inserted by Commission Regulation (EU) 2017/1084 of 14 June 2017 amending Regulation No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs (OJ 2017 L 156, p. 1), and that it therefore did not apply *ratione temporis* at the time of the adoption of the contested decision. In any event, as the Commission notes, the aid scheme at issue cannot be categorised as investment aid, since it did not pertain to the airport operators' fixed assets, but rather benefited the airlines.

158 Therefore, regardless of its lack of clarity, which would have justified rejecting it as inadmissible, it must be concluded that, even after attempting to render it comprehensible, the applicant's line of argument can only be rejected as manifestly unfounded since, contrary to the applicant's premiss, aid of the type at issue in the present case could not have been declared compatible with the internal market under Regulation No 651/2014 even if it had been regarded as attributed to the airport operators.

159 In the light of the foregoing, the first and second parts of the first plea must be rejected as unfounded.

3. Third part of the first plea: absence of selectivity of the aid measure

160 In the third part of the first plea, and assuming it can be regarded as a beneficiary of the aid measure at issue, the applicant disputes that that measure can be described as 'selective'. In its view, airlines operating flights to or from Alghero, Cagliari-Elmas and Olbia are in comparable situations and in competition with each other. They had the same access to funding from the Autonomous Region to promote air transport and each could negotiate airport service and marketing contracts with the airport operators. Moreover, non-beneficiary airlines chose not to participate and, therefore, were not discriminated against. As for the airlines that concluded contracts with the airport operators, they were selected by the airport operators according to the suitability of their offers and not in the light of requirements set by the Autonomous Region. Thus, in the applicant's view, the Commission has not established the selective nature of the aid.

161 The Commission contends that the third part of the first plea should be rejected as unfounded, maintaining that the line of argument of the type put forward by the applicant has been rejected on numerous occasions in the case-law (judgment of 13 September 2012, *Italy* v *Commission*, T-379/09, not published, EU:T:2012:422, paragraphs 47 and 48). In so far as the airlines operating from Cagliari-Elmas and Olbia airports which did not conclude agreements with the respective airport operators did not benefit from the aid scheme at issue, it is established that that scheme was selective. In that regard, the fact that the beneficiary airlines were selected following calls for expressions of interests published on the internet is irrelevant. The mere fact that a measure is open to any undertaking willing to benefit from it cannot suffice to prevent that measure from being selective, as Article 107 TFEU could otherwise be rendered totally ineffective. In any event, in the case at hand, the aid scheme at issue did not identify its beneficiaries on the basis of objective and non-discriminatory criteria. Benefiting from the measure was conditional upon negotiations with the airport operators such that it did not guarantee that interested airlines would receive the benefit, or the amount thereof, in the same way as it did not ensure a non-discriminatory selection of those companies.

162 As a preliminary point, it should be recalled that the specific nature of a State measure, namely its being selective, constitutes one of the characteristics of State aid for the purposes of Article 107(1) TFEU. To determine whether that condition is fulfilled, it must be established whether, under a particular statutory regime, a State measure is such as to favour certain undertakings or the production of certain goods as compared with other undertakings which are in a legal and factual situation that is comparable in the light of the objective pursued by the measure concerned, it being specified that, according to settled case-law, the concept of State aid does not refer to State measures which differentiate between undertakings and

which are therefore prima facie selective, where that differentiation arises from the nature or the overall structure of the system of charging of which they form part (see judgment of 30 November 2009, *France and France Télécom* v *Commission*, T-427/04 and T-17/05, EU:T:2009:474, paragraphs 228 and 229 and the case-law cited).

163 In the case at hand, the Commission, in recital 389 of the contested decision, justified the selectivity of the aid scheme at issue on the ground that it could not be seen as a scheme of general application and due to the fact that its design and implementation was for the exclusive benefit of certain undertakings or certain sectors of activity, namely airlines funded by the Autonomous Region through airport operators. Therefore, it found that airlines flying to and from Cagliari and Olbia airports, which had not concluded agreements with the airport operators, did not benefit from the same financial support from the Autonomous Region, or, at the very least, not under the conditions provided for by Law No 10/2010. According to the Commission, given that the benefit of the economic advantage concerned was limited to certain specific undertakings from a specific sector, namely the air transport sector, the aid scheme at issue was selective.

164 In that respect, it must be pointed out that not all the airlines operating flights to and from Sardinian airports, in particular Cagliari-Elmas and Olbia airports, decided to submit a service offer to the airport operators in implementation of the aid scheme at issue. In addition, even if the applicant has not confirmed that aspect, in invoking the commercial secrecy of the airlines concerned, it is not precluded that, on air routes operated as direct flights by the applicant to and from Cagliari-Elmas and Olbia airports originating from or going to European airports, other airlines were or are in a position to offer equivalent transport via other European airports, implying that they are in competition with the applicant. Similarly, the applicant is in competition with airlines operating routes covered by public service obligations departing from and arriving at Sardinian airports, which routes were excluded from the aid scheme at issue.

165 Those competing airlines of the applicant, however, not having concluded contracts with the airport operators or not having been able to conclude such contracts because they operated air routes excluded from the aid scheme at issue, did not receive the alleged advantage, even though, in view of the objective of the aid scheme at issue and the measures undertaken under activities 1 and 2, those non-beneficiary airlines equally contributed to operating air routes for tourists, in particular from continental Europe, wishing to visit Sardinia.

166 Consequently, given, moreover, that the selectivity of a measure is determined by taking all undertakings into account and not just the undertakings within the same group which enjoy the same advantage (judgment of 11 June 2009, *Italy* v *Commission*, T-222/04, EU:T:2009:194, paragraph 66), it must be held that the aid scheme at issue favoured certain undertakings over other undertakings in a legal and factual situation that was comparable in the light of the objective pursued by the measure concerned.

167 Furthermore, as for the fact that the beneficiary airlines were selected following calls for expressions of interest published on the internet, it is in any event irrelevant. Otherwise, it would be permissible for Member States to conduct such calls for the purpose of selecting aid beneficiaries in order to fall outside of the scope of Article 107 TFEU, which would undermine the effectiveness of that provision.

168 It is moreover for that reason that the mere fact that a measure can benefit all operators satisfying the prescribed conditions, that is to say, that it determines its scope on the basis of objective criteria, does not in itself establish that that measure is general in nature nor does it preclude it from being selective in nature (see judgment of 13 September 2012, *Italy* v *Commission*, T-379/09, not published, EU:T:2012:422, paragraph 47 and the case-law cited).

169 In addition, in implementing the aid scheme at issue, the airport operators, acting as managers of public funds made available to them by the Autonomous Region, individually negotiated the amounts of the financial incentives linked to the traffic targets as well as the price of marketing services in respect of they were reimbursed by that region. Similarly, they determined, under the supervision of the Autonomous Region, the volumes of services that had to be acquired, under those pricing conditions, from the airlines.

That discretion in the modulation of individualised amounts thus paid, under contract, to the operators on the funds provided by the Autonomous Region confirms all the more the selectivity of the aid scheme at issue (see, to that effect, judgments of 26 September 1996, *France* v *Commission*, C-241/94, EU:C:1996:353, paragraphs 23 and 24, and of 6 March 2002, *Diputación Foral de Álava and Others* v *Commission*, T-127/99, T-129/99 and T-148/99, EU:T:2002:59, paragraph 154).

170 It follows from the foregoing that the third part of the first plea must be rejected as unfounded.

4. Fourth part of the first plea: absence of distortion of competition and of effects on trade between Member States

171 In the fourth part of the first plea, the applicant argues that the payments made to it by the operators of Cagliari-Elmas and Olbia airports did not cause competition to be distorted or affect trade between Member States. In particular, they were covered by Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 [TFEU] to *de minimis* aid granted to undertakings providing [SGEI] (OJ 2012 L 114, p. 8) inter alia because they fell below the EUR 500 000 threshold set out at Article 2 of that regulation.

172 The Commission contends that the fourth part of the first plea should be rejected as unfounded.

173 In view of the title of the fourth part of the first plea, the applicant should be understood as taking the view that, given inter alia that the aid at issue concerning it was below that EUR 500 000 threshold prescribed by Regulation No 360/2012, which it will be appropriate to examine in the first place, that aid could not have had the effect of affecting trade between Member States or distorting or threatening to distort competition, which will be examined in the second place.

(a) Possibility of regarding the aid at issue as falling within the de minimis threshold prescribed by Regulation No 360/2012

174 As a preliminary point, it should be recalled that Article 1 of Protocol (No 26) on services of general interest, annexed to the EU and FEU Treaties (OJ 2010 C 83, p. 308), recognises that national, regional and local authorities have an essential role and a wide discretion in providing, commissioning and organising the SGEI as closely as possible to the needs of the users. In that respect, Article 106(2) TFEU provides in particular that undertakings entrusted with the operation of services of general economic interest are subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

175 Therefore, Article 106(2) TFEU permits derogations to be made from the general rules of the Treaty in certain circumstances and seeks to reconcile the Member States' interest in using certain undertakings, in particular in the public sector, as an instrument of economic or social policy, with the European Union's interest in ensuring compliance with the rules on competition and the preservation of the unity of the internal market. The Member States' interest being so defined, they cannot be precluded, when defining the SGEI which they entrust to certain undertakings, from taking account of objectives pertaining to their national policy or from endeavouring to attain them by means of obligations and constraints which they impose on such undertakings (see, to that effect, judgments of 23 October 1997, *Commission* v *France*, C-159/94, EU:C:1997:501, paragraphs 55 and 56, and of 21 September 1999, *Albany*, C-67/96, EU:C:1999:430, paragraphs 103 and 104).

176 In that regard, subject in particular to a regulation adopted in the area under Article 14 TFEU, the Member States have a wide discretion in defining, in general, what they consider to be SGEIs, namely services with specific characteristics in comparison to the general economic interest of other economic activities (see, to that effect, judgments of 10 December 1991, *Merci convenzionali porto di Genova*, C-179/90, EU:C:1991:464, paragraph 27, and of 18 June 1998, *Corsica Ferries France*, C-266/96, EU:C:1998:306, paragraph 45) and, in particular, as regards the tasks entrusted to those SGEIs (judgment of 7 November

2012, *CBI* v *Commission*, T-137/10, EU:T:2012:584, paragraph 191). Consequently, the definition of such services by a Member State can be questioned by the Commission only in the event of manifest error (judgments of 15 June 2005, *Olsen* v *Commission*, T-17/02, EU:T:2005:218, paragraph 216, and of 12 February 2008, *BUPA and Others* v *Commission*, T-289/03, EU:T:2008:29, paragraphs 166 and 169), in particular where the Member State had exercised that power arbitrarily for the sole purpose of removing a particular sector from the application of the competition rules (judgment of 12 February 2008, *BUPA and Others* v *Commission*, T-289/03, EU:T:2008:29, paragraph 168).

177 Nevertheless, regarding a derogation from the fundamental rules of the Treaty, it is incumbent upon a Member State which invokes Article 106(2) TFEU to show that the conditions for application of that provision are fulfilled (judgment of 23 October 1997, *Commission* v *France*, C-159/94, EU:C:1997:501, paragraph 94). The first of those conditions is that the recipient undertaking must actually have public service obligations to discharge, and that the obligations must be clearly defined (judgment of 24 July 2003, *Altmark Trans and Regierungspräsidium Magdeburg*, C-280/00, EU:C:2003:415, paragraph 89).

178 Regulation No 360/2012, relied on by the applicant, merely implements those contributions of the case-law. Article 2(1) of Regulation No 360/2012 recalls accordingly that 'aid granted to undertakings for the provision of [an SGEI] shall be deemed not to meet all the criteria of Article 107(1) of the Treaty and shall therefore be exempt from the notification requirement of Article 108(3) of the Treaty'.

179 In the contested decision, more particularly in recitals 379 and 411 thereof, the Commission found that the routes that are the subject of public service obligations in accordance with Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast) (OJ 2008 L 93, p. 3), which exist in Sardinia, were explicitly excluded from the scope of Law No 10/2010, which was clearly designed as a parallel system to the system of public service obligations under Regulation No 1008/2008. Furthermore, the Commission found that the SGEI obligations could be imposed only with regard to a specific route or group of routes, and could not be imposed with regard to any generic route originating from a given airport, city or region.

180 In that regard, it must be held that the applicant has failed to demonstrate that it was entrusted with SGEIs in relation to each of the air routes which were selected and financed in implementation of the aid scheme at issue.

181 Indeed, first, as the Commission found in the contested decision, Regional Decision No 29/36 itself excluded that routes of strategic interest established by the plans of activities submitted under the aid scheme at issue could overlap with routes already operated under a public service obligation. Second, the application of Article 106(2) TFEU is justified by the endangerment of the performance of the particular tasks entrusted to the undertaking responsible for an SGEI (see, to that effect, judgment of 23 October 1997, *Commission* v *France*, C-159/94, EU:C:1997:501, paragraph 95).

182 In the present case, in respect of the air routes operated by the applicant and financed under the aid scheme at issue, the applicant cannot reasonably argue that public service obligations were imposed on it or that particular tasks as provided for in Article 106(2) TFEU were entrusted to it, especially since it is not disputed that most of the air routes were, during the period covered by the aid scheme at issue, already being run, including by the applicant, under normal market conditions without intervention by the public authority. Accordingly, the fact that, under the aid scheme at issue, the Autonomous Region took the view that the operation of those air routes, categorised as being of strategic interest, constituted an SGEI, is not sufficient, in particular given the lack of a precise definition by that region of public service obligations imposed on the applicant.

183 In the absence of an SGEI being entrusted to the applicant and to other airlines which were beneficiaries of the aid scheme at issue, the Commission was correct not to address in the contested decision whether Regulation No 360/2012 applied in the present case. For the sake of completeness, it must be held that, under the contracts at issue concluded with the airport operators and as the applicant confirmed in response to a question from the Court, it was to receive an amount of EUR 580 000 and, in performance of them,

received an amount of EUR 670 298.75, thereby exceeding the EUR 500 000 threshold prescribed by that regulation.

(b) Distortion of competition and the effects on intra-Union trade of the aid scheme at issue

184 As a preliminary point, it should be recalled that, for the purposes of categorising a national measure as State aid, it is not necessary to establish that such aid has a real effect on trade between Member State and that competition is actually being distorted, but only to examine whether that aid is liable to affect such trade and distort competition (see, to that effect, judgments of 15 December 2005, *Italy* v *Commission*, C-66/02, EU:C:2005:768, paragraph 111, and of 9 June 2011, *Comitato 'Venezia vuole vivere' and Others* v *Commission*, C-71/09 P, C-73/09 P and C-76/09 P, EU:C:2011:368, paragraph 134).

185 In particular, if aid granted by a Member State strengthens the position of an undertaking as compared with that of other undertakings competing in intra-Union trade, the latter undertakings must be regarded as affected by that aid (see judgment of 9 October 2014, *Ministerio de Defensa and Navantia*, C-522/13, EU:C:2014:2262, paragraph 52 and the case-law cited).

186 Furthermore, in the case of an aid scheme, the Commission may confine itself to examining the characteristics of the scheme in question in order to assess, in the grounds for its decision, whether, by reason of the high amounts or percentages of aid, the nature of the investments for which aid is granted or other terms of the scheme, it gives an appreciable advantage to recipients in relation to their competitors and is likely to benefit in particular undertakings engaged in trade between Member States. Thus, in a decision which concerns such a scheme, the Commission is not required to carry out an analysis of the aid granted in individual cases under the scheme. It is only at the stage of recovery of the aid that it is necessary to look at the individual situation of each undertaking concerned (see, to that effect, judgments of 14 October 1987, *Germany* v *Commission*, 248/84, EU:C:1987:437, paragraph 18, and of 9 June 2011, *Comitato 'Venezia vuole vivere' and Others* v *Commission*, C-71/09 P, C-73/09 P and C-76/09 P, EU:C:2011:368, paragraph 63).

187 In the contested decision, in recitals 390 to 392 thereof, the Commission sufficiently explained that airlines, receiving the payments made by airport operators under the aid scheme at issue, were active in a sector characterised by intense competition between operators from different Member States, and therefore were participating in trade within the European Union.

188 Contrary to what the applicant maintains, such reasons are in themselves sufficient in terms of the Commission's obligation to state reasons (see, to that effect, judgments of 7 March 2002, *Italy* v *Commission*, C-310/99, EU:C:2002:143, paragraphs 88 and 89, and of 9 June 2011, *Comitato 'Venezia vuole vivere' and Others* v *Commission*, C-71/09 P, C-73/09 P and C-76/09 P, EU:C:2011:368, paragraphs 114 and 121).

189 Furthermore, the Commission did not misconstrue the concept of State aid, as referred to in Article 107(1) TFEU, in holding that the clear cross-border nature of the activities in question, namely passenger air transport services, implied that the aid scheme at issue was liable to distort competition and affect trade between Member States by strengthening the position on the market of the airlines that benefited from that scheme. Air carriers such as the applicant are in competition on the air market at European level, such that the grant of the aid to the airlines, such as the applicant, which concluded contracts with the operators of Cagliari-Elmas and Olbia airports, strengthens the competitive position of those beneficiary undertakings as compared with that of other competing airlines at European level, regardless of whether or not they operate direct air routes to the island of Sardinia.

190 In any event, first, as the applicant has acknowledged, it is in competition, on its air routes to and from Sardinian airports, with European airlines transporting passengers to and from the same continental airports via connecting flights at other airports. Those airlines, with regard to those connecting routes, competing with the applicant's direct routes, were not beneficiaries of the aid scheme at issue which covered only direct (point-to-point) routes, at least not as regards those flight segments operated beyond

the connecting airport, such that the competitive position of beneficiaries such as the applicant was necessarily strengthened compared with that of such non-beneficiary airlines.

191 As for the applicant's argument that certain airlines, in particular scheduled airlines, were not beneficiaries of the aid scheme at issue solely because they had not submitted offers of cooperation in the context of the calls for expressions of interest published by the airport operators, it cannot succeed, either. The effect on trade between Member States within the meaning of Article 107(1) TFEU cannot depend in the case at hand on whether all the airlines benefited or were able to benefit from the measure at issue. In any event, even assuming that all European airlines operating direct flights to and from Sardinian airports could have benefited from the aid scheme at issue — which has not been established in the present case — that circumstance, concerning the selectivity of the measures at issue, would have had no effect on the Commission's finding that trade between Member States was affected by that scheme inasmuch as it strengthens the competitive position of those airlines compared with their competitors on the European market that do not serve the island of Sardinia.

192 It follows from the foregoing considerations that the fourth part of the first plea must be rejected as unfounded and that, accordingly, the first plea must be rejected in its entirety.

B. Second plea: error as to the possibility of justifying the aid at issue

193 In support of the second plea, the applicant first of all claims that the services entrusted to it are covered by the Commission communication entitled 'European Union framework for State aid in the form of public service compensation (2011)' (OJ 2012 C 8, p. 15). Thus, the scheme at issue could be regarded as justified as an SGEI. In not assessing that matter in the contested decision, the Commission erred in law or, at the very least, that decision is vitiated by a defective statement of reasons.

194 Since that line of argument is analogous to that set out under the fourth part of the first plea, it must, on the same grounds relating to the absence of SGEIs entrusted to the applicant in a tangible manner and as the Commission has also concluded, be rejected as unfounded.

195 The applicant next claims that the aid scheme at issue is covered by Commission communication 2005/C 312/01 concerning Community guidelines for financing of airports and start-up aid to airlines departing from regional airports (OJ 2005 C 312, p. 1, 'the 2005 Guidelines') which apply *ratione temporis*, and not by the 2014 Guidelines. The scheme fulfils the various criteria set out in point 79 of the 2005 Guidelines. The financing provided by the Autonomous Region was degressive, decreasing from EUR 21 million in 2012 to EUR 17.5 million in 2013. Similarly, the plans of activities and the contracts concluded with the airlines provided that the financial contributions for each of the subsidised air routes were to decrease over time. Moreover, the funds allocated under the aid scheme at issue covered marketing and advertising costs relating to the opening of new air routes. Furthermore, the condition referred to in point 79(f) of the 2005 Guidelines was 'almost' fulfilled in the present case. As regards the advertising condition referred to in point 79(h) of those guidelines, it was also fulfilled owing to the publication of calls for expressions of interest on the airport operators' websites with a view to the conclusion of agreements with airlines. Finally, the applicant challenges the Commission's position that the exemption provided for in point 81 of the 2005 Guidelines cannot be applied if an exemption is not possible under point 79.

196 The Commission contends that that line of argument should be rejected as unfounded, maintaining that the aid scheme at issue could not, as regards the applicant, be declared compatible as start-up aid either under point 79 or under point 81 of the 2005 Guidelines.

197 In that regard, according to Article 107(3)(c) TFEU, aid to facilitate the development of certain economic activities or of certain economic areas may inter alia be regarded as compatible with the internal market, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, a condition which must be assessed in accordance with the criteria of necessity and proportionality (judgment of 26 February 2015, *Orange* v *Commission*, T-385/12, not published, EU:T:2015:117, paragraph 80).

198 However, it is settled case-law that the general principle laid down in Article 107(1) TFEU is that State aid is prohibited and that derogations from that principle, as referred to in paragraph 3 of that Article 107, must be construed narrowly (judgments of 29 April 2004, *Germany* v *Commission*, C-277/00, EU:C:2004:238, paragraph 20; of 23 February 2006, *Atzeni and Others*, C-346/03 and C-529/03, EU:C:2006:130, paragraph 79, and of 26 February 2015, *Orange* v *Commission*, T-385/12, not published, EU:T:2015:117, paragraph 81).

199 In addition, according to equally settled case-law, in the application of Article 107(3)(c) TFEU, the Commission has a wide discretion, the exercise of which involves economic and social assessments. Judicial review of the manner in which that discretion is exercised is confined to establishing that the rules of procedure and the rules relating to the duty to state reasons have been complied with and to verifying the accuracy of the facts relied on and that there has been no error of law, manifest error of assessment in regard to the facts or misuse of powers (judgments of 26 September 2002, *Spain* v *Commission*, C-351/98, EU:C:2002:530, paragraph 74; of 29 April 2004, *Italy* v *Commission*, C-372/97, EU:C:2004:234, paragraph 83; and of 15 December 2016, *Abertis Telecom Terrestre and Telecom Castilla-La Mancha* v *Commission*, T-37/15 and T-38/15, not published, EU:T:2016:743, paragraph 160).

200 As is apparent in particular from point 24 of the 2005 Guidelines, the purpose of those guidelines is to specify the cases in which public financing of airports and airlines constitutes State aid and, where it does constitute aid, the conditions under which it may be declared compatible with the internal market in accordance with Article 107(3)(c) TFEU.

201 In that regard, as the applicant notes and as the Commission found in recitals 412 to 414 of the contested decision, the aid scheme at issue, assuming it could be regarded as providing aid for launching new air routes, did fall within the scope of the 2005 Guidelines. In accordance with what point 174 of the 2014 Guidelines provides, aid notified prior to the entry into force of those latter guidelines could in principle be examined, after 4 April 2014, in the light of those guidelines. However, the aid, whether notified or not, implemented, as in the case at hand, before the Commission ruled on the measures notified by the Italian Republic and, consequently, proving unlawful in view of the standstill obligation referred to in Article 108(3) TFEU, must be examined in the light of the 2005 Guidelines.

202 With regard to point 79 of the 2005 Guidelines, relevant to the case at hand, it is worded as follows:

‘In view of the above objectives and the significant difficulties which can result from launching a new route, the Commission may approve such aid if it fulfils the following conditions:

…

(d) Long-term viability and degressiveness: the [new] route receiving the aid must ultimately prove profitable, i.e. it must at least cover its costs, without public funding. For this reason start-up aid must be degressive and of limited duration.

(e) Compensation for additional start-up costs: the amount of aid must be strictly linked to the additional start-up costs incurred in launching the new route or frequency and which the air operator will not have to bear once it is up and running. Examples of such costs are the marketing and advertising costs incurred at the outset for publicising the new link; they may include the installation costs incurred by the airline at the regional airport in question in order to launch the route, provided the airport falls within category C or D and aid has not already been received in respect of the same costs. Conversely, aid cannot be granted in relation to standard operating costs such as hire or depreciation of aircraft, fuel, crew salaries, airport charges or catering costs. The remaining eligible costs must correspond to real costs obtained in normal market conditions.

(f) Intensity and duration: degressive aid may be granted for a maximum period of three years. The amount of aid in any one year may not exceed 50% of total eligible costs for that year and total aid may not exceed an average of 30% of eligible costs.

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

In any event, the period during which start-up aid is granted to an airline must be substantially less than the period during which the airline undertakes to operate from the airport in question, as indicated in the business plan required in [point] 79(i). Furthermore, the aid should be stopped once the objectives in terms of passengers have been reached or when the line breaks even, even if this is achieved before the end of the period initially foreseen.

…

(h) Non-discriminatory allocation: any public body which plans to grant start-up aid to an airline for a new route, whether or not via an airport, must make its plans public in good time and with adequate publicity to enable all interested airlines to offer their services. The notification must in particular include the description of the route as well as the objective criteria in terms of the amount and the duration of the aid. The rules and principles relating to public procurement and concessions must be respected where applicable.

…'

203 In the contested decision, in recitals 410 to 421 thereof, the Commission found that the financial compensation provided by the airport operators to the airlines under the aid scheme at issue could not be considered compatible with the internal market, since the compatibility criteria mentioned in point 79 of the 2005 Guidelines were not fulfilled.

204 Under the second plea put forward, the applicant seeks to demonstrate that, in its individual case, the aid it received, comprising amounts that the operators of Cagliari-Elmas and Olbia airports paid it in performance of the contracts concluded with it, met the conditions laid down in point 79 of the 2005 Guidelines and that, failing that, it could still be declared compatible with the internal market under point 81 of those guidelines or, separate from those guidelines, as tourism development aid in the spirit of Article 107(3)(c) TFEU.

205 In that regard, it must be held, however, as the Commission contends, that the arguments put forward by the applicant are not such as to invalidate its finding, in the contested decision, that the aid scheme at issue did not satisfy the criteria set out in point 79 of the 2005 Guidelines, which are cumulative, meaning that non-compliance with one of them was sufficient to rule out the possibility of aid being categorised as 'start-up aid' compatible with the internal market under those guidelines.

206 First of all, it must be noted that, as is apparent from recital 410 of the contested decision, the Italian Republic itself maintained that the aid scheme at issue had not been conceived as a scheme to support start-up routes and that it did not fulfil the conditions set out in point 79 of the 2005 Guidelines.

207 Next, as regards the condition laid down in point 79(d) of the 2005 Guidelines, even assuming — which has not been demonstrated — that the commercial agreements between the airport operators and the airlines were concluded from the point of view of economic profitability, evaluated by means of an *ex ante* analysis of the viability and profitability of the operating plans submitted by the airlines and of the economic analyses drawn up by the airport operators, the aid scheme at issue did not put in place a system of aid degressive over time for each of the air routes subject to the contracts concluded between the airport operators and the airlines and which, in any event, are not all 'new' within the meaning of those guidelines. In particular, each airline received global amounts corresponding to periods of activity, but, in actual fact, the funding was not individualised per route concerned on departure from and arrival at each airport concerned. On that point, the claim that the aid allocated for 2012 and 2013 was degressive,

decreasing from EUR 21 million in 2012 to EUR 17.5 million, is misplaced, since degressiveness under the 2005 Guidelines is considered per air route concerned.

208 In its particular case, the applicant does not dispute that the aid it received for all the air routes it provides from Olbia airport was not degressive in respect of that airport, since, under the aid scheme at issue, it received or was to receive from the operator of that airport remuneration that actually increased over time, in this case an amount of EUR 280 000 for the period from May 2012 to March 2013 and an amount of EUR 300 000 for the period from June to December 2013. As regards Cagliari-Elmas airport, it was prescribed that it would receive an amount of EUR 74 450 for the period from December 2012 to January 2013. However, it is not apparent from the aid scheme at issue or from the documents produced by the applicant that the air routes that in general were the subject of those amounts were profitable without the funding in question, or that the aid could be individualised for each of those routes so as to find, for each of them, that the aid corresponding to the route in question was degressive.

209 As regards the mechanism, put in place by the Autonomous Region, for monitoring the payments made under the aid scheme at issue, it does not appear that it guaranteed, in the light of the criterion laid down in point 79(e) of the 2005 Guidelines, that the public funding provided was necessary to cover part of the start-up costs of the air routes concerned, that it represented only the actual costs incurred by the airport operators and that it involved only those costs. That is even less the case given that the aid provided to each airline was not broken down for each of the air routes operated to and from each of the Sardinian airports concerned.

210 In that regard, it is irrelevant that the airline operators allegedly had to bear — and to an unknown extent — additional costs out of their own funds or that the applicant would not have opened or maintained the air routes concerned without the financial support received from the operators of Cagliari-Elmas and Olbia airports. Furthermore, the aid scheme at issue and the agreements concluded between the airport operators and the airlines do not specify, for the air routes concerned, what the additional start-up costs for each of them were.

211 Similarly, regarding the condition laid down in point 79(f) of the 2005 Guidelines, it is clearly not satisfied since it is evident that the aid scheme at issue and the agreements concluded between the airport operators and the airlines do not identify eligible costs. In the absence of any mention of eligible costs, it is impossible to assess observance of the condition of maximum funding of 50% of the amount of eligible costs per year, with an average maximum of 30% of funding. On the contrary, it is apparent from the file that the Autonomous Region reimbursed, on request, payments made by the airport operators to the airlines and that those were fixed at flat-rate amounts, often rounded, without further clarity and, in any event, not broken down according to each of the air routes concerned.

212 So far as concerns the applicant’s claim that, Sardinia being a disadvantaged economic region of the European Union within the meaning of the second subparagraph of point 79(f) of the 2005 Guidelines, it must be held, as the Commission notes, that that region does not fulfil the conditions laid down in the Guidelines on national regional aid for 2007-2013 (OJ 2006 C 54, p. 13).

213 With regard to the condition laid down in point 79(h) of the 2005 Guidelines and concerning the non-discriminatory allocation of start-up aid, it is necessary, for the reasons already set out above in support of rejecting the second part of the first plea, to reject the applicant’s argument that the airport operators organised a procedure guaranteeing competition between airlines, ensuring transparency, sufficient advertising, the absence of discrimination and the selection of the most economically advantageous tenders.

214 Thus, it is clear that the aid scheme at issue, including as regards the aid individually received by the applicant, did not fulfil the criteria set out in point 79 of the 2005 Guidelines.

215 In those circumstances, having regard to the Commission’s discretion in the matter as well as the need to interpret strictly the exceptions to the principle that State aid is prohibited, the Commission was entitled,

despite the request made to that effect by the Italian Republic during the administrative procedure, to decide that there was no longer any need to derogate from the criteria set out in the 2005 Guidelines under point 81 of those guidelines, according to which the Commission may 'carry out a case-by-case assessment of aid or a scheme which fails to fully comply with these criteria [of point 79], but the end result of which would be comparable'. In any event, since the aid scheme at issue does not comply with the majority of the criteria set out in point 79 of the 2005 Guidelines, it cannot be regarded as resulting in a situation comparable to aid which complies with those requirements.

216 As to the applicant's claim, which was set out for the first time in the reply and consequently is in any case inadmissible, to have the aid scheme at issue authorised under Article 107(3)(c) TFEU independently of the 2005 Guidelines in so far as it seeks to promote tourism in Sardinia and the commercial activities of those airport operators, first, the Italian Republic did not request the benefit of that derogation during the administrative procedure, and such derogation is to be applied narrowly. Second, the aid scheme at issue, by virtue of the level of the funding it provided, was unlikely not to affect trading conditions to an extent contrary to the common interest.

217 It follows from all the foregoing considerations that the second plea must be rejected as unfounded.

C. Third plea: error of law in the order for recovery of the aid at issue

218 Under the third plea, the applicant complains that the Commission failed to take into account its legitimate interests when it ordered the Italian Republic, in the contested decision, to recover the aid at issue from the applicant. In the light of the small number of cases of aid found to have been granted indirectly and of the Commission's own uncertainties as to how to handle the present case, the applicant claims that it could rely on a legitimate expectation that the mechanism put in place by Law No 10/2010 would not be categorised as 'State aid' paid to the airlines. It stresses in that regard that it could not know that the contracts linking it to the airport operators involved aid within the meaning of Article 107 TFEU.

219 The Commission contends that the third plea should be rejected as unfounded. In particular, the fact that the assessment of the concept of indirect aid is, according to the applicant, unclear in State aid law in no way constitutes a factor capable of preventing the Commission from ordering the recovery of aid, all the more so because, in the case at hand, the aid was clearly unlawful on the ground that the Italian Republic had not previously notified the aid scheme at issue and that the applicant was considered, in the contested decision, to be a direct beneficiary of the aid scheme at issue. In any event, the existence of doubts as to the existence of aid does not give rise to a legitimate expectation on the part of its beneficiary.

220 In that regard, according to settled case-law, the right to rely on the principle of the protection of legitimate expectations extends to any person in a situation where an EU institution has caused him or her to have justified expectations. Moreover, a breach of this principle cannot be invoked in the absence of specific assurances provided to the party by the administration (see judgment of 24 November 2005, *Germany* v *Commission*, C-506/03, not published, EU:C:2005:715, paragraph 58 and the case-law cited). Similarly, if a prudent and alert economic operator could have foreseen the adoption of an EU measure likely to affect his interests, he cannot plead that principle if the measure is adopted (see judgments of 11 March 1987, *Van den Bergh en Jurgens and Van Dijk Food Products (Lopik)* v *Commission*, 265/85, EU:C:1987:121, paragraph 44 and the case-law cited, and of 22 June 2006, *Belgium and Forum 187* v *Commission*, C-182/03 and C-217/03, EU:C:2006:416, paragraph 147 and the case-law cited).

221 In view of the fundamental role played by the notification obligation to render effective the review of State aid by the Commission, which is mandatory, the recipients of aid may not, in principle, entertain a legitimate expectation that the aid is lawful unless it has been granted in compliance with the procedure provided for in Article 108 TFEU and a diligent business operator must normally be in a position to confirm that that procedure has been followed. In particular, as the Commission has noted, where aid is implemented without prior notification to the Commission or, as is the case here, without awaiting the Commission decision closing the procedure, so that it is unlawful under Article 108(3) TFEU, the recipient of the aid cannot have, in principle, a legitimate expectation that its grant is lawful (see, to that effect,

judgment of 27 September 2012, *Producteurs de légumes de France* v *Commission*, T-328/09, not published, EU:T:2012:498, paragraphs 20 and 21 and the case-law cited).

222 In the case at hand, as the Commission maintains, at no point did it give assurances to the applicant as to the compatibility of the aid scheme at issue with the internal market, especially since the Italian Republic implemented that scheme without waiting for the Commission to give a decision on it under Article 108 TFEU, thereby indicating the unlawfulness of that scheme.

223 Regarding the applicant's alleged legitimate expectation as to the strictly commercial nature of its contractual relations with the operators of Cagliari-Elmas and Olbia airports, which the applicant argues was not such as to raise suspicions as to the State origin of the conduct and funds used by those operators, it must be held, first, that the State origin of the funds obtained by the airport operators does not appear to have been concealed in the calls for expressions of interest published by them on their websites and, second and in any event, that the contract between the applicant and the operator of Cagliari-Elmas airport explained, in particularly explicit terms, that the Autonomous Region was financing the performance of that contract, just as the contract of 31 March 2013 concluded with the operator of Olbia airport made reference to it.

224 In addition, Law No 10/2010 having been published in the *Bollettino ufficiale della Regione autonoma della Sardegna*, the applicant, as a prudent operator active on the Italian air transport market, could not disregard its existence (see, by analogy, judgment of 20 November 2008, *Heuschen & Schrouff Oriëntal Foods Trading* v *Commission*, C-38/07 P, EU:C:2008:641, paragraph 61) or, consequently, the financing mechanisms it provided for and the risk, first, that they might be regarded as an aid scheme within the meaning of Article 1(d) of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 TFEU (OJ 2015 L 249, p. 9) and, second, that airlines would be regarded as the actual beneficiaries of that scheme.

225 In that regard, the applicant's line of argument based on the difficulty of grasping the concept of indirect or final beneficiaries of State aid cannot succeed. First, two of the three contracts it concluded with the airport operators expressly mentioned that the Autonomous Region was financing the services commissioned by those operators. Second, like any diligent operator, the applicant should have known that the indirect nature of the aid has no bearing on its recovery (judgment of 15 June 2010, *Mediaset* v *Commission*, T-177/07, EU:T:2010:233, paragraph 177) and therefore in no way constitutes an exceptional circumstance allowing it to escape the direct effect of the prohibition in Article 107(1) TFEU. Moreover, point 79(h) of the 2005 Guidelines, relied on by the applicant, explicitly raises the possibility of a public entity granting aid to an airline 'via an airport', thereby confirming that the existence of a contractual relationship does not rule out per se the possibility of categorising the aid scheme at issue in favour of airlines as State aid incompatible with the internal market.

226 In the light of the foregoing, the third plea must be rejected as unfounded.

D. Fourth plea: mismanagement of the investigation

227 By the fourth plea, the applicant criticises the Commission for a lack of care and impartiality in the conduct of the investigation that led to the adoption of the contested decision. That is demonstrated in particular by the Commission's refusal to examine in detail the application of the private investor test.

228 The Commission contends that the plea should be rejected as inadmissible, noting that, contrary to Article 76(d) of the Rules of Procedure, it is hardly supported in one single paragraph of the application. In any event, even assuming that the Commission misapplied the private investor principle, that does not prove that the administrative investigation was conducted improperly.

229 In that regard, it must be recalled that, under the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union, applicable to proceedings before the General Court by virtue of the first paragraph of Article 53 of that statute, and Article 76(d) of the Rules of Procedure of the General Court, an

application must, inter alia, contain the subject matter of the dispute and a summary of the pleas in law relied on. It is apparent from the case-law that that summary must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to exercise its power of review. It is therefore necessary for the basic legal and factual particulars on which a case is based to be indicated coherently and intelligibly in the application itself. The application must accordingly specify the nature of the grounds on which the action is based, so that a mere abstract statement of the grounds does not satisfy the requirements of the Rules of Procedure (see judgments of 14 February 2012, *Italy* v *Commission*, T-267/06, not published, EU:T:2012:69, paragraph 35 and the case-law cited, and of 13 June 2019, *Strabag Belgium* v *Parliament*, T-299/18, not published, EU:T:2019:411, paragraph 127 and the case-law cited).

230 In the present case, it must be held that the applicant has in no way substantiated the fourth plea on which it relies and which is the subject of only a single paragraph in the application.

231 Accordingly, the plea must be rejected as inadmissible, it being stressed, for the sake of completeness, that, contrary to what the applicant maintains, the Commission carried out a sufficiently detailed assessment of whether the market economy operator principle ought to be applied to the aid scheme at issue.

E. Fifth plea: failure to state reasons and contradictory reasoning

232 By the fifth plea, the applicant claims that the contested decision is vitiated by a failure to state reasons in several respects and by contradictory reasoning.

233 The Commission contends that the plea should be rejected as unfounded, highlighting that, in the contested decision, it complied with the requirements of the case-law relating to the obligation to state reasons. In fact, many of the applicant's complaints in respect of breach of the obligation to state reasons relate more to the substance of the decision as regards various aspects relied on under the preceding pleas.

234 According to settled case-law, the statement of reasons for an act must be appropriate to it and must disclose in clear and unequivocal fashion the reasoning followed by the institution which adopted the act in question in such a way as to enable, first, the persons concerned to understand its basis and, if appropriate, to challenge its validity before the Court and, second, the Court to ascertain whether it is well founded, without it, however, being necessary for the institution to go into all the relevant facts and points of law, since the question whether the statement of reasons satisfies Article 296 TFEU is assessed taking into account both the wording of that act and its legal and factual context (see, to that effect, judgments of 15 July 2004, *Spain* v *Commission*, C-501/00, EU:C:2004:438, paragraph 73, and of 14 December 2005, *Regione autonoma della Sardegna* v *Commission*, T-200/04, not published, EU:T:2005:460, paragraph 63 and the case-law cited).

235 Moreover, in a plea based on a failure to state reasons or a lack of adequate reasons, objections and arguments which aim to challenge the merits of the contested decision are misplaced and irrelevant (see judgment of 15 June 2005, *Corsica Ferries France* v *Commission*, T-349/03, EU:T:2005:221, paragraph 59 and the case-law cited).

236 In the present case, contrary to what the applicant claims, the Commission addressed in detail the question of whether there was an economic advantage, in recitals 362 to 388 of the contested decision.

237 As regards whether the measure was selective, it is true that only one recital of the contested decision, namely recital 389, was given over by the Commission to the question of whether that condition, referred to in Article 107(1) TFEU, was fulfilled. However, contrary to what the applicant maintains, such reasons are in themselves sufficient in terms of the Commission's obligation to state reasons (see, to that effect, judgments of 7 March 2002, *Italy* v *Commission*, C-310/99, EU:C:2002:143, paragraphs 88 and 89, and of 9 June 2011, *Comitato 'Venezia vuole vivere' and Others* v *Commission*, C-71/09 P, C-73/09 P and

C-76/09 P, EU:C:2011:368, paragraphs 114 and 121), in particular because the applicant was entirely capable of ascertaining the Commission's reasoning and challenging it under the third part of the first plea.

238 That is also the case for the examination of the existence of distortion of competition, which is the subject of recitals 390 to 392 of the contested decision.

239 As to the applicability of the *de minimis* threshold laid down for SGEIs, inter alia by Regulation No 360/2012, the Commission was not required to address that question, since, in recitals 379 and 411, it had stated, while providing, contrary to what the applicant claims, the necessary reasoning on that point, that the applicant had not been entrusted with an SGEI under the first condition for the application of Article 106 TFEU and the case-law resulting from the judgment of 24 July 2003, *Altmark Trans and Regierungspräsidium Magdeburg* (C-280/00, EU:C:2003:415).

240 As regards the claim that the applicant's legitimate expectations concerning the recovery of the allegedly unlawful aid were not taken into account, it must be pointed out that the Commission was not required to address that question, since, first, the applicant had not submitted comments during the administrative procedure and therefore had not raised that question and that, second, the Commission was assessing an unlawful aid scheme, implemented before it had ruled on its compatibility with the internal market. In accordance with the case-law recalled above in rejecting the third plea, owing to the unlawfulness of the aid scheme at issue, the beneficiaries could not in any event rely on a legitimate expectation.

241 As regards whether the market economy investor test applies, contrary to what the applicant claims, that question has been examined. Indeed, in recitals 380 to 387 of the contested decision, the Commission clearly explained the grounds upon which it held that the market economy operator principle, including the private investor test, did not apply and accordingly took the view that the applicant had received an economic advantage. In those recitals, it inter alia explained the reasons why, in its view, no tender procedure had been followed with a view to the grant, by the airport operators, of the service contracts to the airlines. As the Commission highlights, it could be inferred from that finding that the prices paid by the airport operators to the airlines for the marketing services were not market prices. Similarly, and contrary to what the applicant claims, the Commission did explain, in particular in recital 382 of the contested decision, why it took the view that, in adopting the aid scheme at issue, the Autonomous Region could not have expected a return comparable to that expected by a private investor.

242 As regards the question of whether the services provided met the Autonomous Region's genuine needs, the Commission explained, in recitals 386 and 387 of the contested decision, the reasons why the aid scheme at issue did not fulfil genuine needs of the Autonomous Region, even if, in so doing, it reached an incorrect conclusion, noted by the Court in its examination of the second part of the first plea. Similarly, the Commission explained, inter alia in Section 7.2.1.3 of the contested decision, why it took the view that the payments made to the airlines could not be regarded as true consideration for the marketing services, since, according to the Commission, those market services sought above all to promote the airlines' air routes.

243 As regards the scope of the penalty clauses inserted into the contracts concluded with the airport operators, the Commission took the view, in recital 359 of the contested decision, that the monitoring mechanism put in place, as described in Section 2.7.3 of that decision and which included, in recital 80 thereof, the imposition of penalties on the airlines by the airport operators, ensured compliance with the obligations imposed by the Autonomous Region on the airport operators. Since the Commission took the view that that mechanism, including the penalty clauses inserted by the airport operators in order to comply with Regional Decision No 29/36, contributed to imputing the contractual behaviour of the airport operators to the Autonomous Region, it did not have to assess that question again when it examined whether the market economy operator principle applied, particularly at the level of the operators of Cagliari-Elmas and Olbia airports, since those airport operators were not owned by the Autonomous Region.

244 As regards whether the aid scheme at issue could be declared compatible with the internal market under Article 107(3)(c) TFEU, the Commission did not have to examine that on its own initiative as the Italian Republic had not intended to justify the aid scheme at issue on the basis of the derogation laid down in that provision.

245 As to whether the aid scheme at issue constituted an aid scheme within the meaning of Article 1(d) of Regulation 2015/1589, the Commission could take the view, in recital 349 of the contested decision, that that was the case from the point when no individual undertaking which it regarded as a beneficiary — an airline in this case — was designated in the legal framework, described in Section 2 of the contested decision, which it considered to constitute the aid scheme at issue. That reasoning was sufficient to enable the applicant to understand that the description of the scheme, set out in that section, fulfilled, according to the Commission, the conditions prescribed in the first situation covered by the definition of an aid scheme set out in Article 1(d) of Regulation 2015/1589.

246 The applicant further complains that the Commission did not explain why the *ex ante* analysis of incremental profitability, as referred to in points 61 to 66 of the 2014 Guidelines, was not applicable in this case. However, that complaint must be rejected. In recitals 381 to 384 of the contested decision, the Commission justified the absence of relevance of the *ex ante* analysis, as referred to in those points 61 to 66, by the fact that, first, the Italian Republic had not provided *ex ante* analyses of incremental profitability, and, second, the Autonomous Region owned only one of the three airports concerned, namely Alghero airport. Furthermore, given that it had found that the operators of Cagliari-Elmas and Olbia airports had merely implemented the aid scheme at issue, the absence of relevance of that type of analysis applied also so far as concerned the application of the market economy operator principle at the level of those operators.

247 As to the assertion that the Commission failed to prove that the funds received by the airlines from the airport operators were those originating from the Autonomous Region, or in what respect the airport operators were merely intermediaries in the transfer of funds from the Autonomous Region to the airlines as beneficiaries, it must be held that, in recitals 357 to 360 of the contested decision, the Commission clearly explained the reasons why it took the view that the airport operators had acted as intermediaries through which the funds from the Autonomous Region had been transferred to the airlines. Moreover, as has already been found in the examination of the first plea, it is clear that the funds used by the airport operators to remunerate the airlines were those made available to those operators by the Autonomous Region.

248 As regards the complaint that the Commission failed to take into account — or took into account insufficiently — the arguments put forward by Ryanair and easyJet during the administrative procedure, inter alia those set out in recitals 116, 118, 131, 136, 145, 152, 166, 172, 177 and 199 of the contested decision, besides those concerning, in essence, the particular situations of those airlines, which, consequently, are best placed to assess whether the reasoning provided in response by the Commission was sufficient, it must be held that the applicant's complaint is factually inaccurate, since the Commission addressed those arguments in the contested decision. In addition, given that it ruled on the existence of an aid scheme, the Commission was not required, contrary to what the applicant claims, to conduct a detailed examination of the content of all the contracts concluded by the airport operators with all the airlines.

249 According to the applicant, the contested decision is vitiated by contradictory reasoning, in particular as regards the applicability of the 2005 and 2014 Guidelines and as regards the objectives of the marketing services offered by the airlines to the airport operators.

250 In that regard, the Commission explained, in recital 414 of the contested decision, why the aid scheme at issue, in so far as it constituted aid to the airlines, was covered by the 2005 Guidelines and not by the 2014 Guidelines. It thus examined the lawfulness of that aid, in recitals 407 to 420 of that decision, in the light of the 2005 Guidelines. It is true that in recitals 379 to 387 of the contested decision, relating to the existence of an advantage, the Commission referred to certain methodological factors concerning the application of the market economy operator principle, which had already been set out by that institution in

the 2014 Guidelines. However, in so doing, the Commission was merely applying concepts that could have been applied in any event, even in the absence of those guidelines. In those circumstances, the reference to the 2014 Guidelines, in the examination of whether the market economy operator principle applied, was not inconsistent with the need to examine the aid to the airlines in the light of the 2005 Guidelines (see, to that effect, judgment of 13 December 2018, *Transavia Airlines* v *Commission*, T-591/15, EU:T:2018:946, paragraphs 157 to 163).

251 As regards the objectives of the marketing services offered by the airlines to the airport operators, the applicant alleges an inconsistency in that respect. However, the wording of that complaint does not enable the Court to understand that complaint, such that it must be rejected as inadmissible.

252 It follows from the foregoing that the contested decision does not suffer from a failure to state reasons or from contradictory reasoning and that, as to the remainder, the complaints and arguments seeking to challenge the substance of the contested decision are inoperative and irrelevant to the present plea.

253 As to the applicant's claim that the Commission is under an enhanced obligation to state reasons where it orders aid to be recovered, it must be rejected. Indeed, it is sufficient to recall in that regard that, in accordance with the case-law, the removal of unlawful State aid by means of recovery is the logical consequence of a finding that it is unlawful. By repaying the aid, which cannot be regarded as a sanction, the recipient forfeits the advantage which it had enjoyed over its competitors on the market, enabling a return to the situation prior to payment of the aid (judgment of 17 June 1999, *Belgium* v *Commission*, C-75/97, EU:C:1999:311, paragraphs 64 and 65). It follows that, after having found, in recital 421 of the contested decision, that the State aid granted to the airlines by the Autonomous Region constituted unlawful State aid which was incompatible with the internal market, the reasoning set out in recitals 422 to 426 of the contested decision was sufficient to order the recovery of the aid, including in the case of the applicant.

254 In the light of the foregoing, the fifth plea must be rejected and, consequently, the action must be dismissed in its entirety.

IV. Costs

255 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. Since the applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (First Chamber, Extended Composition)

hereby:

1. Dismisses the action;

2. Orders Volotea, SA to pay the costs.

Papasavvas Svenningsen Valančius

Csehi Nihoul

Delivered in open court in Luxembourg on 13 May 2020.

E. Coulon S. Papasavvas

Registrar President

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* Language of the case: English.