II

(Non-legislative acts)

DECISIONS

COMMISSION DECISION (EU) 2021/1428

of 24 February 2020

ON THE STATE AID SA.31662 – C/2011 (ex NN/2011) implemented by Romania for Timişoara International Airport – Wizz Air

(notified under document C(2021) 1065)

(Only the Romanian version is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provision(s) cited above ([1]) and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letter dated 30 September 2010, Carpatair ([2]), a company active on the European air transport market (the "Complainant" or "Carpatair"), submitted a complaint (the "Complaint") alleging unlawful State aid provided by the Romanian authorities at Timişoara International Airport ("Timişoara International Airport" or the "Airport") in favour of the Wizz Air Hungarian Airlines Ltd ("Wizz Air"). ([3]) The Complaint was registered under the State aid case number SA.31662 (ex CP 237/2010).

(2) The Commission observed that the Complaint appeared to be connected with the notification of Romanian authorities dated 17 May 2010 (the "Notification") concerning plans to provide public support in favour of regional airports. The Notification was registered under case number N 185/2010. On 15 September 2010, the Romanian authorities informed the Commission that Timişoara International Airport would not fall within the eligible airports under the notified scheme. Nevertheless, as the Commission obtained information about certain public financing of Timişoara International Airport over the period 2007 – 2009, the public financing for this period is being analysed in the present case.

(3) By letter dated 21 October 2010, the Commission forwarded the Complaint to Romania and requested information. The Romanian authorities responded by letter dated 15 December 2010.

([1]) Commission decision SA.31662 (11/C) (ex CP 237/10) – Timişoara International Airport – Wizz Air, OJ C 270, 13.9.2011, p. 11.

([2]) Carpatair is a privately owned regional airline established in 1999. In 2000 Carpatair set up its hub at Timişoara International Airport, providing hub and spoke services.

([3]) Wizz Air is a Hungarian low cost airline. Wizz Air group consists of three operating companies, namely Wizz Air Hungary, Wizz Air Bulgaria and Wizz Air Ukraine.

(4) The Complainant provided additional information by letters dated 24 November 2010, 25 November 2010, 14 January 2011 and 3 February 2011. By letters dated 9 February 2011 and 2 March 2011, the Commission informed the Complainant about the state of the case and requested additional information. The Complainant responded by letters dated 22 February 2011, 9 March 2011 and 28 March 2011, and provided additional information.

(5) The Commission requested additional information from the Romanian authorities by letters dated 16 February 2011, 3 March 2011 and 16 March 2011. The Romanian authorities responded by letters dated 10 March 2011 and 5 April 2011. On 16 March 2011, the Commission informed the Romanian authorities that further information was still required and requested it to be sent by 15 April 2011. The Romanian authorities responded by letter dated 21 April 2011.

(6) By letter dated 12 May 2011, the Complainant agreed to disclose its identity and its financial situation and provided additional information in that regard.

(7) By letter dated 24 May 2011, the Commission notified Romania of its decision to initiate a formal investigation procedure in relation to the financing connected with Timișoara International Airport, the 2008 agreement between the operator of that airport and Wizz Air, the non-payment of airport charges by Wizz Air as well as the discounts and rebates under the 2007, 2008 and 2010 schedule of airport charges (the "Opening Decision").

(8) By letter dated 16 June 2011, the Romanian authorities indicated which information they wished to have removed from the Opening Decision prior to its publication.

(9) On 23 June 2011, the Commission sent a proposal for a non-confidential version of the Opening Decision to Romania. The Commission indicated to Romania which information it did not accept as being confidential.

(10) By letter dated 27 June 2011, Romania replied to the Commission maintaining its request for deletion of certain information.

(11) Based on the correspondence with Romania, the Commission took a final decision on the text it intended to publish, in accordance with point 33 of the Commission Communication on professional secrecy in State aid decisions. ([4]) By letter dated 25 July 2011, the Commission informed Romania of its decision to reject Romania's request for a deletion of certain information. Romania was given 15 days to react to that decision and provide additional elements to justify its request.

(12) By letter dated 11 August 2011, Romania informed the Commission that it maintains its view regarding the deletion of certain information but did not object anymore to the publication of the Opening Decision.

(13) The Opening Decision was published in the *Official Journal of the European Union* ([5]) on 13 September 2011. The Commission invited interested parties to submit their comments on the measure in question within one month of the publication date.

(14) The Commission received comments on the Opening Decision from Romania by letters dated 27 June 2011 and 14 October 2011. Romania submitted further information on 27 July 2011 and 12 June 2012.

(15) The Commission received comments on the Opening Decision from Societatea Nationala Aeroportul International Timișoara – Traian Vuia – S. A. ("The Airport Manager") on 27 October 2011, from Carpatair on 8 August 2011, and from Wizz Air on 24 June 2011 and 27 October 2011. The Commission also received observations on the Opening Decision from the Romanian Airport Association, the former director of the Airport Manager, Eurojet, Austrian Airlines and European Regions Airline Association.

(16) The Commission transmitted the third party comments on the Opening Decision to Romania on 4 September 2012 and 20 September 2012. It received Romania's response to those comments by letters dated 5 October 2012 and 17 October 2012.

([4]) Commission communication on professional secrecy in State aid decisions, OJ C 297, 9.12.2003, p. 6.
([5]) See footnote 1.

(17) The Commission requested additional information from the Romanian authorities by letters dated 12 October 2011, 24 February 2012, 27 July 2012, 9 August 2012, 3 November 2012, 30 October 2014 and 28 July 2015. The Romanian authorities responded by letters dated 16 November 2011, 13 April 2012, 3 May 2012, 3 September 2012, 5 October 2012, 12 December 2012, 2 December 2014, 9 December 2014 and 21 September 2015 respectively.

(18) By letter dated 27 July 2012, the Commission requested additional information from the Complainant. The latter responded with additional information on 3 September 2012. The Complainant also provided information on 7 June 2011, 30 June 2011, 8 August 2011, 14 October 2011, 19 March 2012, 14 May 2012, 13 July 2012, 19 October 2012, 3 December 2012, 1 July 2013, 6 June 2014, 10 July 2014, 10 October 2014, 15 and 16 October 2014, 10 November 2014, 12 November 2014, 14 November 2014, 25 February 2015, 25 May 2015, 28 May 2015, 29 September 2015, 10 December 2015, 22 December 2015, 13 April 2016, 28 April 2016, 27 February 2018 and 20 April 2018.

(19) Wizz Air submitted additional information on 11 February 2015 and 3 July 2015, which included a report prepared by Oxera for Wizz Air, applying the market economy operator (the "MEO") principle (the "MEOP") to the various agreements between Wizz Air and the Airport Manager. Oxera submitted updates of the reports and further notes on 14 May 2015, 10 August 2015, 21 September 2015, 20 October 2015, 15 September 2017 and 22 September 2017. On 10 November 2017, the Commission requested a non-confidential version of Oxera's replies of 15 and 22 September 2017. Oxera informed the Commission on 15 November 2017 that Wizz Air did not request a redaction of any information and after further clarification with Oxera on 23 November 2017, the Commission forwarded Oxera's replies of 15 and 22 September 2017 to Romania on 1 December 2017. The Romanian authorities submitted their comments in relation to the Oxera's study on 1 February 2018.

(20) On 14 March 2014, the Commission informed Romania and the interested parties about the adoption of the Communication "EU Guidelines on State Aid to Airports and Airlines" ([6]) ("2014 Aviation Guidelines") and asked to provide comments within 20 working days of the date of the publication of the 2014 Aviation Guidelines. On 4 April 2014, the 2014 Aviation Guidelines were published in the *Official Journal of the European Union*. The Commission received comments from Carpatair on 25 March 2014, from Wizz Air on 30 April 2014 and from the Airport Manager Operator on 8 May 2014.

(21) The Commission transmitted the comments of third parties on the 2014 Aviation Guidelines to Romania on 28 May 2014. The Commission received Romania's observations on the interested parties' comments by letter dated 3 July 2014.

(22) The Airport Manager submitted additional information on 11 November 2011, 24 November 2016 and 16 December 2016. The Commission also received additional submissions by the Airport Manager on 18 January 2016, 31 January 2016 and 7 March 2016. On 11 March 2016, the Commission transmitted these submissions to Romania which did not have any comments.

(23) By letter dated 17 July 2015, the Commission transmitted further comments from the Complainant and from Wizz Air to Romania, which commented on these observations on 21 September 2015.

(24) By letter dated 11 March 2016, the Commission transmitted further submissions by Oxera to Romania, which commented on these submissions on 15 April 2016.

(25) The Commission requested additional information from the Romanian authorities on 30 October 2017. The translated version of the request in Romanian was sent to the Romanian authorities on 9 November 2017. The Romanian authorities responded after two approved extensions of deadline on 15 January 2018. The Commission sent a request for the further clarifications to the Romanian authorities on 26 March 2018 and 31 October 2018 to which the latter replied on 4 June 2018 and 21 November 2018 respectively. On 8 April 2019, the Romanian authorities provided the translation of their replies of 4 June 2018.

(26) On 17 May 2019, Wizz Air sent a letter to the Commission claiming the right of access to the file and the right to be heard to which the Commission replied on 11 June 2019.

([6]) Communication from the Commission – Guidelines on State aid to airports and airlines, OJ C 99, 4.4.2014, p. 3–34.

2. **TIMIȘOARA INTERNATIONAL AIRPORT**

2.1. **The Airport**

(27) Timișoara International Airport is an international airport situated in the western part of Romania.

(28) The Airport is operated by the Airport Manager (recital (15)), a joint stock company in which the Romanian State holds 80 % of the shares on the date of this Decision. ([7]) The remainder of the shares is owned by Fondul Proprietatea. ([8]) Previously, the initial capital stock was entirely subscribed by Romania and paid in full on the date the Airport Manager was set up. ([9])

(29) The Airport Manager owns the airport infrastructure, except for the runway, taxiway and the apron which are owned by the Romanian State. This latter infrastructure is concessioned to the Airport Manager by the State.

(30) Timișoara International Airport has one runway, which is 3 500 metres long and 45 metres wide. The aprons provide for 22 parking positions. The capacity of the airport amounts to 1 300 international passengers/hour and 500 domestic passengers/hour. The airport also has a cargo terminal.

(31) In years 2007 to 2009, i.e. the period under assessment, Timișoara International Airport was the second largest airport in Romania in terms of traffic (Table 1). Table 1 includes also the subsequent evolution of the traffic until 2017.

Table 1: Traffic at Timișoara International Airport between 2007 – 2018

2007	2008	2009	2010	2011	2012	2013
834 580	**889 756**	**974 785**	1 137 218	1 200 762	1 035 929	757 069

2014	2015	2016	2017
736 191	924 459	1 161 510	1 650 000

Source: Romanian authorities

(32) At the time of this Decision, Timișoara International Airport has scheduled passenger air services by several low cost airlines. Wizz Air serves the highest number of European destinations, with Ryanair and Blue Air having a more limited offering. The Airport is also served by two full services carriers: Tarom and Lufthansa. There are also seasonal charter flights and several cargo operators.

(33) From 2007 to 2009, Timișoara International Airport was a regional hub for Carpatair, a regional full service carrier which operated some 32 domestic and European destinations. Other airlines serving the airport during that period included Tarom, Lufthansa, Austrian Airlines, Malev, Alitalia, Moldavian Airlines.

(34) The nearest airports to Timișoara International Airport are:

— Arad Airport which is located 50 km away. This amounts to a travelling time by road of 40 minutes. Arad Airport has the largest cargo terminal in western Romania. Its passenger traffic is decreased from 67 183 passengers in 2007 to 11 367 passengers in 2018; and

([7]) Statutul Societății Naționale "Aeroportul Internațional Timișoara – Traian Vuia" – S.A. din 18.09.2008 – Statute of the operator of Timișoara International Airport of 15 October 2008 (the "2008 Statute"), Article 8.

([8]) Fondul Proprietatea is a property fund set up by the Romanian government to indemnify individuals who lost their properties during the communist regime and whose ownership claims could not be settled in-kind. The Romanian government became minority shareholder in Fondul Proprietatea (0,04 %) by reallocating shares from its initial holding to eligible claimants.

([9]) Statutul Societății Naționale "Aeroportul Internațional Timișoara" – S.A. din 24.08.1998 – The Statute of the operator of Timișoara International Airport in force from 7 October 1998 to 14 October 2008 ("1998 Statute") approved by the Government Decision 521/1998, Article 7.

— Caransebes Airport which is located 107 km away. This amounts to a travelling time of 1 hour and 14 minutes. It is a private airport with no regular service. It is used for general aviation and rescue and police flights.

(35) Table 2 summarises the financial situation ([10]) of the Airport Manager in the period under assessment:

Table 2: Key financial indicators (in RON thousand)

RON thousand	2007	2008	2009
Revenues	23 473	30 545	41 067
Sales growth	n. a.	+ 30,1 %	+ 34,4 %
EBITDA	7 318	10 646	12 212
EBITDA margin	31,2 %	34,9 %	29,7 %
EBIT	3 249	5 809	5 655
Net Profit	2 417	4 874	3 508
Net Profit margin	10,3 %	16,0 %	8,5 %

2.2. The development plan of the Timișoara International Airport 2006 – 2015

(36) The development plan 2006-2015 ("Development Plan") foresaw an increase of passenger traffic from 611 705 in 2005 to 1 661 332 in 2010 and 2 565 494 passengers in 2015. The accession of Romania to the EU in 2007 was expected to increase traffic by 16 -18 %.

(37) The Development Plan observed that over the period 2001-2005, the passenger traffic and the number of aircraft movement increased by 250 %. It also found that in 2006 the existing capacity reached a critical level regarding the passenger terminal, apron, runway, access road and parking, which jeopardised the possibility to open new routes and increase of the number of passengers on existing routes. The works started in 2003 regarding the extension of the passenger terminal and in 2004 for the extension of the apron. The Development Plan confirmed the need to continue the extension and development of infrastructure to accomodate the envisaged traffic increase.

3. DISPUTED MEASURES

3.1. Measure 1 – Annual financing granted to the Airport Manager

(38) The Airport Manager received annual grants from the State ("Measure 1"). According to Romania, the funding granted to the Airport Manager in the period 2007 – 2009 related to investments of the following types and amounts (Table 3).

Table 3: Public financing granted to the Airport Manager in 2007 – 2009

Year	Item no.	Amount (thousand RON)	Investment project	Owner of the infrastructure
2007	1	500	Access road and parking lot development	Airport
	2	1 758	Non-Schengen Terminal development (initially Domestic Flights Terminal)	Airport
	3	6 846	Improvement of the runway and extension of the aircraft apron	Romanian State
		9 104	**Sub-total**	

([10]) Analyst report dated 7 February 2011 on Fondul Proprietatea, IEBA Trust financial & Investment Services.

2008	4	10 236,65	Improvement of the runway and extension of the aircraft apron	Romanian State
	5	242	Non-Schengen Terminal development (initially Domestic Flights Terminal)	Airport
	6	97,24	Security gates metal detectors	Airport
	7	4 598,4	Explosives-detecting system	Airport
	8	703,99	Portable explosives-detecting devices	Airport
	9	1 344,00	Lighting equipment	Airport
	10	1 773,61	X-ray scanning system	Airport
	11	511,81	EMS self-propelled chassis	Airport
		19 507,7	**Sub-total**	
2009	12	2 387,99	Improvement of the runway and extension of the aircraft apron	Romanian State
	13	6 379,96	Non-Schengen Terminal improvement (initially Domestic Flights Terminal)	Airport
		8 767,95	**Sub-total**	
2007-2009		**37 379,65**	**Total**	

(39) According to Romania, the financing of the investments had the following legal bases:

(1) For the security equipment, the Government Decision 1461/2007 concerning financing of programmes to purchase airport security equipment which included the security equipment to be financed at Timişoara International Airport in 2008. The financing was allocated in the draft 2008 budget approved by the Government decision 666/2008 from 24 June 2008.

(2) For the remainder of the investments, the Government Decision 615/2002 approved the strategic programme for the development of the airport infrastructure at the Timişoara International Airport for the period 2002 – 2015. It was amended by the Government Decision 1212/2007 which approved the strategic programme for the period 2007 – 2015. The list of investments were specifically included in the strategic programme. The amounts allocated for these investments were included in the legal acts approving the budgets for years 2007, 2008 and 2009. ([11])

3.2. **Measure 2 – The 2007, 2008 and 2010 AIP**

3.2.1. *The 2007 AIP and 2008 AIP*

(40) Based on the information from Romania, each airport manager has the power, under the applicable national legal framework, to set its airport charges. The charges set by the airport manager are subject to the formal publication as required by the international aviation rules, in the Aeronautical Information Publication (the "AIP"). Accordingly, the charge policy for the use of the Timişoara International Airport has been set only with respect to that Airport and is not applicable with respect to any other airport within the regional or national territory. The AIPs are proposed by the executive management of the Airport Manager, and approved by the Board, in accordance with the prerogatives entrusted expressly under the statute of the company.

(41) The applicable charges were published in the AIP on 7 June 2007 under the reference GEN 4.1-17 ("2007 AIP") as follows:

([11]) Order 289 of the Ministry of Transport, Ministry of Finance and Ministry of Labour of 21 February 2007 for the 2007 budget, Government Decision 666 of 24 June 2008 for the 2008 budget and Government Decision 721 of 17 June 2009 for the 2009 budget.

Table 4: 2007 AIP airport charges (in EUR)

Charge	Minimum charge	Unit rate
Landing	50	7/tonne
Lighting	50	2,10/tonne
Parking	15	0,15/tonne/hour
Passengers service		
— ***international flights***		8/passenger
— ***domestic flights***		3/passenger
— ***security***		7/passenger
— ***transit or transfer***		5/passenger

(42) The 2007 AIP provides for the reductions on the landing charges based on the number of landings as summarised in the following table:

Table 5: 2007 AIP reductions of the airport charges

International flights	
Number of landings/year	**Rebate (%)**
250 – 500	10
501 – 1 200	20
1 201 – 2 000	30
2 001 – 2 500	40
2 501 – 3 000	50
3 001 – 3 500	60
3 501 – 4 000	70
> 4 001	85

(43) Furthermore, a 50 % discount on the landing charges for a period of six months is granted for new air operators which perform at least two flights per week and for new destinations that are not yet connected with Timișoara International Airport.

(44) The 2008 applicable airport charges were published in the AIP on 23 October 2008 under the reference GEN 4.1-17 (”2008 AIP”) as follows:

Table 6: Applicable airport charges (2008 AIP) in EUR

Charge	Minimum charge	Unit rate
Landing	50	7/tonne
Lighting	50	2,10/tonne
Parking	15	0,15/tonne/hour
Passengers service		
— ***international flights***		8/passenger
— ***domestic flights***		5/passenger
— ***security***		10/passenger
— ***transit or transfer***		1,50/passenger
— ***persons with reduced mobility***		0,20/passenger

(45) The 2008 AIP increased the passenger security charges from 7 EUR in 2007 to 10 EUR per passenger. The passenger fee for transit or transfer passengers was reduced from 5 EUR per passenger to EUR 1,50. In addition, the Airport Manager has introduced a charge amounting to EUR 0,20 for persons with reduced mobility.

(46) The 2008 AIP provides for reductions on the landing charges based on the number of landings of the previous year as follows:

Table 7: Reductions in airport charges (2008 AIP)

International flights	
Number of landings/year	**Rebate (%)**
250 – 500	10
501 – 1 200	20
1 201 – 2 000	30
2 001 – 2 500	40
2 501 – 3 000	50
3 001 – 3 500	60
> 3 501	70

(47) The 2008 AIP provides also for a discount of 50 % on the landing charges for a period of 12 months for new air operators at Timișoara International Airport that perform at least three flights per week by an aircraft of at least 70 seats. For each new opened destination, the applied discount on the landing charges is 50 % for a period of six months.

(48) In addition to the previous discounts and reductions, the Airport Manager grants also a partial reimbursement of the payments it receives which originated from the embarkment charge (Table 8).

Table 8: Reimbursement of revenue originated from the embarkment charge according to 2008 AIP

Number of embarked passengers/year delivered by the user	Reimbursement
150 001 – 300 000	10 %
300 001 – 500 000	20 %
> 500 001	30 %

3.2.2. *The 2010 AIP*

(49) On 26 August 2010, an amendment to the airport charges at Timișoara International Airport was published ("2010 AIP"). The Airport Manager introduced a new category of discounts for aircraft over 70 tonnes maximum takeover weight ("MTOW"):

Table 9: The 2010 AIP discounts for aircrafts over 70 tonnes MTOW

Number of embarked passengers/month delivered by the user	Discount (%)
0 – 10 000	0
10 001 – 18 000	72
18 001 – 36 000	82
> 36 000	85

3.3. **Measure 3 – The 2008 Agreements between the Airport Manager and Wizz Air**

(50) In the middle of 2008, the Airport Manager and Wizz Air signed a series of agreements, determining the principles of their cooperation as well as terms and conditions of the use of the airport infrastructure and services by the airline. The signed agreements consisted of (i) a memorandum of understanding, (ii) a marketing agreement, (iii) an operation agreement, and (iv) a ground handling agreement (jointly the "2008 Agreements"). On the basis of the 2008 Agreements, Wizz Air started its operations from Timișoara International Airport at the end of 2008. In 2009, the company gradually increased its number of international destinations served with A320 type aircrafts (280 seats).

3.3.1. *The Memorandum of Understanding of 25 June 2008*

(51) The memorandum of understanding ("Memorandum of Understanding" or "MoU") was signed on 25 June 2008 by the Airport Manager and Wizz Air. It was signed for an initial period of three years plus one year during which the parties could terminate it for a breach of contract. The MoU set the general principles of their cooperation, and the terms and conditions for the use of the airport infrastructure and services by Wizz Air.

(52) The Airport Manager agreed to expand the passenger terminal in order to allow it to handle up to three million passengers per year by 1 January 2011 at the latest. It also agreed to upgrade the landing and takeoff category of the runway to category III in both directions before the end of 2009 and to make slots available according to Wizz Air's request.

(53) Wizz Air agreed to conduct marketing activities for the Airport Manager. In particular, it was agreed to promote Wizz Air's flight destinations from or to the Airport to increase the number of departing and arriving passengers at the Airport. In return, the Airport Manager agreed to pay marketing fees, depending on the number of landings and delivered passengers numbers.

3.3.2. *The marketing agreement of 30 July 2008*

(54) The marketing agreement ("Marketing Agreement") was signed by the parties on 30 July 2008 and concluded for an initial term of three years, commencing on 11 December 2008. The duration of the Marketing Agreement could be extended after an initial period of three years by one year.

(55) The Marketing Agreement set the terms and conditions of the marketing activities carried out by Wizz Air, with the aim to increase the number of departing and arriving passengers at the Airport.

(56) The Marketing Agreement details the following marketing activities to be carried out by Wizz Air:

— the promotion of the Timișoara International Airport and Wizz Air flights to and/or from the Timișoara International Airport in its online and board magazine;

— advertisement of Timișoara International Airport on its website;

— creation of a marketing strategy for Timișoara International Airport and Wizz Air;

— advertising promotions in relation to the air services at the Timișoara International Airport; and

— other activities promoting passenger growth at Timișoara International Airport.

(57) The marketing activities were to be carried out in Romanian and in foreign media.

(58) In return for Wizz Air's marketing activities, the Airport Manager was to pay Wizz Air a marketing fee which depended on the delivered departing passenger numbers.

(59) The Marketing Agreement stipulated that, in case of an increase of the charges regulated in the operation agreement or the ground handling agreement, the marketing fee was to be modified equally to the change of the airport charges.

(60) Additionally, the Airport Manager has the following obligations towards Wizz Air:

— to allow Wizz Air the use of the Timişoara International Airport's infrastructure for commercial and marketing activities;

— to support Wizz Air's contacts with local public and business entities,

— to provide Wizz Air with its experiences, knowledge and contacts to the local marketing services and media;

— to involve Wizz Air in its promotion and marketing activities;and

— to provide Wizz Air with advertising space at the Timişoara International Airport;

— to support Wizz Air with public relation activities.

(61) The Marketing Agreement provided that Wizz Air was to issue an invoice for the marketing fee after the receipt of a "*pro-forma invoice*" from the Airport Manager on the charges of the operation agreement and the ground handling agreement.

(62) According to the Marketing Agreement, Wizz Air was obliged to provide the Airport Manager at least annually with reports describing its conducted marketing activities (i.e. description of marketing activities, target groups, advertising, frequency, choice of media, amounts spent on the marketing activities).

3.3.3. *Termination of the Marketing Agreement and payment of marketing fees by the Airport Manager*

(63) On 11 February 2010, the Airport Manager decided to terminate the Marketing Agreement.

(64) With regard to public procurement rules, the Romanian National Authority for Regulating and Monitoring Public Procurement concluded that the award of the Marketing Agreement, without applying any of the awarding procedures laid down in the national legislation, constituted an infringement of these rules and was punishable by a fine between RON 70 000 and 100 000.

(65) The Airport Manager had received invoices from Wizz Air amounting to a total of EUR 2 560 992,90 for marketing services for the period October 2008 to January 2010. The Romanian authorities claim that the Airport Manager did not pay this amount and that the payment obligation from the Marketing Agreement would be settled in accordance with business law.

(66) The invoices of Wizz Air to the Airport Manager show that the marketing fees have been invoiced with a few months of delay.

3.3.4. *The operation agreement of 1 August 2008*

(67) The operation agreement was concluded on 1 August 2008 for the period of 11 December 2008 to 10 December 2009, with an automatic renewal for further 12 month periods at each anniversary of its entry into force (the "Operation Agreement"). ([12]) The Operation Agreement detailed the requirements for the services to be provided to Wizz Air by the Airport Manager (passenger services, security services, transit/transfer services) and set out the applicable airport charges to be paid by Wizz Air as well as discounts and exemptions to the charges.

(68) The charges were essentially ([13]) the same as set in the 2008 AIP. Additionally, the airline was entitled to a 50 % discount for six months for an increase in frequencies.

(69) The payments for the services were due 30 days after the receipt of the invoice "*without any deduction by reason of any alleged counterclaim or otherwise howsoever*". Late payment penalty interest was set at the level of 6,5 % per annum. Penalties were to be set out in an invoice.

([12]) This Operation Agreement is the operation agreement referred to in the Marketing Agreement.

([13]) With the exception of the charge for domestic flights, as Wizz Air did not provide any domestic flights.

(70) The breach of the confidentiality of the contract was to be sanctioned by a penalty in the amount of EUR 10 000.

(71) On 25 June 2010, the Operation Agreement was amended by a new discount scheme, which covered the period up to 6 February 2011. This new discount scheme corresponds to the one set out in the 2010 AIP.

3.3.5. *The ground handling agreement of 1 August 2008*

(72) The ground handling agreement (the "GHA") constituted an annex to the Standard Ground Handling Agreement of April 2004 and was effective from 11 December 2008 to 10 December 2009 with an automatic renewal for further 12 month periods at each anniversary of its entry into force. ([14])

(73) The GHA set the handling charges for an Airbus A320 passenger aircraft at EUR 150 for a single ground handling consisting of an arrival and a subsequent departure. Services "on request" were not included and were to be charged separately.

(74) The invoices for the handling services were to be issued no later than the 5th of the following month. The payments were to be made in 30 days from the date of the receipt of the invoice. A late payment interest was set at a rate of 6,5 % per annum.

(75) On 1 February 2010, the GHA was extended for a period of one year starting on 6 February 2010. The provision in the Marketing Agreement, which allowed an immediate termination of the GHA and the Operation Agreement without any damages when the Marketing Agreement expired or was terminated, was declared void.

(76) On 25 June 2010, the GHA was amended by a new discount scheme applicable for the handling charges and the services on request which covered the period until 6 February 2011. The new discount scheme had been introduced by a decision of the Board of Directors of the Airport Manager on 15 June 2010. This new discount scheme corresponds to the one set out in the 2010 AIP.

3.4. **Measure 4 – Forbearance of invoiced airport charges to Wizz Air for the period October 2009 – February 2010**

(77) On 28 April 2010, the Airport Manager sent Wizz Air a summons to pay EUR 2 825 360 for invoices concerning the fees due under the Operation Agreement and the GHA dated from October 2009 to February 2010.

(78) At the time of the Opening Decision, Wizz Air had only paid EUR 264 367,10 in the first half of 2010 and it seemed that no further action had been taken by the Airport Manager to collect the amounts due.

4. **GROUNDS FOR INITIATING THE INVESTIGATION PROCEDURE**

(79) In the Opening Decision, the Commission concluded that the base rate of the airport charges contained in the 2007 AIP, 2008 AIP, and 2010 AIP did not amount to State aid.

(80) However, the Opening Decision raised the question whether the following measures were granted at market conditions, and thus did not involve State aid. And if not, whether such State aid could be considered compatible with the internal market:

— Annual operating financing granted to the Airport Manager in 2007, 2008 and 2009;

— Discounts and rebates according to the 2007 AIP, 2008 AIP and 2010 AIP;

— 2008 Agreements between Wizz Air and Airport Manager;

— Forbearance of invoiced airport charges to Wizz Air for the period October 2009 to February 2010.

([14]) This GHA is the ground handling agreement referred to in the Marketing Agreement.

4.1. **Measure 1 – Annual operating financing granted to the Airport Manager 2007 – 2009**

(81) The Commission took the preliminary view that the annual financing granted to the Airport Manager does not conform with the MEOP due to the fact that no business plan or profitability projections had been provided, the fact that the minority shareholder (Fondul Proprietatea) did not seem to have contributed to the financing under the same conditions and the fact that it was not clear that the Airport Manager has consistently paid the corresponding dividends to the shareholders.

4.2. **Measure 2 – Discounts and rebates according to the 2007 AIP, 2008 AIP and 2010 AIP**

(82) The Commission took the preliminary view that the discounts and rebates in the 2007 AIP amounted to State aid and it could not exclude that the 2008 AIP and 2010 AIP involved State aid. The Commission could not exclude that some users of the Timişoara International Airport had received a selective advantage granted through such rebates and discounts. With regards to the new rebate for aircraft over 70 MTOW set forth in the 2010 AIP, the Commission took the view that it constituted State aid as it was not prima facie sufficient to cover the costs of the Airport Manager. In addition, the difference in charges for national passengers and international passengers as well as for transit passengers led the Commission to question the non-discriminatory character of the schemes.

4.3. **Measure 3 – 2008 Agreements between Wizz Air and the Airport Manager**

(83) The Commission took the preliminary view that the 2008 Agreements with Wizz Air were not concluded under normal market conditions and, therefore, Wizz Air has received a selective economic advantage. The Commission therefore took the preliminary view that the 2008 Agreements amounted to State aid.

4.4. **Measure 4 – Forbearance of invoiced airport charges to Wizz Air for the period October 2009 – February 2010**

(84) The Commission took the preliminary view that it cannot exclude that forbearance of airport charges involves State aid as no steps of enforcement had been taken.

5. **COMMENTS FROM ROMANIA**

5.1. **Measure 1 – Annual financing granted to the Airport Manager 2007 – 2009**

(85) Romania explained that the alleged operating aid granted to the Airport Manager in fact relates to investment costs and did not constitute State aid. The investment projects are indicated in Table 3 of the present decision.

(86) Regarding the financing of the *runway improvement and aircraft apron extension* in 2007, 2008 and 2009, Romania argued that such financing was carried out in compliance with the MEOP. According to Romania, the MEOP is complied with if investments are made in assets that are State owned and that generate revenues from dividends and concession fees. In this case, Romania calculated a concession fee of 2 % of the gross income received through the concession. Romania stated that the Development Plan and the Timişoara International Airport Capacity Assessment drawn up in 2006 (the "Capacity Assessment") indicated economic sustainability of the investments. According to Romania, economic sustainability could have been expected as increased passenger numbers and efficiency gains would increase revenues from operating the airport infrastructure. According to Romania, the investments were also necessary to meet aviation security requirements (in particular to avoid unauthorised access to airplanes) and to cope with operational needs resulting from traffic growth. Romania further stated that in addition to commercial activities, the infrastructure was also used for military activities, official missions, search and rescue missions, humanitarian and emergency aid airfare, UN, Red Cross and Red Crescent flights and similar. Romania stated that activities of national interest (the army and national defence, humanitarian and rescue missions, and similar) fall under the public service remit. Romania submitted that according to Romanian law, the Airport Manager had the obligation to enable the free use of airport infrastructure for such non-commercial activities.

(87) Regarding the financing of *security equipment* in 2008, Romania argued that such financing relates to activities falling under the public service remit. Romania stated that these investments were required by Regulation (EC) No 2320/2002 of the European Parliament and of the Council, by Commission Regulation (EC) No 622/2003 and by national law. Moreover, Romania stated that the security equipment helped the Airport Manager to comply with the requirements on border security imposed by Regulation (EC) No 562/2006 of the European Parliament and of the Council.

(88) Regarding the financing of *extension and improvement of non-Schengen terminal* in 2007, 2008, 2009 and 2010, Romania argued that such financing was either carried out in compliance with the MEOP or was related to activities falling under the public policy remit. According to Romania, these investments were based on economic considerations to prepare the airport for higher passenger numbers. Romania stated that the State was guided by prospects of profitability in the longer term. Further, Romania explained that the investments were necessary to fulfill the obligations of Romania in order to join the Schengen area. In particular, Romania stated that investments were necessary to comply with Regulation (EC) No 2320/2002 of the European Parliament and of the Council and with Regulation (EC) No 562/2006 of the European Parliament and of the Council.

(89) Regarding the financing of an *access road and parking lot development* in 2007, Romania argued that such financing was carried out in compliance with the MEOP. Romania stated that a feasibility study on this investment was carried out in 2005 and that this included a business plan as well as a profitability assessment of the investment. According to Romania, the profitability analysis indicated an opportunity for significant revenues.

(90) Regarding the financing of *lighting equipment* in 2008, Romania argued that such financing was carried out in compliance with the MEOP. According to Romania, the investment in lighting equipment was needed to ensure an optimal use of the airport infrastructure and safety of passengers and aircraft. Romania stated that the investment also proved profitable *ex post*.

5.2. **Measure 2 – Discounts and Rebates according to the 2007 AIP, 2008 AIP and 2010 AIP**

5.2.1. *The 2007 AIP and the 2008 AIP*

(91) Romania submitted that the Airport Manager operated profitably since 2007 and that profits increased on a constant basis since then. In this context, the tariffs applied by the Airport Manager covered the costs of the services rendered.

(92) Romania stated that the decisions on the application of airport charges were based on economic and financial background notes drawn up by a specialised department of the Airport Manager.

(93) According to Romania, airport charges were published in the AIP and were applicable to all users on a non-discriminatory basis.

(94) Romania clarified that the 2007 AIP and the 2008 AIP were approved by the Board of Directors of the Airport Manager approximately two months prior to the entry into force of each AIP respectively.

(95) According to Romania, the business model of Carpatair, namely the hub and spoke model, led to a situation where, during the peak times of Carpatair passenger arrivals, the airport capacities were almost completely exhausted. On the other hand, during the off-peak time, the capacity was under-used. Therefore, the incremental costs of increasing passenger output at Timișoara International Airport, at least at off-peak times created by Carpatair's operating model, was very low due to most costs being fixed. Consequently, even low aeronautic charges were estimated to be incrementally profitable. This is demonstrated by the 39 % increase in operating revenues observed by the Airport Manager over the period 2008-2010, which was achieved with only a 22 % increase in operating costs.

(96) According to Romania, the rebates and discounts included in the 2007 AIP and 2008 AIP reflect economies of scale for the Airport Manager resulting from the high fixed cost nature of airport operation. It means that there is a strong incentive to pursue incremental volumes. The rebates and discounts are designed to incentivise and increase economic activity which makes the most efficient use of the airport infrastructure.

5.2.2. *The 2010 AIP*

(97) According to Romania, the Airport Manager acted on its own when determining the charges and reductions published in the 2010 AIP. Romania stated that the charges and reductions are not attributable to the State.

(98) Romania submitted that the 2010 AIP was adopted in compliance with the MEOP. According to Romania, non-aviation revenues, the outsourcing of the network and an increase of the value of the company should be taken into account when analysing compliance with the MEOP. About 14 % of the Airport Manager's revenues were non-aeronautical revenues. According to Romania, passengers of low-cost airlines are usually more prone to buy newspapers, food, drinks or similar at an airport's shops than other passengers as low-cost airlines usually do not provide these items on board.

(99) Romania believed the 2010 AIP provided an incentive to airlines to attract more passengers. Romania stated that throughout the application of the 2010 AIP, the traffic at the Airport had developed positively (see Table 10).

Table 10: Timișoara airport – Revenue and Passenger numbers

	Total number of passengers	**Total revenue RON (EUR)**
2008	831 404	22 033 887 (5 983 079)
2009	944 167	34 977 836 (8 254 746)
2010	1 137 218	37 565 399 (8 923 110)

(100) Romania explained that airport charges applicable to Carpatair were reduced by 70 % for landings and by 50 % for lighting. Only EUR 1,5 per transfer passenger was charged. According to the 2010 AIP, the maximum reduction of airport charges applicable to Wizz Air amounted to inbetween 67 % and 72 %. Discounts amounting to 72 % to 85 % were never applied to Wizz Air because it had never reached the respective thresholds. According to Romania, other airlines were also entitled to the reduction of charges according to the level of passengers or movements reached.

(101) Romania stated that the reduction of airport charges in the 2010 AIP reflects the Airport Manager's opportunity costs in providing services to companies using small aircrafts and longer rotation times as compared to providing services to larger aircrafts which bring a higher number of passenger per landing. The 2010 AIP aimed at attracting airlines with shorter rotation times so as to allow for a higher number of rotations per hour and therefore improve the operational capacity of the Airport Manager in terms of number of landings per hour.

(102) Romania stated that the discounts applied to Wizz Air also reflect the smaller amount of services used. Wizz Air only offered direct flights and thus did not require facilities and services needed for transfer. For transit flights, the Airport Manager must double the security facilities. According to Romania, 60 % of Wizz Air passengers check in online, which entails a significant reduction of required staff at the check-in. Wizz Air passengers carry less baggage, reducing the staff and facilities required to handle such baggage. According to Romania, Wizz Air's own teams provided the routine cleaning of aircrafts during the rotation time.

5.3. **Measure 3 – 2008 Agreements between Wizz Air and the Airport Manager**

(103) Romania submitted that none of the investments in taxiway restoration or apron extension were made specifically due to the presence of Wizz Air. According to Romania investments made by the State as a main shareholder were launched before Wizz Air announced its intention to operate at Timișoara International Airport. Romania stated that, similarly, investments and repairs made from own resources of the Airport Manager were not made because of the presence of Wizz Air or any other airline at Timișoara International Airport but rather to ensure the safety and security conditions necessary for the good conduct of the airport activity. Repairs were made because of normal wear and tear and not for or due to any airline.

(104) According to Romania, as indicated in its preamble, the MoU was an agreement in principle which did not impose any legal obligations on the parties. Romania submitted that except for violation of the confidentiality clause, the agreement did not set any sanctions for potential infringements. In addition to the absence of any valid obligation concerning the provision of the services listed in the MoU, the Airport Manager did not carry out any infrastructure work in the period concerned other than the infrastructure work that was completely independent of Wizz Air's operation.

(105) Romania stated that the MoU expresses the intention of the parties to start negotiations in good faith concerning a potential cooperation that was to be set upon the basis of mandatory agreements. Romania submitted that such mandatory agreements were indeed concluded, practically replacing the MoU: Operation Agreement, GHA and the Marketing Agreement.

(106) According to Romania, the Airport Manager acted in line with the MEOP when signing the 2008 Agreements with Wizz Air. In order to substantiate the argument, Romania sent to the Commission an *ex ante* business plan reconstructed *ex-post*, which showed that the 2008 Agreements with Wizz Air were expected to generate higher passenger numbers, as well as higher profits.

5.4. **Measure 4 – Forebearance of invoiced airport charges to Wizz Air for the period October 2009 – February 2010**

(107) Romania stated that the Airport Manager acted on its own as regards the payment of the airport charges owed by Wizz Air to the Airport Manager. According to Romania, the decision in this context is therefore not attributable to the Romanian State.

(108) Romania submitted that the decision by the Airport Manager regarding the payment of airport charges owed by Wizz Air to the Airport Manager respected the MEOP.

(109) According to Romania, the amounts that were to be refunded to and recovered from Wizz Air were set off on 1 March 2014 in a settlement agreement No 20310 ([15]) between the Airport Manager and Wizz Air (the "Settlement Agreement").

(110) Romania submitted that as of 20 November 2014, debts of the Airport Manager to Wizz Air amounted to EUR 0 and debts of Wizz Air to the Airport Manager amounted to EUR 122 861,67 for operations from 1 October 2014 to 31 October 2014 and EUR 1 256,12 for the rent of an administrative area at Timișoara International Airport. According to Romania these amounts were due on 30 November 2014.

([15]) The Settlement Agreement was based on the following actions. The Airport Manager filed arbitration claim against Wizz Air to the Arbitration Court of the Cluj Chamber of Commerce and Industry ("Cluj Arbitration Court") under no. 24/2011. The Cluj Arbitration Court granted the Arbitral Award no. 3 of 16 May 2012 (the "Arbitral Award"). By the decision of 11 June 2012, certain errors were corrected by the Cluj Arbitration Court. The Arbitral Award ordered the payment by Wizz Air of certain invoices issued by the Airport Manager and the remaining balance to be paid based on the Operation Agreement and the Ground Handling Agreement. The Airport Manager also requested from Wizz Air the payment of a late interest. Wizz Air lodged a claim against the Airport Manager requesting that it is ordered to pay the invoices issued by Wizz Air on the basis of the Marketing Agreement. The Cluj Specialized Tribunal issued Decision no. 3597 of 3 October 2012 by which it granted in part the legal action filed by Wizz Air against the Airport Manager.

6. OBSERVATION FROM THIRD PARTIES

6.1. Carpatair

6.1.1. *Measure 3 – 2008 Agreements between Wizz Air and the Airport Manager*

(111) According to Carpatair, the various schemes in favour of Wizz Air's operation at Timișoara International Airport constitute State aid. The alleged aid granted to Wizz Air is estimated by Carpatair to amount to EUR 5,5 million between October 2008 and December 2010. It was allegedly granted through the Marketing Agreement, in the amount of EUR 2,6 million and discounts based on the AIP and Operating Agreement, in the amount of EUR 2,9 million. In addition, Carpatair claimed that in 2011 the measure continued to be provided to Wizz Air by the Airport Manager and it would amount to EUR 8,3 million by the end of 2011.

(112) Carpatair commented on the MEOP. According to Carpatair, a market economy investor would have based its decisions on the specificities of the airport. Due to its location and the efforts of Carpatair, a hub and spoke system had been progressively created since 2000, leading to a situation where Carpatair provided 38 % of the Airport Manager's revenues in 2008, at the time where Wizz Air arrived. This is essentially because Carpatair was able to attract a stable traffic of business people coming from Romania, Italy, Moldova, Ukraine and Germany.

(113) Carpatair further submitted that the traffic at Timișoara International Airport was 836 574 passengers in 2007 and 890 704 passengers in 2008. This normally had to be the base and reference of revenues on which a private investor would aim to build marginal revenues. The main concern of the Airport Manager should have been not to cannibalize the existing business and revenues. However, according to Carpatair, the Airport Manager did not take this into consideration and, as a result, in 2013 Timișoara International Airport processed only 757 009 passengers. This was 15 % less than before Wizz Air's arrival. A prudent investor would therefore have taken into account that it was this very traffic which brought high quality yield, and would have limited the advantage given to Wizz Air to new routes only. This was not the case. The Marketing Agreement gave a 85 % rebate on all charges, handling services and even material used for three years, on all the routes, including therefore half of them already flown by Carpatair. A wise investor would have known that weakening its main client, Carpatair, would destroy the existing hub and the resources attached to it. A wise private investor should have been aware of the actual profitability margins in the industry, particularly of those airlines operating hub and spoke model. Considering that only half of revenues stemming from operation at Timișoara International Airport (20 % of the total Carpatair revenues) would have been lost after implementation of the alleged aid, the slump in the profitability would be a 15 % loss on total revenues from 5 % profit. When expressed in absolute figures, the respective loss meant EUR 10 – 15 million of negative impact a year.

(114) Carpatair stated that a prudent investor would have disclosed the results of a study commissioned in 2006 which showed the need to repair the runway at a cost of EUR 30 million. The information was made available in 2010 by the new airport director. A prudent private investor is guided by the prospect of longer term profitability which allows to bypass the short term notion of marginal profit brought by even extremely low incremental revenues such a 1 EUR per passenger. It is clear that the Airport Manager, when it ignored the costs of repair and – on the contrary – allowed an airline which was bound to overload and damage the runway, did not consider the long term profitability. A prudent investor in the airline industry would have imposed a surcharge on such an airline, for each overload operation movement.

(115) Carpatair claimed that at the beginning of 2012, the Airport Manager conditioned the renewal of its contract upon the agreement of Carpatair with the arrangements with Wizz Air and the terms thereof.

(116) Carpatair alleged that the MEOP is not fulfilled. Carpatair claimed that no *ex ante* analysis was made and no business plan was presented to the Commission in accordance with the 2005 Guidelines on financing of airports and start-up aid to airlines departing from regional airports ([16]) (the "2005 Aviation Guidelines").

([16]) Communication from the Commission – Community guidelines on financing of airports and start-up aid to airlines departing from regional airports, OJ C 312, 9.12.2005, p. 1.

(117) Carpatair rejected Romania's arguments on the fact that non-aeronautical income has to be included in the analysis of the MEOP. Carpatair stated that Romania was not able to submit a detailed economic analysis of how the subsidies to Wizz Air would be justified by an increased non-aeronautical profit.

6.1.2. *The 2014 Aviation Guidelines*

(118) Carpatair stated that the 2014 Aviation Guidelines confirm that the measures were State aid. The MEOP test was not met as there was no *ex ante* business plan and consequently, Romanian authorities did not provide to the Commission such plan or profitability projections of the 2008 Agreements.

(119) Carpatair claimed that the latest financial data of the Airport Manager confirm that the aid is incompatible. Carpatair argued that the State aid decreased the profitability of the Airport Manager and the aid did not comply with the cumulative conditions for start-up aid.

(120) Carpatair further informed the Commission that it lodged a complaint with the Romanian Competition Council alledging that the Airport Manager abused its dominant position by offering discriminatory conditions to airlines.

6.2. **Wizz Air**

6.2.1. *Measure 2 – Discounts and Rebates according to the 2007 AIP, 2008 AIP and 2010 AIP*

(121) Wizz Air claimed that a discount up to 85 % pursuant 2010 AIP was never applied. Instead, an average maximum 73 % discount was applied after the Romanian Ministry of Transport opposed the above scheme of charges.

(122) Moreover, according to Wizz Air, there is no selectivity and advantage in its favour under the 2007 AIP, the 2008 AIP and the 2010 AIP. Other airlines operate aircraft of the same size and MTOW as Wizz Air's and therefore could benefit from the same level of discount.

(123) Wizz Air alleged that since its arrival, the general trend towards the use of larger aircraft was encouraged by the Airport Manager, and the number of passengers has increased by 36 % in the period from 2007 to 2010, with an increase in movement by only 2 %.

(124) Contrary to Carpatair, Wizz Air offered a low fare service, and its operations were efficient. Consequently, it was economically rational that the provision of less expensive infrastructure and services lead to the application of lower charges by an airport acting as a MEO. Wizz Air declared having boosted the Airport's traffic by increasing aeronautical and non-aeronautical revenues.

6.2.2. *Measure 3 – 2008 Agreements between Wizz Air and the Airport Manager*

(125) Wizz Air argued that the lack of an *ex-ante* business plan is not evidence that the Romanian authorities failed to act as an MEO.

(126) Wizz Air hired an economic consultant, Oxera Consulting Ltd, in order to prepare the Economic MEIP assessment in relation to the Airport. The Oxera's report, submitted to the Commission on 27 October 2011, aimed to establish whether the MEOP test is fulfilled in the agreements between the Airport Manager and Wizz Air.

(127) Oxera's analysis focused on the 2008 Agreements as well as the 2007 AIP, the 2008 AIP and the 2010 AIP.

(128) According to Oxera, the charges paid by Wizz Air at Timișoara International Airport should be compared with charges paid by Wizz Air at similar airports over an appropriate timeframe.

(129) In Oxera's analysis, three airports have been chosen as relevant comparators for the purposes of this analysis. Oxera claimed that the ownership and funding structure of these airports is such that all of them are likely to behave in a manner consistent with 'private investors' airports, and they are Wizz Air destinations that are broadly comparable in a number of dimensions.

(130) Based on data received from Wizz Air, Oxera concluded that the overall charges paid by the airline at Timişoara International Airport can be compared with the respective charges paid at the three comparator airports between 2008 – 2009 and 2010 – 2011, both on a per passenger and a per turnaround basis.

(131) According to Oxera, the analysis has shown that the overall level of charges paid by Wizz Air at Timişoara International Airport, as per the agreements detailed, is higher, on average, than the comparable average level of charges paid by the airline at the comparators airports. The lower prices paid by Wizz Air at the comparator airports suggest that a private investor would have been likely to enter into a contract on the terms of the deal between the Airport Manager and Wizz Air.

(132) The profitability assessment of agreements shows that a rational private sector investor would be willing to enter into the same deal with Wizz Air. The profitability analysis therefore implied that, by concluding the various agreements with Wizz Air, the Airport Manager conducted itself in a way consistent with the MEOP.

(133) Overall, Oxera concluded that the result of the comparator analysis and the analysis of the profitability of the agreements suggested that the charges paid by Wizz Air at Timişoara International Airport were comparable with a level of charges that would have been offered to Wizz Air by an airport- owning market economy investor in similar circumstances.

6.2.3. *Measure 4 – Forebearance of invoiced airport charges to Wizz Air for the period October 2009 – February 2010*

(134) In Wizz Air's opinion, the alleged outstanding amount due to the Airport Manager clearly did not constitute aid. Wizz Air claimed to have reciprocal claims against the Airport Manager resulting from the reversal of a set off procedure between the Airport Manager and Wizz Air.

(135) Wizz Air argued that the imputability of the State was not proven because the Commission has not established that the State was involved in the failure to pay charges due.

(136) The alleged aid granted by the Airport Manager to airlines is not attributable to the Romanian State citing the Court's case-law in Stardust Marine. ([17]) According to Wizz Air, the Airport Manager appears to have acted autonomously and without the approval or even the knowledge of the Romanian State. The Romanian government intervention has consisted only in orders to reverse certain measures adopted by the Airport Manager which met with the government's *ex post* disapproval.

6.2.4. *The 2014 Aviation Guidelines*

(137) Wizz Air reiterated that the 2008 Agreements with the Airport Manager did not constitute a State aid under the 2014 Aviation Guidelines.

(138) According to Wizz Air, the agreements between the Airport Manager and Wizz Air were in compliance with MEOP test. The comparison with the market price and the *ex-ante* profitability analysis, described in the 2014 Aviation Guidelines, were applied in this case, as proved by the Oxera's report.

(139) Wizz Air finds that the alleged State aid to the Airport Manager, if any, was not passed on to Wizz Air. It referred to points 11 and 65 of the 2014 Aviation Guidelines under which where an airport has been the recipient of aid, then the advantage resulting from such aid is not passed on to a specific airline if relevant infrastructure is open to all airlines and not dedicated to a specific airline and the airlines pay tariffs covering at least the incremental cost of their operation at the airport.

(140) Wizz Air stated that these conditions were satisfied. Wizz Air was not the only airline operating aircraft of more than 70 tonnes MTOW at Timişoara International Airport during the relevant period and, therefore, other airlines possibly benefitted from similar or greater rebates on airport charges than Wizz Air.

([17]) Judgment of 16 May 2002, *France v Commission ("Stardust Marine")*, Case C-482/99, EU:C:2002:294.

(141) Wizz Air concluded from point 172 of the 2014 Aviation Guidelines that even if it was found that the Airport Manager has received aid, its compatibility should be assessed based on the 2014 Aviation Guidelines, with aid intensities allowed for airports under 700 000 passangers.

6.3. **The Airport Manager**

6.3.1. *Measure 3 – 2008 Agreements between Wizz Air and the Airport Manager*

(142) The Airport Manager stated that no State aid within the meaning of Article 107(1) TFEU is involved in the 2008 Agreements.

(143) According to the Airport Manager, there was no selectivity. The alleged aid provided to Wizz Air was available to all comparable airlines on a transparent basis and without discrimination.

(144) The Airport Manager claimed that the marketing arrangement concerned Wizz Air's marketing services for the Airport Manager. The Airport Manager would have offered such arrangement to other airlines but could not as there was a limitation on how much the Airport Manager could spend on advertising.

(145) The Airport Manager argued having no access to State resources. The State resources were only used for the provision of non-discriminatory infrastructure such as taxiways, aprons, security equipment, terminal facilities and terminal equipment.

(146) The Airport Manager alleged to have acted autonomously. The fact that Romania is shareholder with an 80 % stake in the Airport would not imply that the State has direct or indirect control on the resources under consideration.

(147) The MEOP has been satisfied in all respects in the 2008 Agreements. The Airport Manager declared having carried out calculations before concluding the 2008 Agreements. According to the Airport Manager, there was no legal obligation to have prepared a business plan. The Airport Manager knew of no reason to retain any documentation.

(148) The RBB ([18]) Report, sent by the Airport Manager, sought to estimate the incremental costs and benefits to the Airport Manager under the 2008 Agreements. According to the report, the 2008 Agreements have, even over the three years in which the Airport Manager bore the cost of the Marketing Agreement, produced a positive return for the Airport Manager.

(149) The RBB Report considered the efficiency improvement enjoyed by the Airport as a result of Wizz Air operation. The data showed that Wizz Air carried a significantly greater number of passengers per aircraft movement than other airlines operating at the Airport. The addition of Wizz Air to the Airport Manager's customer portfolio has therefore provided it with a substantial increase in passengers for only a small increase in aircraft movements.

(150) This pattern of growth improved the Airport's profitability: over the period 2008 to 2010, the Airport Manager's total operating revenues have increased by 39 %, while total operating costs have increased only by 22 %.

(151) According to the RBB Report, the data showed that Wizz Air bears a share of aeronautical revenues commensurate to or greater than its share of both passengers and aircraft movements at the Timișoara International Airport. By contrast, the RBB Report stated that the data showed that Carpatair has consistently made a smaller contribution to the Airport Manager's revenues than is consistent with its usage of the Timișoara International Airport's facilities as measured by its share of passengers and aircraft movements.

(152) The report suggested that Carpatair obtained better terms from the Airport Manager than other airlines, including Wizz Air. This consistent underpayment relative to capacity usage reflects the relative inefficiency, in terms of airport utilisation, of Carpatair's business modal based on a large number of aircraft movements each carrying relatively few passengers.

([18]) RBB Economics LLP is an economic consultancy with its headquarters in London. It specialises in providing economic advice relating to competition law.

(153) According to the study from the University of Timişoara, the investments made by the Airport Manager were profitable and beneficial. The study alleged that the Airport Manager acted in compliance with the MEOP.

(154) The study stated that the Airport Manager had a correct strategy channelled into the increase in passengers' numbers as well as aircraft movements. For this, taking as an example the charges on other airports in the country and abroad, an advantageous scheme of discounts was produced, especially for the airlines carrying large numbers of passengers and operating large capacity aircraft. Moreover, the rental charges for the locations within the terminal building respect the market price, the charges were compatibles with those practiced in Timişoara for locations of the same type.

6.3.2. *The 2014 Aviation Guidelines (Measure 1 and Measure 3)*

(155) The Airport Manager submitted that, on the basis of the 2014 Aviation Guidelines, there was no illegal State aid. Even if there had been aid, it would have been compatible with the internal market pursuant to Article 107(3)(c) TFEU.

(156) According to the Airport Manager, the aid to the Airport Manager contributed to a well-defined objective of common interest as it increased the mobility of European Union citizens and the connectivity of the Timiș County by establishing access points for intra-EU flights, combated air traffic congestion at major EU hub airports, and facilitated regional development in the Timiș County.

(157) The Airport Manager stated that the investment aimed at creating new capacity at Timişoara International Airport, the new infrastructure meets, in the medium-term, the forecasted demand of the airlines, passengers and freight forwarders in the catchment area of the Timişoara International Airport.

(158) According to the Airport Manager, the arrangements between Wizz Air and the the Airport Manager did not constitute State aid under the MEOP test.

(159) The Airport Manager applied the two different approaches described in the 2014 Aviation Guidelines for the MEOP test.

(160) The Airport Manager argued that the price charged by an airport to a particular airline corresponds to the market price: the Airport Manager reminded that the RBB Report showed that the aeronautical fees paid by Carpatair in 2010 were lower than those charged to Wizz Air.

(161) In the Airport Manager's opinion, the arrangements contributed to the profitability of the Airport by quantifying the incremental costs and benefits: according to the RBB Report, for the period 2008 to 2010, the arrangements with Wizz Air showed an incremental profit to the Airport Manager.

(162) Moreover, while aeronautical charges to Wizz Air represented an ongoing income stream for the Airport Manager due to continued operations, around 50 % of the incremental costs faced by the Airport Manager consisted of a one-off marketing payment in 2009.

(163) Consequently, the 2008 Agreements did not constitute State aid.

6.4. **The European Regions Airline Association (ERA)**

6.4.1. *Measure 3 – 2008 Agreements between Wizz Air and the Airport Manager*

(164) ERA ([19]) alleged that the measures provided to Wizz Air are State aid within the meaning of Article 107(1) TFEU.

(165) ERA believed that the financial data are essential evidence of the infringement and should therefore be disclosed.

([19]) The European Regions Airline Association (ERA) is a trade association representing the European aviation industry (airlines, airports, manufacturers and suppliers).

(166) According to ERA, the existence of a clear business plan should form an essential element of analysis of any aid granted. Such a plan should clearly demonstrate the financial viability of the route.

(167) ERA highlighted that the airline industry is characterised by traditionally low margins and high capital investment requirements. Therefore, advantages of this magnitude, financed through State funds, quickly lead to those carriers not receiving an advantage to leave the marketplace.

(168) In ERA's opinion, the result is not only a distortion of competition but potential monopoly dominance by the remaining subsidised airport operator. The impact on the consumer in the long term is an increase of prices and reduction of choice.

6.5. **Eurojet**

6.5.1. *Measure 2 – Discounts and Rebates according to the 2007 AIP, 2008 AIP and 2010 AIP*

(169) Eurojet, a business charter company operating also in Romania, agreed that a discount be accorded to an airline when non-aviation activities make up an important share of the airport's revenues.

(170) However, in Eurojet's opinion, the 85 % discount applicable to operators that use aircraft with a mass greater than 70 tonnes has clearly been introduced for the exclusive benefit of a single operator.

7. **ASSESMENT OF MEASURE 1 – ANNUAL OPERATING FINANCING GRANTED TO THE AIRPORT MANAGER**

7.1. **Existence of Aid**

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

(172) The qualification of a measure as State aid within the meaning of this provision thus requires the following cumulative conditions to be met:

(a) the beneficiary is an undertaking;

(b) the measure is financed through state resources and is imputable to the State;

(c) it confers an economic advantage on its recipient;

(d) the advantage is selective; and

(e) the measure must distort or threaten to distort competition and is liable to affect trade between Member States.

(173) In the Opening Decision, the Commission took the preliminary view that the public financing granted to the Airport Manager amounted to State aid. Based on the information available at the time of the Opening Decision, the Commission considered such public financing to constitute operating aid.

(174) Following the Opening Decision, Romania submitted that the annual grants did not constitute operating aid but were earmarked for investments at Timișoara International Airport. Romania further argued that the investments made did not constitute State aid as they either fell within the public policy remit or were in line with the MEOP.

(175) The Commission recalls that distinction needs to be made between investment aid and operating aid. In line with the 2014 Aviation Guidelines, investment aid is defined as aid to finance fixed capital assets, specifically, to cover the 'capital costs funding gap'. Operating aid is defined as aid to cover the 'operating funding gap', either in the form of an upfront payment or in the form of periodic installments to cover expected operating costs (periodic lump sum payments).

(176) The Commission notes that the investment projects submitted by Romania (Table 3) relate to the financing of fixed capital assets and were accounted for in the capital expenditure in the Airport Manager's accounting. Based on the information provided by Romania after the Opening Decision, in particular the legal acts approving the investments projects, the Commission therefore considers such financing as financing of investment projects.

(177) The Commission will analyse whether the investments submitted by Romania (Table 3) constitute State aid. The Commission will then subtract the annual amount of investments that do not constitute State aid from the total annual amount of investments. The difference, if any, is the annual amount of investment aid granted to the Airport Manager.

(178) The Commission will then analyse whether the investment aid granted to the Airport Manager, if any, is compatible.

7.1.1. *Economic activity and notion of undertaking*

7.1.1.1. Principles

(179) According to settled case-law, the Commission must first establish whether the Airport Manager is an undertaking within the meaning of Article 107(1) TFEU. The concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. ([20]) Any activity consisting in offering goods or services on a given market is an economic activity.

(180) It is settled case law that the operation and construction of airport infrastructure must be considered as an economic activity falling within the ambit of State aid control as of 12 December 2000, the date of the Aéroports de Paris judgment. ([21]) Once an airport operator engages in economic activities by offering airport services against remuneration, regardless of its legal status or the way in which it is financed, it constitutes an undertaking within the meaning of Article 107(1) TFEU, and the Treaty rules on State aid are therefore capable of applying to advantages granted by the State or through State resources to that airport operator.

(181) While airport operators must be considered to constitute undertakings in the sense of Article 107(1) TFEU, it must be recalled that not all activities of an airport operator are necessarily of an economic nature. ([22])

(182) The Court of Justice held that activities that normally fall under the State's responsibility in the exercise of its official powers as a public authority are not of an economic nature and do not fall within the scope of the rules on State aid. ([23])

(183) Therefore, the financing of activities falling within the public policy remit or of infrastructure directly related to those activities in general does not constitute State aid. ([24]) At an airport, activities such as air traffic control, police, customs, firefighting, activities necessary to safeguard civil aviation against acts of unlawful interference and the investments relating to the infrastructure and equipment necessary to perform these activities are generally considered to be of a non-economic nature. ([25])

([20]) Judgment of 23 April 1991, *Höfner and Elser v Macrotron ("Höfner and Elser")*, C-41/90, EU:C:1991:161, paragraph 21; Judgment of 17 February 1993, *Poucet and Pistre v AGF and Cancava*, C-160/91, EU:C:1993:63, paragraph 17; Judgment of 18 June 1998, *Commission v Italy*, C-35/96, EU:C:1998:303, paragraph 36.

([21]) Judgment of 12 December 2000, *Aéroports de Paris v Commission*, T-128/98, EU:T:2000:290, confirmed by Judgment of 24 October 2002, *Aéroports de Paris v Commission*, C-82/01, EU:C:2002:617, paragraphs 75-79. This was confirmed in Judgment of 24 March 2011, *Mitteldeutsche Flughafen AG and Flughafen Leipzig Halle GmbH v Commission*, ("Leipzig-Halle Airport"), Cases T-443/08 and T-455/08, EU:T:2011:117, in particular paragraphs 93 and 94; confirmed by Judgment of 19 December 2012, *Leipzig-Halle*, Case C-288/11 P, EU:C:2012:821.

([22]) 2014 Aviation Guidelines, point 34. See also Judgment of 19 January 1994, *SAT Fluggesellschaft v Eurocontrol ("Eurocontrol")*, C-364/92, EU:C:1994:7.

([23]) Judgment of 16 June 1987, *Commission v Italy*, C-118/85, EU:C:1987:283, paragraphs 7 and 8, and Judgment of 4 May 1988, *Bodson v Pompes funèbres des régions libérées*, C-30/87, EU:C:1988:225, paragraph 1.

([24]) Commission Decision N 309/2002 of 19 March 2003, Aviation security – compensation for costs incurred following the attacks of 11 September 2001, OJ C 148, 25.6.2003, p. 7.

([25]) 2014 Aviation Guidelines, point 35. See also *Eurocontrol*, paragraph 30; Judgment of 26 March 2009, *Selex Sistemi Integrati v Commission*, C-113/07 P, EU:C:2009:191, paragraph 71 and Commission Decision (EU) 2018/628 of 11 November 2016 on State aid SA.24221 (2011/C) (ex 2011/NN) implemented by Austria for the Klagenfurt airport, Ryanair and other airlines using the airport, OJ L 107, 26.4.2018, p. 1.

(184) However, public financing of non-economic activities must not lead to undue discrimination between airlines and airport managers. Indeed, it is established case-law that an advantage is present when public authorities relieve undertakings of the costs inherent to their economic activities. ([26]) Therefore, if, in a given legal system, it is normal that airlines or airport managers bear the costs of certain services, whereas some airlines or airport managers providing the same services on behalf of the same public authorities do not have to bear those costs, the latter may enjoy an advantage, even if those services are considered in themselves non-economic. ([27])

7.1.1.2. Application to the present case

(185) The Airport Manager is engaged in constructing, maintaining and operating the airport infrastructure. The Airport Manager offers airport services and charges users – commercial aviation operators as well as non-commercial general aviation users – for the use of the airport infrastructure, thereby commercially exploiting the infrastructure. It must therefore be concluded that Airport Manager was engaged in an economic activity in the period under assessment and, thus, constitutes an undertaking within the meaning of Article 107(1) TFEU.

(186) Romania submitted that the costs arising from the following activities are to be considered as falling within the public policy remit (recitals (87) and (88)):

— Investments in runway restoration and apron extension relate to non-commercial activities at Timișoara International Airport (such as military activities, official missions, search and rescue missions, humanitarian and emergency flights);

— Investments in security equipment;

— Investments in non-Schengen terminal development aimed at ensuring compliance with the EU requirements so that the terminal was able to receive non-Schengen flights – at that time Romania expected to become a member of the Schengen area in 2011.

(187) Regarding the investments in *runway restoration and apron extension* in 2007, 2008 and 2009, the Commission recalls that if infrastructure is used for both economic and non-economic activities, public funding will only fall under State aid rules insofar as it covers the costs linked to the economic activities.

(188) However, in this case the investments in taxiway restoration and apron extension were predominantely required because of the commercial usage of the airport facilities. Romania argued that the investments were necessary to meet the demands of increased commercial traffic forecasts, to generate further revenues for the Airport Manager and increase its profitability (recital (86)). The Commission recalls that funding of an airport's non-economic activity may not lead to cross-subsidisation of the airport's economic activities. For the purposes of this Decision, the Commission considers the investments in runway restoration and apron extension to be fully linked to economic activities and therefore to be outside the public policy remit.

(189) Regarding the investments in *security equipment*, the Commission recalls that activities necessary to safeguard civil aviation against acts of unlawful interference and the investments relating to the infrastructure and equipment necessary to perform those activities are considered in general to be of a non-economic nature. The Commission considers the control of hold baggage, passengers, cabin luggage and the control of access of members of the public to the security area of an airport to be measures falling within the scope of safeguarding civil aviation against acts of unlawful interference. ([28])

(190) Romania confirmed that under the Romanian legal order, the State finances the security equipment of all airports on the basis of the Government Decision 1661 from 6 December 2007.

([26]) Judgment of 3 March 2005, *Wolfgang Heiser v Finanzamt Innsbruck*, C-172/03, EU:C:2005:130, paragraph 36, and case-law cited.
([27]) 2014 Aviation Guidelines, point 37.
([28]) Commission Decision (EU) 2015/1226 of 23 July 2014 on State aid SA.33963 (2012/C) (ex 2012/NN) implemented by France in favour of Angoulême Chamber of Commerce and Industry, SNC-Lavalin, Ryanair and Airport Marketing Services, OJ L 201, 30.7.2015, p. 48.

(191) The Commission considers the investments in security equipment in 2008 as submitted by Romania to be necessary to safeguard civil aviation against acts of unlawful interference. The investments therefore fall into the public service remit and therefore do not constitute State aid.

(192) Regarding the investments in *non-Schengen terminal development*, Romania states that the initial terminal extension investments were triggered by economic considerations but were also essential for creating a terminal that complies with the safety measures required by EU rules on civil aviation security and Schengen borders control. In particular, these measures relate to the separation of passengers. There was no specification as to which investments were strictly necessary for the compliance with such rules and thus for exercising public powers.

(193) The Commission recalls that funding of an airport's non-economic activity may not lead to cross-subsidisation of the airport's economic activities. Based on Romania's submission, the Commission considers that the investments in the terminals were to a large part conducted for economic purposes. For the purposes of this Decision, the Commission considers investments in non-Schengen terminals to be outside the public policy remit.

(194) In conclusion, the Commission finds that:

(i) the investments in runway restoration and apron extension in 2007, 2008 and 2009, to be outside the scope of the public policy remit and therefore to constitue an economic activity;

(ii) the investments in security equipment in 2008 to fall within the public policy remit and therefore do not constitute State aid;

(iii) the investments in non-Schengen terminal development in 2007, 2008 and 2009 to be outside the public policy remit and thus an economic activity.

7.1.2. *State resources and imputability to the State*

7.1.2.1. Principles

(195) In order to constitute State aid, the measures in question have to be financed from State resources and the decision to grant the measure must be imputable to the State.

(196) The concept of State aid applies to any advantage granted through State resources by the State itself or by any intermediary body acting by virtue of powers conferred on it. ([29]) Resources of local authorities are, for the application of Article 107 TFEU, State resources. ([30])

7.1.2.2. Application to the present case

(197) The public funding granted to the Airport Manager was decided by Government decisions 615/2002 and 1212/2007 (recital (39)) and were direct grants from the budget of the national authority, namely the Ministry of Transport of Romania. The funds were granted for the investment projects and were recorded as capital expenditure. The funds were allocated throughout the investment on the basis of a budget approved for the year concerned.

(198) Thus, the Commission considers that they are financed through State resources and are also imputable to the State.

([29]) Stardust Marine, paragraph 53 – 56.
([30]) Judgment of 12 May 2011, *Nord-Pas-de-Calais*, Joined Cases T-267/08 and T-279/08, EU:T:2011:209, paragraph 108.

7.1.3. *Selectivity*

7.1.3.1. Principles

(199) To fall within the scope of Article 107(1) TFEU, a State measure must favour "*certain undertakings or the production of certain goods*". Hence, only those State measures favouring undertakings which grant an advantage in a selective way fall under the notion of State aid.

(200) As confirmed by the Court of Justice, when the terms of the agreement concluded were proposed selectively by the State to one or more operators rather than on the basis of objective criteria, laid down by a text of general application, applicable to any operator, together with other elements, this can be an indication of State aid. ([31])

7.1.3.2. Application to the present case

(201) In the case at hand, the financial support was proposed and given by the State to a single undertaking- the Airport Manager- only. This is an individual measure. Measure 1 was thus selective by definition within the meaning of Article 107(1) TFEU.

7.1.4. *Economic advantage*

7.1.4.1. Principles

(202) An advantage within the meaning of Article 107(1) TFEU is any economic benefit which an undertaking would not have obtained under normal market conditions, that is to say in the absence of State intervention. Only the effect of the measure on the undertaking is relevant, not the cause nor the objective of the State intervention. Whenever the financial situation of the undertaking is improved as a result of State intervention, an advantage is present.

(203) However, public resources placed directly or indirectly at the disposal of an undertaking by the State in circumstances which correspond to normal market conditions cannot be regarded as State aid ([32]) (the "MEO Principle" or "MEOP").

(204) The MEO Principle applies only if the State acted as a private market operator which is in comparable circumstances.

(205) Regional or policy considerations cannot be taken into account for the purposes of the MEOP test. Any positive repercussions on the economy or accessibility of the region in which the undertaking is located should be left aside. ([33])

(206) The MEOP test should be based on available information and foreseeable developments at the time when the public funding was granted and it should not rely on any analysis based on a later situation. ([34])

(207) Consequently, as regards public financing to airports, the analysis of conformity with the MEOP test should be based on sound *ex ante* profitability prospects for the entity granting the financing. ([35]) Any traffic forecasts used for that purpose should be realistic and subject to a reasonable sensitivity analysis. The absence of a business plan constitutes an indication that the MEOP test may not be met. ([36])

([31]) Judgment of the Court of Justice of 4 June 2015, *Commission v MOL*, C-15/14 P, EU:C:2015:362, paragraph 91.
([32]) 2014 Aviation Guidelines, point 49. See also Stardust Marine, paragraph 69.
([33]) 2014 Aviation Guidelines, point 49. See also Judgment of 10 July 1986, *Belgium v Commission*, Case 40/85, EU:C:1986:305.
([34]) 2014 Aviation Guidelines, point 48. See also Stardust Marine, paragraph 71 and Judgment of 5 June 2012, *European Commission v Électricité de France* ("*EDF*"), Case C-124/10 P, EU:C:2012:318, paragraph 85
([35]) Commission Decision in Case C 25/2007 – *Finland – Tampere Pirkkala airport and Ryanair*, OJ L 309, 19.11.2013, p. 27.
([36]) EDF, paragraphs 84, 85 and 105.

(208) In the absence of a business plan, Member States can provide analysis or internal documents from the public authorities or from the airport concerned showing clearly that an *ex ante* analysis demonstrates that the MEOP test is satisfied. ([37])

(209) According to the settled case-law of the Court, it is for the Member State itself to establish that it acted as a prudent private investor ([38]) and submit to the Commission the evidence to that effect. ([39])

7.1.4.2. Application to the present case

(210) In the present case, in order to determine whether the public financing grants the Airport Manager an advantage that it would not have received under normal market conditions, the Commission has to compare the conduct of the public authorities providing the direct investment grants and capital injections to that of a market economy operator who, leaving aside all social, regional-policy and sectoral considerations, is guided by prospects of profitability in the long-term, over the lifetime of the investment. ([40]) These prospects are particularly pertinent to investment in infrastructure, which often involve large amounts of financial resources and can produce a positive return only after many years. Any assessment of the profitability of an airport must take into account airport revenues.

(211) The Commission notes that initially, the Government owned 100 % of the shares of the Airport Manager (recital (28)). However, its shareholding decreased to 80 % of the shares at the end of 2008. The size of the Government's shareholding when compared to the proportion of the costs it financed is taken into acount for the purposes of the MEOP assessment.

(212) The Commission must base its assessment on the information and assumptions which were at the disposal of the relevant Romanian authorities at the time when the public funding was granted. ([41])

(213) According to Romania, the following investments were carried out in line with the MEOP (recital (86):

— Financing of runway restoration and apron extension in 2007, 2008 and 2009;

— Financing of non-Schengen terminal development in 2007, 2008 and 2009;

— Financing of an access road and parking area development in 2007; and

— Financing of lighting equipment in 2008.

(214) According to Romania, these investments were guided by prospects of profitability in the longer term from which the State could benefit in a double position: that of a shareholder which receives dividends and as an owner which receives a concession fees (calculated as 2 % of the gross income received through the exploitation of the concession) (recital (86)). Romania states that the Development Plan drawn up in 2006 and the Capacity Assessment drawn up in 2006 indicated economic sustainability of the investments. According to Romania, economic sustainability could have been expected as increased passenger numbers and efficiency gains would increase revenues from operating the airport infrastructure (recital (86)).

(215) The Commission will first consider whether the *ex-ante* feasibility studies provided by Romania for the investments above are sufficient to prove compliance with the MEOP.

([37]) 2014 Aviation Guidelines, point 51.
([38]) Opinion of the Advocate General Mr Henrik Saugmandsgaard Øe from 24 October 2019, *Larko v Commission*, Case C-244/18 P, EU:C:2019:896, paragraph 53. See also Judgment of 1 February 2018, *Larko v Commission*, T-423/14, EU:T:2018:57; Judgment of 25 June 2015, *SACE and Sace BT v Commission*, T-305/13, EU:T:2015:435 and EDF.
([39]) EDF, paragraph 104.
([40]) Judgment of 21 March 1991, *Italy v Commission ("ALFA Romeo")*, C-305/89, EU:C:1991:142, paragraph 23; Judgment of 12 December 2000, *Alitalia v Commission*, T-296/97, EU:T:2000:289, paragraph 84.
([41]) 2014 Aviation Guidelines, point 3.4. See also Stardust Marine, paragraph 71.

Feasiblity studies

(216) Romania submitted feasibility studies prepared in view of the investments related to the runway restoration and apron extension, for the non-Schengen terminal development, for the access road and parking area development and for the lighting equipment. The feasibility studies aim at assessing the overall profitability of the projects that received State investments. They are therefore used to analyse whether Romania invested in projects that were expected to be profitable.

(217) The feasibility study for the *runway restoration and apron extension* found a net present value (the "NPV") of EUR 3,791 million and an internal rate of return of 10,56 % (using a discount rate of 5 %). The Commission found that this study shows a number of shortcomings. In particular, the NPV value shows significant discrepancies when compared to NPV values set out in the *ex post* feasibility studies. The forecasting period of 25 years is too long, given the limited nature of the type of restorative investments carried out by Romania, especially when taking into account its limited contribution to the overall passenger growth. The *ex post* feasiblity study, in contrast, looks at a substantially shorter forecasting period for this investment (6 years). Furthermore, the study does not include any traffic evolution which should have been the basis for forecasted revenues. The predicted inflation rates are not explained and very low (1,5 % as of the 11th year), considering the inflation rate at the time (4,7 % in 2007, 7,9 % in 2008). The discount rate of 5 % is unexplained and seems too low, especially when compared to other contemporary investments, such as the modernisation and extension of the parking area. The Commission thus does not consider this study to be reasonable. Furthermore, while a large part of the investments were carried out in 2007, the study was drawn up in July 2008. This feasiblity study therefore cannot confirm profitability of investments as required by the MEOP test ([42]).

(218) Regarding the feasibility study for the *non-Schengen terminal development*, the Commission found that when calculating the NPV of the terminal, the study did not consider investments as costs. The Commission therefore cannot accept this feasibility study as proving compliance with the MEOP. In addition, the study was drawn up in June 2008 and it seems to relate only to the investments in 2009.

(219) Regarding the feasibility study for the *modernisation and the extension of the parking* on the basis of which the investments related to the access road and parking lot development were undertaken, the Commission considers the study reasonable. The study assumes a 15 % increase in revenues from the expected increase in the users of the parking linked to the increase in the number of passengers. The study found a positive NPV using a discount rate of 15 % over the expected life time of the investment of eight years. The Commission finds the discount rate of 15 % reasonable and the life time of the investment conservatively short. The study shows that the investment will be already amortised after five years. The study was drawn up in November 2005 and is therefore suitable to indicate MEOP compliance of the investment in 2007. Furthermore, the Commission notes that at the time the financing of the modernisation and the extension of the parking was decided, the Government owned 100 % of the shares in the Airport Manager. It is therefore not necessary to proportionally adjust the NPV of the project.

(220) Romania submitted that the relevant date for the feasibility study for lighting equipment is the date when it was prepared by IPTANA SA, which started the works on the study in August 2007 under Contract no. 1016/22.8.2007 and it was given a favourable opinion by the Technical and Economic Council of the Ministry of Transport in Opinion No 33/1998, revised in 2007. Nevertheless, the exact date when the study was drawn up is not available. In any case, the feasibility study for the *lighting equipment* did not include a profitability analysis, but elaborated the costs estimations for this project. Therefore, it did not show how the behaviour of the Airport Manager was guided by the prospects of profitability in the longer term. The Commission therefore cannot accept this feasibility study as proving compliance with the MEOP.

(221) On the basis of the above, the Commission considers the *ex-ante* feasibility study prepared in view of the investments related to the access road and parking area sufficient to prove compliance with the MEOP. The Commission finds that the feasibility studies for the taxiway restoration and the apron extension, for lighting and for the non-Schengen terminal do not demonstrate compliance with the MEOP.

([42]) Stardust Marine, paragraph 71 and EDF, paragraphs 85 and 104.

Ex post reconstructed *ex ante* profitability studies

(222) The Airport Manager also submitted *ex-ante* profitability studies reconstructed *ex post* for the investments listed in recital (213).

(223) Regarding the investments in the *runway restoration and apron extension*, the profitability study reconstructed *ex post* found an NPV of EUR 1 784 600,12 and an internal rate of return of 13,12 %. The discount rate used was 9,1 %. The reconstructed *ex-post* study assumes a different passenger traffic forecast than available *ex-ante* on the basis of the Development Plan. These passengers forecasts are more conservative and estimated number of passengers are lower than included in the Development Plan. In this respect, the expected profitability would have been therefore even higher if the passenger number forecast in the Development Plan would have been taken into account. Nevertheless, the Commission notes that the estimated investment costs differ from the *ex-ante* feasibility study drawn up in July 2008. The Commission cannot verify whether the investment costs assumptions are those that could have been expected *ex ante*. Consequently, it is not possible to conclude that the assumptions taken into account are those that would have been available before granting the public financing and reconstructed study cannot be seen as providing a reliable *ex-ante* profitability analysis.

(224) Regarding the investment in the *lighting equipment*, the profitability study reconstructed *ex post* provided by the Airport Manager found an NPV of EUR 226 066,84 and an internal rate of return of 26,9 %. The discount rate used was 9,1 %. The reconstructed *ex-post* study assumes a different passenger traffic forecast than available *ex-ante* in the Development Plan. These passengers forecasts used are more conservative as the estimated number of passengers are lower than included in the Development Plan. In this respect, the expected profitability would have been therefore even higher if the passenger number forecast in the Development Plan would have been taken into account. This *ex-ante* analysis reconstructed *ex-post* seems reasonable to indicate the *ex-ante* profitability prospects of the investment in the lighting equipment in 2008.

(225) The Airport Manager has provided a profitability study reconstructed *ex post* for the investment in the *non-Schengen terminal*. This study found an NPV of EUR 2 536 094,92 and an internal rate of return of 14,71 %. The discount rate used was 8,67 %. The reconstructed *ex-post* study assumes a different passenger traffic forecast than available *ex-ante* in the Development Plan. These passengers forecasts used are more conservative and estimated number of passengers are lower than included in the Development Plan. Nevertheless, the Commission cannot verify the investment costs assumptions are those that could have been expected *ex ante*. In addition, it is not clear how the investment costs in the reconstructed study relate to the investment costs assumed in the *ex-ante* profitability study drawn up in June 2008 (recital (218)). Consequently, it is not possible to conclude that the assumptions taken into account are those that would have been available before granting the public financing and therefore the reconstructed study cannot be seen as providing a reliable *ex-ante* profitability analysis for investment in the non-Schengen terminal.

7.1.4.3. Conclusion on economic advantage

(226) As explained above, the Commission considers that Romania acted in line with the MEOP when investing in the access road and parking lot development project at Timișoara International Airport as shown in Table 3. The Commission therefore concludes that the financing related to this investment did not confer an economic advantage on the Airport Manager.

(227) Regarding the other three investment projects (taxiway restoration and apron extension, non-Schengen terminal development and lighting equipment), the Commission concludes that the public financing for these three investment projects provided an economic advantage to the Airport Manager.

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

7.1.5.1. Principles

(228) When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-EU trade, the latter must be regarded as affected by that aid. ([43])

([43]) Judgment of 30 April 1998, *Het Vlaamse Gewest v Commission*, T-214/95, EU:T:1998:77 and Judgment of 17 September 1980, *Philip Morris v Commission*, C-730/79, EU:C:1980:209, paragraph 11

(229) Since the operation of an airport is an economic activity, competition takes place, on the one hand, between airports to attract airlines and the corresponding air traffic (passengers and freight), and, on the other hand, between airport managers, which may compete between themselves to be entrusted with the management of a given airport. Moreover, in particular with respect to low cost carriers and charters, airports that are not located in the same catchment areas and even in different Member States can also be in competition with each other to attract those airlines.

(230) A public financing of an airport may therefore distort competition *between airports*. Competition between airports can be assessed in the light of airlines' criteria of choice, and in particular by comparing factors such as the type of airport services provided and the clients concerned, population or economic activity, congestion, whether there is access by land, and the level of charges for use of airport infrastructure and services. ([44])

(231) As mentioned in point 40 of the 2005 Aviation Guidelines and reaffirmed in point 45 of the 2014 Aviation Guidelines, it is not possible to exclude even small airports from the scope of application of Article 107(1) TFEU. Furthermore, point 45 of the 2014 Aviation Guidelines explicitly states that *"the relatively small size of the undertaking which receives public funding does not, as such, exclude the possibility that trade between Member States migh be affected."*

7.1.5.2. Application to the present case

(232) At the time under assessment, Timişoara International Airport was the second largest airport in Romania (recital (31)). It carried approximately 900 000 passengers per year. It is located in the vincinity of the Arad Airport which is 50 km away and within a two hour drive from Caransebes (recital (34)). There are international flights flying from Timişoara International Airport to other parts of the Union by a variety of different airlines that are operating also from different airports in Romania and other Member States. The runway at Timişoara International Airport is of sufficient length and allows airlines to serve medium- haul international destinations and, thus, to attract airlines to the detriment of other similar airports located in other Member States. The economic advantage granted by the direct investment grants in this case to the Airport Manager strengthened its economic position, as the Airport Manager was able to set up its business without bearing all of the inherent investment costs.

(233) Therefore, the measures under assessment must be considered liable to distort competition and affect trade between Member States.

7.1.6. *Conclusion on existence of State aid*

(234) On the basis of the above, the Commission concludes that public financing of the access road and parking area development in 2007 and of the security equipment in 2008 does not constitute State aid within the meaning of Article 107(1) TFEU.

(235) The Commission finds, however, that the public financing for the non-Schengen terminal development, the improvement of the taxiway and the extension of the apron and the lighting equipment constitutes State aid to the Airport Manager within the meaning of Article 107(1) TFEU.

7.2. **Type of aid: existing or new aid**

(236) The Commission notes that under the provisions of Annex V of the Act concerning the conditions of accession of the Republic of Bulgaria and Romania, ([45]) *"aid schemes and individual aid to the transport sector, put into effect in a new Member States before the date of accession and still applicable after that date shall be regarded as existing aid within the meaning of Article 88(1) of the EC Treaty subject to the following condition: the aid measures shall be communicated to the Commission within four months of the date of accession […] These aid measures shall be regarded as `existing` aid within the meaning of Article 88(1) of the EC Treaty until the end of the third year from the date of accession."*

(237) It follows from the above that in the case of Romania, the regime foreseen in Annex V will only apply to aid put into force before 1 January 2007 and continued thereafter if such aids have been communicated to the Commission within four months of the date of accession.

([44]) 2014 Aviation Guidelines, point 43.

([45]) Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the Treaties on which the European Union is founded, OJ L 157/203 of 21.6.2005.

(238) Romania submitted that the public financing for the investments at Timișoara International Airport for 2007 were approved in November 2006, hence before Romania's accession to the European Union. However, given that these measures have not been listed amongst the measures communicated to the Commission in accordance with the procedure detailed above, they cannot constitute existing aid. The Commission therefore concludes that the public financing for the non-Schengen terminal development, the improvement of the taxiway and the extension of the apron and the lighting equipment constitute new aid.

7.3. **Lawfulness of the aid**

(239) The public financing for the non-Schengen terminal development, the improvement of the taxiway and the extension of the apron and the lighting equipment was put into effect without a prior formal approval by the Commission. The measures do not meet the requirements of a block exemption from the notification obligation laid down in Article 108 of the Treaty. They were implemented by Romania in breach of its obligations under Article 108(3) TFEU.

(240) Therefore, the measures constitute unlawful State aid.

7.4. **Compatibility with the internal market**

(241) The public financing for the non-Schengen terminal development, the improvement of the taxiway and the extension of the apron and the lighting equipment (Table 3) was granted before 4 April 2014, which was the date when the 2014 Aviation Guidelines became applicable. According to 2014 Aviation Guidelines, the Commission will apply to unlawful investment aid to airports the rules in force at the time when the aid was granted. ([46])

(242) The 2005 Aviation Guidelines were in force when this investment financing was granted. Therefore, the 2005 Aviation Guidelines apply to the compatibility assessment of this investment aid.

(243) Based on point 61 of the 2005 Aviation Guidelines, the Commission will assess the aid in terms of the following criteria:

— the construction and operation of the infrastructure meets a clearly defined objective of general interest (regional development, accessibility, etc.);

— the infrastructure is necessary and proportional to the objective which has been set;

— the infrastructure has satisfactory medium-term prospects for use, in particular as regards the use of existing infrastructure;

— all potential users of the infrastructure have access to it in an equal and non-discriminatory manner; and

— the development of trade is not affected to an extent contrary to the Union's interest.

7.4.1. *Eligible costs*

(244) According to the 2005 Aviation Guidelines, costs eligible for investment aid to an airport must be limited to the investment costs of airport infrastructure properly speaking (runways, terminals, aprons, etc.) or facilities that directly support them (firefighting facilities, security or safety equipment). However, eligible costs must exclude the costs of commercial activities not directly linked to the airport's core activities, such as the construction, financing, use and renting of land and buildings, not only for offices and storage but also for the hotels and industrial enterprises located within the airport, as well as shops, restaurants and car parks.

(245) The costs for the investment listed in Table 3, items no. 2, 3, 4, 5, 9, 12 and 13 are eligible for investment aid under the 2005 Aviation Guidelines as they are part of the airport infrastructure.

7.4.2. *Clearly defined objective of general interest*

(246) The Airport Manager claims that its intervention pursued a clearly defined objective of general interest, namely regional development, accessibility of the region and air transport safety (recital (156)).

([46]) 2014 Aviation Guidelines, point 173.

(247) In particular, Romania explained that the investments over the period 2007- 2009 in the taxiway restoration and the extention of the apron was justified by the need to improve the airport's operation capacity during peak times when the capacity of the taxiway and the apron was constrained, in particular in the light of the significant expected traffic growth up to 2015 (recital (36)). In addition, Romania stated that the investments were also driven by aviation safety reasons, namely the need to separate the parking zones of the aircrafts and the access to such parking zones as well as the need to ensure the safety of the parked aircrafts (recital (86)).

(248) Regarding the development of the non-Schengen terminal, Romania explained that initially the investments aimed at improving the capacity of Timișoara International Airport in light of the expected significant increase in the passenger traffic in the period up to 2015. At the moment of the decision to grant the investment in 2006, the terminal capacity was considered at its critical limit from the operational point of view. The passenger traffic already increased by 250 % during the period 2001- 2005 leading to congestion at peak times. The original terminal constructed in 1960 was not designed to accommodate such levels of traffic (recital (37)).

(249) Romania explained that subsequently the need for further investments in the non-Schengen terminal was aimed at ensuring compliance with the security requirements so that the terminal can receive non-Schengen flights. At that time Romania expected to join the Schengen area in 2011. In particular, there was a need to separate the passengers flows between passengers arriving from within Schengen area and those coming from non-Schengen countries. This would also have ensured the Timișoara International Airport could maintain its commercial activity with respect to both flights within as well as outside of the Schengen area after Romania's accession to the Schengen area (recital (88)).

(250) According to Romania, the 2008 financing of the investments in lighting equipment aimed at better using the existing infrastructure by allowing landing from both directions instead of one direction in case of bad weather conditions. It also aimed at ensuring air traffic safety and the safety of the passengers and aircraft (recital (90)).

(251) In the light of the arguments above, the investments were designed to allow the Timișoara International Airport to cope with capacity contraints at peak times existing at that time as well as to accommodate the significant forecasted traffic growth increase. They were also designed to promote aviation security and compliance with safety measures required by Union rules on civil aviation security and Schengen borders control.

(252) In addition, the expected traffic could not be absorbed by neighbouring airports. The nearest airport- Arad Airport- had very limited traffic, both in absolute terms and compared with Timișoara International Airport. The number of passengers per year at Arad Airport varied between 67 183 and 128 835 in the period 2007 – 2009, whereas traffic at Timișoara International Airport varied between 859 329 to 991 758 passengers per year, with no correlation between the changes in passenger numbers between those two airports. ([47]) Arad Airport did not have the physical capabilities to accommodate the forecasted passenger traffic growth as its maximum passenger capacity was below 200 000 passengers per year.

(253) Timișoara International Airport was the second largest airport of Romania in the period under assessment and is currently the third largest airport of Romania. According to the Development Plan covering the time period 2006 – 2015, Timișoara International Airport served the region of Western Romania, one of the most developed regions in Romania. It also served the regions from East of Hungary as well as Serbia and Montenegro (DKMT euroregion). ([48]) Timișoara International Airport had therefore an important role for the regional development. In the light of the expected number of passengers for the period 2006 – 2015, without the investments to increase capacity, the economic development of the regions served and their accessibility would have been negatively affected, in particular given the fact that no other airport in the region could absorb the existing or expected traffic. In addition, there was no high-speed railway line through Timișoara, therefore there was no intermodal competition for any of the air routes.

([47]) The non-correlation of the traffic evolution of the neighbouring airports was also one criteria used in case SA.22614 (C 53/07) implemented by France in favour of the Chamber of Commerce and Industry of Pau-Béarn, Ryanair, Airport Marketing Services and Transavia (OJ L 201, 30.7.2015, p. 109), for arguing compatibility of the aid to Pau airport.

([48]) The Danube–Criș–Mureș–Tisa Euroregion (DMKT) is a euroregion located in Hungary, Romania and Serbia. It is named after the four rivers of the area.

(254) On the basis of the above, the Commission can conclude that the financing under review contributed to the accessibility of the regions served and the regional economic development and therefore served a well-defined objective of common interest.

7.4.3. *Necessity and proportionality of the aid*

(255) According to 2005 Aviation Guidelines, there is no limitation of the aid intensity for investment aid. The State financing involve the following aid intensities: 80,3 % for the non-Schengen terminal, 86,73 % for the improvement of the taxiway and the extension of the apron and 100 % for the lighting equipment.

Table 11 Financing of the investments 2007-2009

	2007		2008		2009		**Total**	
	Airport own resources	State budget allocations	Airport own resources	State budget allocations	Airport own resources	State budget allocations	**Airport own resources**	**State budget allocations**
Non-Schengen terminal development	353 849,91	1 758 000,00	809 682,29	242 000	888 417,89	6 379 960	**2 051 950,09**	**8 379 960**
Improvement of the taxiway and extension of the aircraft apron	469 548	6 846 000,00	2 323 854,71	10 236 650	184 252,34	2 387 990	**2 977 655**	**19 470 640**
Lighting equipment				1 344 000			**0**	**1 344 000**
Total	**823 397,9**	**8 604 000**	**3 133 537**	**11 822 650**	**1 072 670**	**8 767 950**	**5 029 605**	**29 194 600**

Source: Airport Manager

(256) In the light of the limited profits of the airport and the dividends paid to the Romanian state over the period 2007 – 2009 when compared to the size of the needed investments, it is reasonable to assume the Airport Manager would have not been able to make higher own contributions. This is in line with the general difficultes in access to finance on the market in the period under assessment due to the then-ongoing financial crisis. The Commission further recognises that airports with an annual passnger traffic of up to 1 million passengers are usually not able to cover their capital costs to a large extent.

(257) Consequently, the public financing was necessary so that the investments it financed could be made. In other words, it had an incentive effect as the Airport Manager would not have undertaken these investments without the state financing or not to the same extent. Moreover, it complies with the principle of proportionality as the Airport Manager could have not significantly increased its contribution to the financing of these investments.

7.4.4. *The infrastructure has satisfactory medium-term prospects for use*

(258) According to the Development Plan, over the 2001-2005 period, the passenger traffic and the number of aircraft movement increased by 250 %. The Development Plan also foresaw an increase of passenger traffic from 611 705 in 2005 to 1 661 332 in 2010 and 2 565 494 passengers in 2015. The accession of Romania to the EU in 2007 was expected to increase traffic by 16-18 %.

(259) These prospects therefore justified the investments aimed at accommodating the expected traffic. Consequently, the infrastructure had satisfactory medium-term prospects for use when the financing was granted.

7.4.5. *Access to the infrastructure in an equal and non-discriminatory manner*

(260) Romania confirmed that the infrastructure is accessible to all users in a non-discriminatory manner. The only constraint of use of the infrastructure is related to the limitation imposed by the capacity of reception of the apron and terminal. The infrastructure can therefore be accessed in an equal and non-discriminatory manner within the meaning of the 2005 Aviation Guidelines.

7.4.6. *Development of trade not affected to an extent contrary to the Union's interest*

(261) The nearest airport- Arad Airport- could have been affected by the public financing at Timișoara International Airport in the period under assessment. However, the Commission notes that several factors led to a limited competitive impact of the financing of the Airport Manager at Timișoara International Airport.

(262) Arad Airport had limited physical capacity for passenger traffic. It was only in 2014 that there were plans to expand the infrastructure to bring the passenger terminal capabilities close to or slightly over the 200 000 passengers per year threshold. However, even such increased potential would not have matched the demand forecasted in the Development Plan for Timișoara International Airport.

(263) The actual traffic numbers also confirm that Arad Airport had very limited passenger traffic. Traffic at Arad Airport represented only 7,8 % of the traffic at Timișoara International Airport in 2007, 14,5 % in 2008 and 8,8 % in 2009. Furthermore, the traffic evolution at the two airports does not seem correlated. ([49])

(264) Therefore, the expected significant increase in the passengers traffic envisaged for Timișoara International Airport could have not been absorbed by Arad Airport.

(265) In view of the above, the Commission considers that the distortions of competition brought about by the aid were limited and did not outweigh the contribution of the aid to regional development, accessibility and safety.

7.4.7. *Conclusion on Measure 1*

(266) For the reasons set of in recitals (241) to (265) above, the Commission considers that the State aid for the financing of the non-Schengen terminal development, the improvement of the runway and extension of the aircraft apron and the lighting equipment is compatible with the internal market on the basis of Article 107(3)(c) TFEU.

8. ASSESSMENT OF MEASURE 2 – THE 2007 AIP, 2008 AIP AND 2010 AIP

8.1. Existence of Aid

(267) The principles of Article 107(1) TFEU as set out in recitals (171) and (172) are applicable also for the assessment of Measure 2.

8.1.1. *Economic activity and notion of undertaking*

8.1.1.1. Principles

(268) The Commission must first establish whether the Measure 2 applies to undertakings within the meaning of Article 107(1) TFEU. The concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. ([50]) Any activity consisting of offering goods or services on a given market is an economic activity. ([51])

8.1.1.2. Application to the present case

(269) The AIPs set out the charges that apply to airlines for using the Airport's infrastructure.

(270) Airlines provide air transport services. By providing such services, airlines are performing an economic activity and, therefore, constitute undertakings within the meaning of Article 107(1) TFEU.

([49]) See footnote 32.
([50]) Judgment of 18 June 1998, *Commission v Italy,* C-35/96, EU:C:1998:303 and Höfner and Elser.
([51]) Judgment of 16 June 1987, *Commission v Italy,*118/85, EU:C:1987:283; Judgment of 18 June 1998, *Commission v Italy,* 35/96, EU:C:1998:303.

8.1.2. *State resources and imputability to the State*

8.1.2.1. Principles

(271) The concept of State aid applies only to advantages granted directly or indirectly, through State resources. ([52]) State resources include all resources of the public sector, ([53]) including resources of intra-State entities (decentralised, federated, regional or other) ([54]) and, under certain circumstances, resources of private bodies. The origin of the resources is not relevant provided that, before being directly or indirectly transferred to the beneficiaries, they come under public control and are therefore available to the national authorities, ([55]) even if the resources do not become the property of the public authority. ([56])

(272) Furthermore, the concept of State aid applies only if the granting of the advantage is imputable to the State, i.e. granted by the State itself or by any intermediary body acting by virtue of powers conferred on it.

(273) The fact that the State or State entity is the sole or majority shareholder of an undertaking is not sufficient to find that a transfer of resources by that undertaking is imputable to its public shareholders. ([57]) The Court of Justice also ruled that, even if the State is in a position to control a public undertaking and to exercise a dominant influence over its operations, actual exercise of that control in a particular case cannot be automatically presumed. A public undertaking may act with more or less independence, according to the degree of autonomy left to it by the State.

(274) Therefore, the mere fact that a public undertaking is under State control is not sufficient for measures taken by that undertaking to be considered imputable to the State. It is also necessary to examine whether the public authorities must be regarded as having been involved, in one way or another, in the adoption of this measure. On that point, the Court of Justice indicated that the imputability to the State of a measure taken by a public undertaking might be inferred from a set of indicators arising from the circumstances of the case and the context in which that measure was taken. ([58])

(275) Such indicators can be the integration of the undertaking into the structures of the public administration, the nature of its activities and the exercise of the latter on the market in normal conditions of competition with private operators, the legal status of the undertaking (in the sense of its being subject to public law or ordinary company law), the intensity of the supervision exercised by the public authorities over the management of the undertaking, or any other indicator showing, in the particular case, an involvement by the public authorities in the adoption of a measure or the unlikelihood of their not being involved, having regard also to the compass of the measure, its content or the conditions which it contains. ([59])

8.1.2.2. Application to the present case

(276) In the case at hand, at all material times the State exercised direct or indirect control on the resources under consideration. At the time when the 2010 AIP was approved, the Airport was 80 % owned directly by the Ministry of Transport of Romania, in accordance with the Article 8 of the 2008 Statute (recital (28)). The resources of the Airport Manager fell within the control of the State and were therefore at its disposal. Romania was capable, by excercising its dominant influence over the Airport Manager, of directing the use of its resources

([52]) Judgment of the Court of Justice of 24 January 1978, *Van Tiggele*, 82/77, EU:C:1978:10, paragraphs 25 and 26; Judgment of 12 December 1996, *Air France v Commission ("Air France")*, T-358/94, EU:T:1996:194, paragraph 63.

([53]) Air France, paragraph 56.

([54]) Judgment of the Court of Justice of 14 October 1987, *Germany v Commission*, 248/84, EU:C:1987:437, paragraph 17; Judgment of 6 March 2002, *Territorio Histórico de Álava and Others v Commission*, Joined Cases T-92/00 and 103/00, EU:T:2002:61, paragraph 57.

([55]) Judgment of the Court of Justice of 17 July 2008, *Essent Netwerk Noord*, C-206/06, EU:C:2008:413, paragraph 70; Judgment of the Court of Justice of 16 May 2000, *France v Ladbroke Racing Ltd and Commission ("Ladbroke Racing")*, C-83/98 P, EU:C:2000:248, paragraph 50.

([56]) Air France, paragraphs 65, 66 and 67; Ladbroke Racing, paragraph 50.

([57]) Stardust Marine, paragraph 51 *et seq*.

([58]) Stardust Marine, paragraph 52 and 55.

([59]) Stardust Marine, paragraph 56.

in order to finance specific advantages in favour of other undertakings. Furthermore, when the 2007 AIP and 2008 AIP were approved, ([60]) Romanian state was the sole shareholder of the Airport Manager. Based on the Article 7 of the 1998 Statute (recital(28)), the initial capital stock was entirely subscribed by Romania and paid in full on the date the Timișoara International Airport was set up. Consequently, the resources of the Airport Manager have to be considered as State resources for the purposes of Article 107(1) TFEU.

(277) As regards the imputability to the Romanian state, the Romanian authorities argue that the Airport Manager operates as a market economy investor and that the State's influence is strictly limited to its role as the shareholder of the company according to company's memorandum of association and Act No 31/1990 on companies. The Airport Manager's pricing policy is decided by the Board of Directors and the executive management of the Airport Manager in accordance with the company's memorandum of association.

(278) As regards the supervision of the activities of the Airport Manager by the State, the Commission observes that, the General Shareholders assembly is made up by representatives of the shareholders, Romanian state, represented by the Ministry of Transport, being the sole shareholder under the 1998 Statute and the majority shareholder (with the 80 % of the shares) under the 2008 Statute, and is competent to decide on the activities and the economic policy pursued by the Airport Manager. Based on the Article 19 of the 2008 Statute, the decisions of the General Shareholders assembly are to be taken by the vote of a number of shareholders representing at least half of the share capital, without any blocking minority rights.

(279) According to Article 20 of 2008 Statute, the Airport Manager is administered by a Management Board made up by seven members, out of which two are representatives of the Ministry of Transport and one is representative of Ministry of Finance. Furthermore, the Commission observes that the Management Board is chosen by the General Shareholders Assembly (in which the State was a sole shareholder under the 1998 Statute and currently holds a majority). The Management Board and its Chairperson are appointed by an order of the Ministry of Transport.

(280) The meetings of the Management Board may take place in the event that at least one half plus one member of the board participate. ([61]) The Management Board shall deliberate in the presence of at least two thirds of the number of its members and shall adopt decisions by a majority of the members of the Management Board. ([62])

(281) The Chairperson of the Management Board also carries out duties of managing director of the Airport Manager. The organic structure and influence chain is a further indicator of imputability of the approval of the schedule of charges and discounts to the State. In any case, and at the very least, the State was continuously kept informed about the evolution related to the schedule of charges and discounts via these members of the Management Board.

(282) Furthermore, based on the Article 2, point 2 of the 1998 Statute, the Airport Manager has as its main purpose the activities of national public interest. According to the Article 5 of the 1998 Statute, the Airport Manager is a specialized technical body designated by the Ministry of Transport to carry out mainly activities of national public interest in order, according to its scope of activity, to perform benefits, services, works for the administration and exploitation of assets belonging to or owned or leased out by the State, with a view to the national and international traffic of aircraft, ensuring the transit of persons and goods.

(283) In the light of these considerations, the Commission considers that there are sufficient indicators to find that the 2007 AIP, 2008 AIP and 2010 AIP are imputable to the State.

([60]) It was clarified by Romania, that the 2007 AIP and the 2008 AIP were approved by the Board of Directors of the Airport Manager approximately two months prior to the entry into force of each AIP respectively.

([61]) Article 20, point 9 of the 1998 Statute.

([62]) Article 20, point 10 of the 1998 Statute.

8.1.3. *Selectivity*

8.1.3.1. Principles

(284) To fall within the scope of Article 107(1) TFEU, a State measure must favour "*certain undertakings or the production of certain goods*". Hence, only those measures favouring undertakings which grant an advantage in a selective way fall under the notion of State aid.

(285) It is settled case-law that the assessment of the selectivity condition requires it to be determined whether, under a particular legal regime, a national measure is such as to favour certain undertakings or the production of certain goods over others which, in the light of the objective pursued by that regime, are in a comparable factual and legal situation. The examination of selectivity requires prior definition of the reference framework within which the measure concerned fits. ([63]) A measure is selective "*only if, within the context of a particular legal regime, it has the effect of conferring an advantage on certain undertakings over others, in a different sector or the same sector, which are in the light of the objective pursued by that regime, in a comparable factual and legal situation*." ([64]) The concept of State aid does not refer to State measures which differentiate between undertakings if such differentiation arises from the nature or the overall structure of the system of which they form part. ([65])

(286) A measure by which a public undertaking lays down the conditions for the use of its goods or services is not necessarily always a selective measure for the purposes of Article 107(1) TFEU. ([66]) Article 107(1) TFEU does not distinguish between measures of State intervention by reference to their causes or their aims but defines them in relation to their effects, and thus independently of the techniques used. ([67])

8.1.3.2. Application to the present case

(287) The 2007 AIP, 2008 AIP and 2010 AIP provided for a system of base rates for airport charges (recitals (41) and (44) respectively). Furthermore, the 2007 AIP, 2008 AIP and 2010 AIP also included discounts and rebates to the charges depending on the number of landings per a given time period, number of passengers, the weight of the aircraft and/or the type of the route served (recitals (42) to (43), (46) to (48) and (49) respectively).

(288) The 2007 AIP, 2008 AIP and 2010 AIP were proposed, assessed and established by the executive management of the Timișoara International Airport and were approved by the Board of Directors (recital (40)). This conforms to the requirement that the operator of an airport, exercising a power of its own, draws up the scale of airport fees applicable to that airport. ([68]) The applicable legal framework was therefore the airport charges, discounts and rebates applicable at Timișoara International Airport set by the 2007 AIP, 2008 AIP and 2010 AIP respectively.

(289) Therefore, the relevant reference framework for examining whether the 2007 AIP, 2008 AIP and 2010 AIP had the effect of favouring certain airlines over others which were in a comparable factual and legal situation was that of the regime applicable to Timișoara International Airport alone.

(290) The system of airport charges and the discounts and rebates were applicable to all airlines using, or liable to use, Timișoara International Airport which met the conditions described in the 2007 AIP, 2008 AIP or 2010 AIP respectively.

(291) The Commission further analysed whether the discounts provided for by the 2007 AIP, 2008 AIP or 2010 AIP respectively were selective by favouring certain airlines using Timișoara International Airport to the detriment of other airlines using it.

([63]) Judgment of the Court (Grand Chamber) of 21 December 2016, *Commission v Hansestadt Lübeck ("Lübeck")*, C-524/14 P, EU:C:2016:971, paragraphs 40-67.

([64]) Lübeck, paragraph 58.

([65]) Lübeck, paragraphs 40-67 and the case-law cited therein.

([66]) Ibid.

([67]) Ibid. Judgment of 15 November 2011, *Commission and Spain v Government of Gibraltar and United Kingdom*, C-106/09 P and C-107/09 P, EU:C:2011:732, paragraph 87 and the case-law cited therein.

([68]) Lübeck, paragraph 61.

(292) The applicable discounts were on a sliding scale, with the lowest starting at 10 % for 250 – 500 landings per year, i.e. approximately 5 landings a week. The Commission notes that in the period under assessment, in addition to Wizz Air, there were a number of other airlines operating at Timișoara International Airport which had in their fleet aircraft of the relevant sizes and/or sufficient frequences and therefore, benefitted or could have benefitted of the relevant discounts.

(293) It follows that the system of airport charges and the discounts were applicable in a non- discriminatory manner.

(294) Therefore, the base rate, the discounts and the rebates set out in the 2007 AIP, 2008 AIP and 2010 AIP were not selective.

(295) The Commission notes that this conclusion holds only with respect to the charges, the discounts and the rebates stemming directly from the 2007 AIP, 2008 AIP and the 2010 AIP. It does not apply to any charges, discounts or rebates provided on the basis of individualized agreements with airlines, if any.

8.1.3.3. Conclusion on selectivity

(296) It follows from the above that Measure 2 does not meet the selectivity condition of Article 107(1) TFEU.

(297) The conditions of Article 107(1) TFEU are cumulative. If one of them is not met by a measure under assessment, such measure does not constitute State aid.

(298) The Commission therefore concludes that Measure 2 did not constitute State aid within the meaning of Article 107(1) TFEU as it was not selective.

(299) The Commission notes that the Opening Decision raised the issue that the AIPs may be incompatible with the internal market because of a potential discriminatory treatment between different types of passengers. This principle applies to measures which constitute State aid and prevents them to be found compatible under State aid rules. ([69]) As in the current case the AIPs are found not to constitute State aid, it is not necessary to further analyse the indissoluble link element raised in the Opening Decision.

9. ASSESSMENT OF MEASURE 3 – 2008 AGREEMENTS WITH WIZZ AIR

9.1. Existence of Aid

(300) The principles of Article 107(1) TFEU as set out in recitals (171) and (172) are applicable also for the assessment of Measure 3, which concerns the 2008 Agreements between the Airport Manager and Wizz Air.

9.1.1. *Economic activity and notion of undertaking*

(301) Wizz Air is an airline. It provides scheduled passenger air transport services and pursues an economic activity. It therefore constitutes an undertaking within the meaning of Article 107(1) TFEU.

9.1.2. *State resources and imputability to the State*

9.1.2.1. Principles

(302) The principles explained in recitals (271) to (275) are also applicable for this measure.

9.1.2.2. Application to the present case

(303) For the state resources, the same as stated in the recital (276) applies.

([69]) Judgment of the Court of 15 June 1993, *Matra v Commission*, C-225/91, EU:C:1993:239.

(304) As regards imputability of the 2008 Agreements that were signed during the validity of the 1998 Airport's statute, the reasoning in recitals (277) to (279) for the 2007 AIP, 2008 AIP and 2010 AIP applies *mutatis mutandis*.

(305) In the light of these considerations, the Commission finds that the conclusion of the 2008 Agreements between Wizz Air and the Airport Manager is imputable to the State.

9.1.3. *Selectivity*

9.1.3.1. Principles

(306) The principles explained in the recital (199) are also applicable for this measure.

9.1.3.2. Application to the present case

(307) In the case at hand, the 2008 Agreements were concluded with a single undertaking- Wizz Air only. Measure 3 was thus selective by definition within the meaning of Article 107(1) TFEU.

9.1.4. *Economic advantage*

9.1.4.1. Principles

(308) The principles regarding an economic advantage within the meaning of Article 107(1) TFEU set out in recitals (202) to (206) apply to arrangements between airports and airlines. The application of the MEO Principle to such arrangements is further explained in the 2014 Aviation Guidelines. ([70])

(309) In the specific airport-airlines situation, the Commission will assess whether the availability of public resources to the airport confers an advantage for the airlines using that airport. Such aid to an airline using the airport can, in principle, be excluded where the relationship between the airport and that airline satisfies the MEO test.

(310) According to the 2014 Aviation Guidelines, by virtue of the MEOP, aid to an airline using an airport can, in principle, be excluded where:

(1) the price charged for the airport services corresponds to the market price, or

(2) it can be demonstrated through an *ex ante* analysis, namely an analysis based on the data available at the moment the measures in question were decided, that the airport/airline arrangement could be expected to lead to a positive incremental profit contribution for the airport.

(311) As concerns the first approach outlined in recital (310) (i.e. comparison of the price charged for airport services with the market price), according to the 2014 Aviation Guidelines, the identification of a benchmark requires, first, that a sufficient number of comparable airports providing comparable services under normal market conditions can be selected. In this respect the Commission notes that for the moment, a large majority of Union airports benefit from public funding to cover investment and operating costs. Publicly owned airports have traditionally been considered by public authorities as infrastructures for facilitating local development and not as undertakings operating in accordance with market rules. Those airports' prices consequently tend not to be determined with regard to market considerations and in particular sound *ex ante* profitability prospects, but essentially having regard to social or regional considerations. Even if some airports are privately owned or managed without social or regional considerations, the prices charged by those airports can be strongly influenced by the prices charged by the majority of publicly subsidised airports as the latter prices are taken into account by airlines during their negotiations with the privately owned or managed airports. In those circumstances, the Commission expressed its doubts in the 2014 Aviation Guidelines that at the present time, an appropriate benchmark can be identified to establish a true market price for services provided by airports. ([71])

([70]) 2014 Aviation Guidelines, point 53.
([71]) 2014 Aviation Guidelines, point 59.

(312) In any event, the Commission considers that a benchmarking exercise should be based on a comparison of airport charges, net of any benefits provided to the airline (such as marketing support, discounts or any other incentive), across a sufficient number of suitable 'comparator airports', whose managers behave as market economy Airport Managers. In particular, the following indicators should be used: traffic volume; type of traffic (business or leisure or outbound destination); the relative importance of freight and the relative importance of revenue stemming from the non-aeronautical activities of the airport type and level of airport services provided; proximity of the airport to a large city number of inhabitants in the catchment area of the airport; prosperity of the surrounding area (GDP per capita); different geographical areas from which passengers could be attracted.

(313) Based on the above, the Commission considers the *ex ante* incremental profitability analysis to be the most relevant criterion for the assessment of arrangements concluded by airports with individual airlines.

(314) In addition, the Commission considers that arrangements concluded between airlines and an airport can be deemed to satisfy the MEOP test when they incrementally contribute, from an *ex ante* standpoint, to the profitability of the airport, at least in the long term. ([72]) The airport should demonstrate that, when setting up an arrangement with an airline (for example, an individual contract or an overall scheme of airport charges), it is capable of covering all costs stemming from the arrangement, over the duration of the arrangement, with a reasonable profit margin on the basis of sound medium-term prospects. ([73])

(315) In this respect, the Commission considers that price differentiation is a standard business practice, as long as it complies with all relevant competition and sectoral legislation. Nevertheless, such differentiated pricing policies should be commercially justified to satisfy the MEOP test. ([74])

9.1.4.2. Joint assessment of the 2008 Agreements

(316) The Commission considers that for the purpose of application of the MEOP, the 2008 Agreements have to be assessed together as one single measure. There are several indications why this should be the case.

(317) First, the agreements were concluded by the same parties.

(318) Second, the Memorandum of Understanding from 25 June 2008 lists the scope of the services to be provided by the Airport Manager as well as the marketing services to be provided by Wizz Air. The Memorandum of Understanding foresees the same formula for calculating the marketing fee and the same retained amount per departing passenger as the Marketing Agreement of 30 July 2008. Consequently the Memorandum of Understanding and the Marketing Agreement are closely and directly linked in terms of content. The Memorandum of Understanding also provides the general principles of cooperating between the Airport Manager and Wizz Air which are subsequently spelled out in more operational terms in the Marketing Agreement, the Operation Agreement and the GHA. The Marketing Agreement also makes a direct reference to the Memorandum of Understanding in its preamble (recital (55)). The Memorandum of Understanding was eventually replaced by the Marketing Agreement, the Operation Agreement and the GHA.

(319) Thirdly, the Operation Agreement and the GHA were signed on the same day (1 August 2008) for the same period of time, i.e. 11 December 2008 to 10 December 2009, with an automatic renewal for further 12 months at each anniversary of its entry into force, and without the possibility to terminate them prior to the third anniversary of the Marketing Agreement. The Marketing Agreement also entered into force the same day, i.e. 11 December 2008 (recital (54)).

([72]) 2014 Aviation Guidelines, point 66.
([73]) 2014 Aviation Guidelines, point 63.
([74]) 2014 Aviation Guidelines, point 62.

(320) Fourth, the 2008 Agreements were interlinked. The Marketing Agreement makes several references to the Operation Agreement and the GHA: i) the Marketing Agreement foresaw that parties could terminate immediately the Marketing Agreement if the Operating Agreement expired without renewal or was terminated; ii) the Marketing Agreement stipulatated that parties could terminate immediately the Operation Agreement and the GHA without any damages when the Marketing Agreement expired or was terminated; iii) the Marketing Agreement stipulated that in case of an increase of the charges regulated in the Operating Agreement or the GHA, the marketing fee should be modified equally to the change of the airport charges (recital (59)).

(321) On the basis of the above arguments, the Commission considers that the Memorandum of Understanding, the Marketing Agreement, the Operation Agreement and the GHA are not separable. The Commission therefore finds that it is necessary to analyse the 2008 Agreements together, with a view to determining whether such a transaction constitutes State aid.

9.1.4.3. Application of the principles to the present case

(322) In the present case, in order to determine whether the 2008 Agreements grant Wizz Air an advantage that it would not have received under normal market conditions, the Commission has to examine whether in similar circumstances an airport operating under normal conditions of the market economy and guided by prospects of profitability in longer term ([75]) would have entered into same or similar commercial arrangement with an airline. The Commission has to place itself at the time when the decision to conclude the 2008 Agreements between the Airport Manager and Wizz Air was taken and base its assessment on the information and assumptions which were at the disposal of the Airport Manager at that time.

(323) As to the applicable MEO analysis, Wizz Air submitted that the comparison with the market price approach, i.e. the first approach explained in recital (310)(1) should apply to this case in addition to the second approach (i.e. profitability analysis) in recital (310)(2).

(324) Wizz Air submitted a report prepared by Oxera on the "Economic MEIP assessment" dated 27 October 2011, where the charges paid by Wizz Air at Timişoara International Airport have been compared with the charges paid by Wizz Air at three airports in the UK, which Oxera considered to be comparable airports: Liverpool, Prestwick and Doncaster airports. The analysis in the study is based on the data provided by the Airport Manager and Wizz Air. According to the Oxera study, these airports are likely to behave by their ownership and funding structure as "private investor" airports. The study also presented a comparison between the general characteristics of the Timişoara International Airport and the three comparable airports (e.g. size of the home city population, distance to the home city, population of largest city within 150 km, nearest large airport), the size in income level measures by GDP per capita as well as average weekly wages, the trends in traffic numbers, the revenues of the concerned airports and the funding status (i.e. whether it received or not public funding). The report calculated the charges paid by Wizz Air at Timişoara International Airport compared to the three UK airports (the analysis took into account different charges at the four airports net of benefits provided to Wizz Air). The analysis presented the total charges paid by Wizz Air at Timişoara International Airport and at the comparator airports expressed in euros per turnaround and euros per passenger. On that basis, it found that the overall level of charges paid by Wizz Air at Timişoara International Airport over the period 2008 – 2011 expressed both on a per- turnaround basis as well as per- passenger basis is higher on average than the comparable average level of charges paid by the airline at the comparator airports. According to the Oxera report, the lower prices paid by Wizz Air at the comparator airports suggest that a private investor would have been likely to enter into a contract on the terms of the deal between the Airport Manager and Wizz Air.

(325) Regarding the Oxera report comparing Timişoara International Airport with three UK airports provided by Wizz Air, the Commission recalls that benchmarking is not an appropriate method to establish market prices if the available benchmarks have not been identified with regard to market considerations or the existing processes are significantly distorted by public interventions. Such distortions appear to be present in the aviation industry, for the reasons explained in recitals (311) to (312).

([75]) ALFA Romeo, paragraph 23; Judgment of 12 December 2000, *Alitalia v Commission*, T-296/97, EU:T:2000:289, paragraph 84.

(326) In addition, the Commission finds that the criterion of a sufficient number of comparator airports providing comparable services under normal conditions set out in point 55 of the 2014 Aviation Guidelines is not fulfilled. Given that there are a few hundreds of airports in Europe, ([76]) three airports cannot be considered to be a sufficient number which would allow the identification of an appropriate benchmark for the relevant market prices. Moreover, two of the three benchmarking airports (Liverpool and Doncaster) are also owned by the same group – Peel Airports Group. This further undermines the number and variety of the comparator airports needed in order to provide a reliable benchmark.

(327) Furthermore, all of the three comparator airports are located in the United Kingdom and two of them (Liverpool and Doncaster) are close to the same large city – Manchester. Moreover, the Oxera report does not explain whether the three comparator airports as well as Timișoara International Airport provide comparable services. The study only provides information regarding the moment when Wizz Air started operation at each airport and to which destinations and analyzes the total fees paid by Wizz Air at these airports (net of payments for marketing services). However, this does not allow an assessment as to whether the airports provide comparable services.

(328) Furthermore, as the Oxera report itself points out there are a number of differences between Timișoara International Airport and other two UK airports (Liverpool Airport and Prestwick Airport). In particular, Liverpool Airport is substantially bigger than Timișoara International Airport (around 5.5 million passengers in 2007), Prestwick Airport served more than 2 million passengers. Therefore, in terms of traffic volume, the only one which was comparable was Doncaster Airport (up to 1 million). The number of passengers that Wizz Air itself transported from each of these airports differs.

(329) As regards the prosperity of the surrounding area (GDP per capita), there was a huge difference between that ofTimișoara (index of GDP per capita ([77]) below 50 in 2007) and the UK (index of GDP around 120 in 2007), where the three comparator airports are located. Furthermore, the Oxera report contains in the comparison part the information on average weekly wages in regional employment markets in Timișoara and the three cities in the UK where the comparator airports are located (Liverpool, Prestwick and Doncaster) and they are also very different (Timișoara is below 50, whereas the three other cities attained the level of more than 500).

(330) Moreover, the report does not take into account certain indicators as specified in point 60 of the 2014 Aviation Guidelines (e.g. the type of traffic or the type and level of airport services provided).

(331) Last, even assuming that, based on a valid comparable analysis, the ”price” applied in the various transactions covered by this assessment were equivalent to or higher than the ”market prices”, the Commission could not, however, conclude that those transactions necessarily corresponded to the market price. It would not be a market price if, at the conclusion of such arrangements, the operator may have expected them to lead to incremental costs higher than the incremental revenues. An MEO would not in fact be interested in offering goods or services at the ”market price” if this led to its incremental loss.

(332) The Commission considers it appropriate to reiterate in the context of this analysis that, following the adoption of the 2014 Aviation Guidelines, both Romania and the interested parties were invited to submit comments on the application of those guidelines to the present case. Apart from Wizz Air, neither Romania nor other interested parties disputed the Commission's approach according to which, where an appropriate benchmark cannot be identified to establish a true market price for the services provided by airports to airlines, the most relevant criterion for assessing the arrangements concluded between these two parties is an *ex ante* incremental profitability analysis.

([76]) 2014 Aviation Guidelines, point 1 states that the air transport system of the European Union is made of a network of over 460 airports.

([77]) As explained in the Oxera report, the index of GDP per capita for Romania and the UK is expressed in the purchasing power standards (PPS), relative to the average for the European Union (EU-27). The average for the European Union (EU-27) was set equal to 100.

(333) Therefore, based on the above, the Commission considers that the approach generally recommended in the 2014 Aviation Guidelines for applying the MEOP test to relationships between airports and airlines, namely the *ex-ante* incremental profitability analysis, must be applied in this case. ([78])

9.1.4.4. Timeframe for assessing the profitability of the 2008 Agreements

(334) When deciding on whether or not to enter into agreements with an airline, a MEO will choose a time frame for its assessment based on the terms of the agreements in question or the term set in each individual agreement. In other words, it will assess the incremental costs and revenues for the term of application of the agreements. On the date of the signature of the agreements, a prudent MEO will not count on the agreements being renewed once they have expired, whether under the same or new terms.

(335) Based on the approach outlined in recital (334), the Commission will assess the incremental costs and revenues of the 2008 Agreements for the period 11 December 2008 – 10 December 2011, which is the initial period of application of the Marketing Agreement. The optional prolongation of the Marketing Agreement by another 12 monhts after the expiry of the first three years will not be taken into account. This was only an option to prolong, and therefore, a market operator could not have relied on the fact that such option would be executed.

(336) Both the Operation Agreement and the GHA were valid for an initial period of one year, i.e. from 11 December 2008 to 10 December 2009. Each of them foresaw an automatic renewal for further 12 months periods at each anniversary of their respective entry into force. The Airport Manager was not entitled to unilaterally terminate these two contracts before the 3rd renewal period. ([79]) As the renewal of the Operation Agreement and the GHA was automatic from the point of view of the Airport Manager, the Commission therefore considers that a prudent MEO would have assumed the Operation Agreement and the GHA would be valid at least for the duration of the Marketing Agreement, if not longer.

(337) A contrario, assuming an initial three- year period of the Marketing Agreement and a one- year initial period for the Operation Agreement would not have been logical, since without the operation of the airline at the airport, the Marketing Agreement would remain without object. Similarly, the duration of the application of the GHA would need to be aligned to the duration of the Operation Agreement as the groundhandling services are possible only if the airline operates at the airport. In addition, as explained in recital (319), the duration of the Marketing Agreement on the one side and the duration of the Operation Agreement and the GHA on the other side are linked.

(338) The Commission notes that the Memorandum of Understanding signed on 25 June 2008 was the framework setting out the general principles of cooperation between the Airport Manager and Wizz Air. These were then spelled out in operational terms in the Marketing Agreement, the Operation Agreement and the GHA. Therefore, the Commission considers the period before the signature of the Memorandum of Understanding, i.e. 25 June 2008, should be considered as the *ex-ante* standpoint of reference for the purposes of the profitability analysis.

(339) Both the Operation Agreement and GHA were amended on 25 June 2010 by a new discount scheme agreed between Wizz Air and the Airport Manager which covered the period up to 6 February 2011 (the "2010 Amendment Agreements"). This new discount scheme corresponds to the 2010 AIP. Given the fact that the amendments brought modifications to the terms of the two agreements, the Commission will apply the MEO principle separately to the 2010 Amendment Agreements aiming to assess if an MEO would have entered into the amendment agreements. The assessment below will therefore distinguish the profitability analysis for the initial period of the 2008 Agreements from the profitability analysis of the 2010 Amendment Agreements.

([78]) 2014 Aviation Guidelines, point 59 and 61.

([79]) Save for a standard breach of contract reasons.

9.1.4.5. Profitability analysis of the 2008 Agreements

Assessment of incremental costs and revenues of the 2008 Agreements

(340) The 2008 Agreements were an individually negotiated arrangements that only applied to the two contracting parties. It is not an overall scheme of airport charges that applies to all airlines using the airport. ([80]) The relevant costs and revenues that are incremental to the 2008 Agreements are those that the Airport Manager expected to incur due to the operation of Wizz Air at Timișoara International Airport.

(341) The key issue is whether incremental revenues, arising from the activity of the airline, exceed incremental costs. Therefore, investments undertaken at the Airport prior to the agreements and fixed operating costs are not relevant.

(342) Incremental revenues that a private investor would reasonably expect from the 2008 Agreements would arise from additional aeronautical revenues from airport charges paid by Wizz Air and additional non- aeronautical revenues from, for example, car parking, franchised shops, or directly operated shops.

(343) Incremental costs in this case are the operating costs, marketing costs and any investment costs which can be attributed to the presence of Wizz Air at Timișoara International Airport.

Ex-ante profitability analysis provided by Romania for the 2008 Agreements

(344) Upon the Commission request, on 9 December 2014, Romania provided an *ex-ante* profitability analysis reconstructed *ex-post* based on the data available before concluding the 2008 Agreements with Wizz Air. The analysis provided an overview of the incremental revenues that could have been expected at the time the agreements were concluded.

(345) The 2008 Agreements were estimated to generate the following revenues:

Table 12: Ex-ante estimated revenues generated through the 2008 Agreements (excluding marketing agreement)

Year (1)	Number of passengers (estimated) (2)	Aeronautical revenue per Wizz Air passenger (EUR) (3)	Non-aeronautical revenue per pasager (EUR) (4)	Aeronautical revenues (EUR) (5)=(2)x(3)	Non-aeronautical revenues (EUR) (6)=(2)x(4)	Total revenues (estimated) (EUR) (5)+(6)
2009	**200 000**	12	2,50	2 400 000	500 000	**2 900 000**
2010	**300 000**	12	2,50	3 600 000	750 000	**4 350 000**
2011	**350 000**	12	2,50	4 200 000	875 000	**5 075 000**

(346) The analysis uses the Wizz Air forecasts of the number of passengers to be transported in 2009, 2010 and 2011.

(347) The aeronautical revenue per departing passenger was calculated as shown in Table 13. The aeronautical revenues per Wizz Air passenger were calculated as the aeronautical revenue per Wizz Air departing passenger (approximately EUR 24) divided by 2, as only half of the Wizz Air passengers are departing passengers. The unit costs represent the full charges (i.e. without any discounts) as set out in the Operation Agreement and the GHA.

([80]) 2014 Aviation Guidelines, point 63.

Table 13: Aeronautical revenue per flight and per departing Wizz Air passenger

		MTOW	**72**
		Capacity	**180**
		Load Factor	**82 %**
	Unit measure	Unit charge (EUR)	Per flight (EUR)
Landing charge	MTOW	7	504
Station charge	MTOW	0,15	10,80
Lighting charge	MTOW	2,10	151,20
Ramp Handling charge	Flight	150	150
Embarked Passenger charge	Dpax	8	1 180,80
Security charge	Dpax	10	1 476
Passenger with Reduced Mobility charge	Dpax	0,20	29,52
Total per flight	**Flight**		**3 502,32**
Total per Dpax	**Dpax**		**23,73**

(348) According to Romania, based on the Airport's experience in preceding years, the non aeronautical revenues represented only 15 – 20 % of the total revenues of the Airport Manager, which amounted to EUR 2,5 of non-aeronautical revenue per passenger. This amount was also assumed for the Wizz Air passenger (as shown in column 4 of Table 12).

(349) When including the marketing payments as set out in the Marketing Agreement into the estimations, the following revenues were expected. The marketing payments are included in the table by Romania as "the Airport marketing investment".

Table 14: Ex-ante estimated net revenues generated through the 2008 Agreements (including Marketing Agreement)

Year	**Number of passengers/year**	**Number of embarked passengers per year (2)/2**	**Aeronautical revenue per embarked passenger (EUR)**	**Non-aeronautical revenue per passenger (EUR)**	**Tariff retained by the Airport Manager per embarked passenger (EUR)**	**Amount retained by the Airport (3)x(7) (EUR)**	**Aeronautical revenues (2)x(4) (EUR)**	**The Airport marketing fee (8) – (7) (EUR)**	**Non-aeronautical revenues (2)x(5) (EUR)**	**Final revenues Airport (7) + (10) (EUR)**
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**	**(7)**	**(8)**	**(9)**	**(10)**	**(11)**
2009	200 000	100 000	12	2,5	5	500 000	2 400 000	1 900 000	500 000	**1 000 000**
2 010	300 000	150 000	12	2,5	4	600 000	3 600 000	3 000 000	750 000	**1 350 000**
2 011	350 000	175 000	12	2,5	4	700 000	4 200 000	3 500 000	875 000	**1 575 000**

(350) The amount retained by the Airport Manager per embarked passenger (column 6 of Table 14) was calculated based on the Marketing Agreement. The Marketing Agreement foresaw an amount to be retained by the Airport Manager ([81])depending on the monthly number of passengers delivered by Wizz Air to/from the airport as follows.

([81]) The retained amount was a methodology used in the calculation of the marketing payments in relation to the airport charges.

Table 15 Retained amount per departing passenger

Monthly number of passengers (departing and arriving) delivered by Wizz Air to/from the airport			Retained amount per departing passenger in EUR
0	-	5 349	8
5 350	-	10 690	6
10 691	-	15 999	5
16 000	-	31 999	4
> 32 000			3,50

(351) Given the number of estimated Wizz Air passengers per year of 200 000 in 2009, 300 000 in 2010 and 350 000 in 2011, it was estimated that the number of Wizz Air passenger per month would have been 16 666 in 2009, 25 000 in 2010 and 29 166 in 2011. On that basis, it was considered that the Airport Manager would retain EUR 5 per embarked passenger in 2009 and EUR 4 in 2010 and 2011.

(352) The analysis provided by Romania does not include incremental costs calculations. According to the Romanian authorities, the majority of airport costs are fixed (approximately 80 %). In addition, the airport costs were estimated to remain constant or be subject to only minor modifications due to an increased consumption of fuel and energy and possibly due the physical wearing out of equipment associated with Wizz Air operations at the airport. Romania explained that no other additional costs with the equipment, materials or infrastructure were expected since Wizz Air operations would use the existing assets and infrastructure during the time intervals which they were so far not used. The activity of the Timișoara International Airport was focused on Carpatair operations which used only certain time intervals during the day. No additional personnel costs were expected either for similar reasons. According to Romania, no investment costs were allocated to Wizz Air, because all airport investments were planned before negotiations with Wizz Air started. Consequently, according to the analysis, given the high share of fixed costs, the Airport Manager would benefit from an increased profitabitability due to the increase in the passenger volume, even when applying reduced tariffs.

(353) The Commission considers the approch regarding the number of estimated passengers reasonable as it is consistent with the Development Plan. The Development Plan foresaw an increase by 244 348 passengers from 2008 to 2009. Given that Wizz Air operation agreement entered into force on 11 December 2008, it can be roughly said that from the 244 348 passengers increase forecasted in the Development Plan, 200 000 passengers were brought by Wizz Air. The Development Plan also estimated an increase in the passenger traffic by 253 423 passengers from 2009 to 2010 and by 215 973 passengers from 2010 to 2011. Therefore the increase by 100 000 passengers from 2009 to 2010 and 50 000 respectively from 2010 to 2011 for Wizz Air foreseen in the *ex-ante* analysis of Romanian looks reasonable.

(354) The Commission finds that the aeronautical revenues are overestimated as the discounts for the airport charges foreseen in the Operation Agreement are not taken into account. Nevertheless, due to the formula for calculating the marketing payment, the lower aeronautical revenue would have resulted in a lower marketing payment by the exact same amount. ([82]) Consequently, the revenues and costs would be lower by the same amount and would therefore not affect the profitability.

(355) However, the Commission finds that the *ex-ante* analysis reconstructed *ex post* provided by Romania features a number of shortcomings as follows:

([82]) For example, if the aeronautical revenue per departing passenger would be EUR 20 instead of EUR 24, the aeronautical revenues would be lower by EUR 400 000, i.e. it would amount to EUR 2 million. The marketing payment would then be EUR 1 500 000 (EUR 2 million aeronautical revenues minus EUR 500 000 the amount retained by the Airport Manager). So the marketing payment in such situation is lower by EUR 400 000 when compared to a charge per passenger of EUR 24.

(a) The security charge ([83]) is entirely included as aeronautical revenue of the airport. This charge should have been either excluded considering it finances non-economic activities ([84]) or should have been included in the aeronautical revenues with the corresponding security costs accounted for on the costs side (therefore the inclusion of security charge and costs would have not affected the profitability). ([85])

(b) The analysis does not provide any incremental operating costs calculation whereas it recognised that the Airport Manager will incur some additional operating costs (albeit small) associated with the presence of Wizz Air at Timișoara International Airport (recital (352)).

(c) The analysis does not provide a net present value and a discount rate.

(356) On the basis of the above, the Commission considers that the *ex-ante* profitability analysis reconstructed *ex post* by Romania does not prove compliance with the MEO Principle of the 2008 Agreements.

Oxera *ex-ante* profitability analysis for the 2008 Agreements

(357) Wizz Air submitted a report prepared by Oxera dated 10 February 2015 (together with its further amendment the "Oxera Report"), assessing the expected profitability of the 2008 Agreements with Wizz Air reconstructed *ex-post* based on the data that would have been available at the moment when the agreements were signed. The Oxera Report called "*Economic MEOP assessment: Timișoara airport. Profitability analysis*" is based on the data from the analysis provided by Romania (recital (344)) complemented by additional data provided by the Airport Manager to Oxera.

(358) The timeframe of the 2008 Agreements taken into account is three years, i.e. the initial timeframe foreseen in the Marketing Agreement without its possible extension.

(359) On 14 May 2015, Oxera re-submitted the expected profitability calculations to correct a data issue found in the report from 10 February 2015. The correction concerned an overestimation of the total costs of investments resulting from a double-counting of the investment funded by the state in the original submission. This data issue affected the expected profitability of the 2008 Agreements, which was originally underestimated.

(360) According to the amended Oxera Report, the results of the incremental costs, revenues and profits that could have been expected at the time were the 2008 Agreements were signed are summarised in Table 16 below. Oxera concluded that the 2008 Agreements were expected to have a net present value (the "NPV") of RON 7,62 million.

([83]) According to point 35 of the 2014 Aviation Guidelines, such activities necessary to safeguard civil aviation against acts of unlawful interference and investments relating to the infrastructure and equipment necessary to perform those activities are considered to be of a non-economic nature and therefore not to fall within the scope of the rules on State aid.

([84]) The Commission understands that according to the Ordinance of the Ministry of Transport n° 2190/2005 the security charge finances exclusively investment, maintenance work and equipment which is directly related to security. To the extent the charge also finances such infrastructure or equipment which is also used for commercial purposes (and is therefore inherent to the airport business), the total exclusion of the charge from the calculation would be conservative and would under-estimate revenues. Nevertheless this would lead to an increase in the marketing payments by the exact same amount and therefore it does not affect the calculation of the profitability.

([85]) The Ordinance of the Ministry of Transport n° 2190/2005 regarding the use of the airport security charge, which was in force at the time of the signature of the agreement foresaw that the security charge should exclusively be used to i) carry out investments, capital repairs and maintainance works for any item directly related to the security of the activity of the airport; ii) purchase of equipment used for the security of the activity of the airport, iii) specific training for personnel involved in the airport security, iv) financing of the security guard services for the airport perimeter and of other services aiming at airport security; v) payment of any interest rates, insurance premiums and any fee related to loans contracted to finance activities explained above.

Table 16: Oxera incremental revenues, incremental costs and incremental profits expected from the 2008 Agreements

(RON '000s)		**2008**	**2009**	**2010**	**2011**
Number of Wizz Air departing passengers	[A]	5 587	100 000	150 000	164 932
Aeronautical revenues	[B]	255	4 565	6 824	7 507
Non-aeronautical revenues	[C]	112	2 085	3 241	3 694
Total incremental revenues	*[D] = [B] + [C]*	*367*	*6 649*	*10 066*	*11 201*
Operating costs	[E]	47	879	1 367	1 558
Marketing costs	[F]	165	2 956	4 411	4 854
Depreciation	[G]	9	171	617	688
Total incremental costs	*[H] = [E] + [F] + [G]*	*222*	*4 006*	*6 394*	*7 099*
Incremental profits	*[I] = [D] – [H]*	*146*	*2 643*	*3 671*	*4 102*
Discount factor		1,0	0,8	0,7	0,6
NPV		**7,620**			

(361) The results in Table 16 are based on the following considerations:

(a) Since no traffic forecasts were specified in the 2008 Agreements, forecasts of Wizz Air traffic at Timişoara International Airport for 2009, 2010 and 2011 have been based on forecasts of Wizz Air as set out in the *ex-ante* analysis provided by Romania. Traffic forecasts for 2008 have been derived from the 2009 level of expected traffic decreased by Eurocontrol's (2008) estimated annual growth in European air traffic. ([86])

(b) Forecasts of Wizz Air turnarounds have been based on information provided by the Airport Manager directly to Oxera. Oxera understands that the estimations it received from the Airport Manager were based on data available prior to the start of the 2008 Agreements. These forecasts imply a load factor of approximately 79 – 80 % (in line with the load factor of 82 % specified in the *ex-ante* analysis provided by Romania).

(c) Forecasts of aeronautical revenues are based on the per- departing passenger and per- turnaround charges and discounts at the same levels as were stipulated in the 2008 Agreements. The 2008 Agreements stipulate a discount of 10 % up to 70 % for the landing charge depending on the number of landings per year and a 10 % to 30 % discount for the passenger charge depending on the number of departing passengers per year. Based on discussions with Wizz Air, Oxera assumes a 50 % discount on landing charges. It also assumes a 10 % discount on the passenger charges. The analysis does not include the security fee as Oxera considered that this falls outside the scope of MEOP assessment since such fees finances activities that fall under state responsibility in the exercise of its official powers. This was based on point 35 of the 2014 Aviation Guidelines.

(d) Forecast of non-aeronautical revenues are based on the estimations of the non- aeronautical revenues per departed passenger Wizz Air included the *ex-ante* analysis provided by Romania (i.e. EUR 2,5 per Wizz Air passenger) These estimations are coverted in RON and uprated with expected inflation and applied to the traffic projections as explained in recitals a) and b) above.

([86]) Eurocontrol (2008), "Challenges of Growth 2008", Summary report, page 14.

(e) Regarding the incremental operating costs (e.g. staff services, energy, materials), the Airport Manager considers that about 20 % of the operating costs can be considered incremental, i.e. varying according to the number of passengers. The Oxera Report estimates incremental operating costs per passenger from the outturn operating costs data prior to signing of each agreement ([87]) assuming 20 % of costs are incremental and uprated by expected inflation. Such incremental operating costs per passenger is applied to the Wizz Air traffic projections as explained in recitals a) and b) above. Security costs are excluded.

(f) The Oxera Report estimates the incremental marketing costs incured by the Airport Manager based on the provisions of the Marketing Agreement and taking into account the amount of the aeronautical fees estimated as explained in recital c) above.

(362) Regarding the incremental investment costs, the following assumptions were taken:

(a) In the absence of forecasts of expected investment, the Oxera Report estimates annual investment costs based on outturn investments at the Airport and financed both by state funding and own resources for the period 2007 – 2011.

(b) The government funding received by the Airport Manager for terminal building and security equipment has been excluded as it was not considered to be attributable to the presence of Wizz Air at Timişoara International Airport. According to Romania these were funded by the state in relation to the Schengen accession and were not required as a result of Wizz Air's operations. The report assumes no additional investments were expected as a result of Wizz Air operation at Timişoara International Airport.

(c) The depreciation of other investments financed by the Airport Manager's own resources was allocated to the Agreements with Wizz Air based on the expected share of Wizz Air traffic relative to the airport capacity.

(d) A straight line depreciation was considered when calculating the depreciation costs, i.e. annual depreciation has been calculated by allocating the investment cost equally in each year across the entire asset life. ([88])

(e) The estimated profits have been discounted using the Commission's reference rates, plus a margin of 100 basis points which results in a discount rate of 16,87 %.

(363) According to the Oxera Report, the results of the analysis of the profitability of the 2008 Agreements suggested that the charges paid by Wizz Air at Timişoara International Airport under the 2008 Agreements were comparable with a level of charges that would have been offered to Wizz Air by an airport-owning MEO in similar circumstances.

(364) The Commission finds the estimated passenger numbers in the Oxera study as reasonable. These traffic estimates seems consistent with the traffic forecast foreseen by the Development Plan. The estimated Wizz Air passengers in the Oxera Report increased by 188 826 passengers ([89]) from 2008 to 2009, 100 000 passengers from 2009 to 2010 ([90]) and 29 864 passengers from 2010 to 2011. ([91]) The Development Plan foresaw an increase by 244 348 passengers from 2008 to 2009, 253 423 passengers from 2009 to 2010 and 215 973 passengers from 2011 to 2010. Consequently, compared to the increase forecasted by the Development Plan, the estimated increase in Wizz Air passengers assumed in the Oxera Report seems reasonable and conservative.

([87]) For 2008, the outturn data for the whole year was taken into account. Nevertheless, Oxera confirmed that as the 2008 Agreements only entered into effect on 11 December 2008, this assumption does not significantly affect the results from the analysis. Oxera confirmed that, if the incremental operating costs for the assessment of the 2008 Agreements were instead based on the outturn operating costs for 2007 alone, this would lead to lower estimates of incremental operating costs (i.e. RON 8,0 – 8,9 RON per departing passenger, in comparison to RON 8,5– 9,4 per departing passenger) over the duration of the 2008 Agreements.

([88]) The Commission notes that such linear depreciation is not in line with NPV practice, and thus, cannot be endorsed.

([89]) From 5 587 departed passengers in 2008 to 100 000 departed passengers in 2009 multipled by two to obtain the total number of passengers – departed and arrived.

([90]) From 100 000 departed passengers in 2009 to 150 000 departed passengers in 2010 multiplied by two.

([91]) From 150 000 departed passengers in 2010 to 164 932 departed passengers in 2011 multiplied by two.

(365) The Commission considers the assumed discounts to calculate the aeronautical revenues are reasonable. The Operation Agreement allowed for a 50 % discount on the landing charges for new airlines or new destinations or increase in the frequencies to/from existing destinations. Given that Wizz Air was just going to start operations at Timișoara International Airport, it was reasonable to assume they would open new destinations and/or increase frequencies over the period of the 2008 Agreements and therefore would benefit of a 50 % discount.

(366) The Oxera Report also assumes a 10 % discount on the passenger charge for the entire period of validity of the 2008 Agreements. For the years 2010 and 2011, the assumed 10 % discount is in line with the discount foreseen in the Operation Agreement for the estimated Wizz Air embarked passenger per year. Nevertheless, for the years 2008 and 2009, no discount should have been assumed since the estimated number of embarked passengers was below 150 000 per year (and only above this number the discount is applicable). However, the assumed discount of 10 % for 2008 and 2009 lowers the revenues for those years and, therefore, the approach can be considered as conservative and, thereby, acceptable.

(367) The Commission also agrees with the exclusion of the security charge. The security charge finances activities which are considered to be of a non-economic nature and therefore not to fall within the scope of the rules on State aid, which is one of the option describes in recital (354) above. The Commission understands that, according to the Romanian legislation, the security charge finances exclusively investment, maintenance work and equipment which is directly related to security. To the extent the charge also finances such infrastructure or equipment which is also used for commercial purposes (and is therefore inherent to the airport business), the exclusion of the charge from the calculation of the revenues is conservative and would therefore under-estimate revenues.

(368) The Commission finds the estimation of incremental non-aeronautical revenues acceptable. This is based on the Airport Manager's *ex-ante* estimation of non- aeronautical revenue per passenger and was uprated by expected inflation.

(369) The Commission also agrees with the discount rate used for the calculation, as it is in line with ther Commission reference rates.

(370) As regards incremental marketing costs incured by the Airport Manager, the estimations are based on the provisions of the Marketing Agreement, taking into account the estimated amount of the airport charges. The Commission finds them therefore acceptable.

(371) As regards incremental operating costs, the Oxera Report bases itself on the assumption provided by Romanian according to which 80 % of the operating costs are fixed and only 20 % vary with the number of passengers. The Commission finds this assumption reasonable. ([92]) Oxera Reports estimates the incremental operating costs by using outturn data for operating costs per departing passenger prior to the signature of the 2008 Agreements and uprated for expected inflation. It then applies such per passenger operating costs to the estimated number of Wizz Air passengers. The Commission finds the approach in estimating the incremental operating costs therefore sound.

(372) Regarding the incremental investment costs, the Commission accepts the assumption according to which no additional investments were to be expected as the result of Wizz Air operation at the Timișoara International Airport. In the Memorandum of Understanding, the Airport Manager committed to:

i) expand the passenger terminal to be able to handle up to three million of passengers/year by 1 January 2011 at the latest;

ii) upgrade the Airport's landing and take-off category to Category III of both directions until the end of 2009;

iii) secure the necessary number of parking places for the passengers;

iv) make from one aircraft stand available from February 2009 and make two to three aircraft stands available from October 2009.

([92]) According to the impact assessment accompanying the 2014 Aviation Guidelines, up to 90 % of the operating costs of airports are fixed and vary little with the scale of the operation. http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2014/swd_2014_0042_en.pdf, page 26.

(373) In addition, the Operation Agreement signed subsequently foresaw an obligation for the Airport Manager to finish the process of upgrading the airport's landing and take-off category to only Category II until end of 2009.

(374) Regarding the commitment to expand the passenger terminal (recital (372)(i)), the Commission notes that the extension of the terminal was decided in two steps and the timing of the decisions preceeded the signing of the Memorandum of Understanding. A first extension of Timişoara International Airport was driven by the need to increase the capacity of the terminal given an expected increase in the traffic over the following years. This extension was foreseen by Development Plan drawn in March 2006 and formally approved by the Government Decision n° 1212 from 4 October 2007. The Government Decision foresaw an extension of the terminal over the period 2008 – 2009. A second extension was triggered by the need to comply with Schengen security requirements. According to the information provided by Romania, the fesability study for this extension was launched in January 2008 on the basis of a contract with a consultant from March 2008 and was finalised in June 2008, i.e. before the signature of the Memorandum of Understanding.

(375) The Commission notes that the Operation Agreement revised the commitment taken in the Memorandum of Understanding to upgrade the Airports' landing and take-off category to Category III of both directions until the end of 2009 by a commitment to finalise the upgrade to Category II by end 2009 (recital (372)(ii)). ([93]) According to the publicly available information, ([94]) the upgrade to the Airport's landing and take-off category to Category III on landing direction East was done in 2015 through an upgrade of the radio- navigation system. Currently, Timişoara International Airport is Category III on landing direction East and and Category II for the landing direction West. According to information submitted by Romania, in 2008 the Airport was upgraded to Category II from Category I in one direction through an investment in the Airport's lighting (the other direction was already Category II). The decision on the investment in the lighting system was taken in the Development Plan and the feasibility study was launched in August 2007 based on a contract from 22 August 2007. A contract for the acquisition of the lighting equipment was signed in October 2008. Therefore the decision on the upgrade of the lighting equipment was taken before the signature of the 2008 Agreements. Based on this, it is reasonable to assume that the Operation Agreement commitment to finalise the upgrade to Category II by end 2009 was referring to the upgrade to Category II aimed at through the lighting equipment which was already decided.

(376) Regarding the commitment to secure the necessary number of parking places for the passengers (recital (372)(iii)), the Commission notes that the investment in parking was done in 2007 and no other investments in parking were done after the signature of the MoU and during the term of its application.

(377) Regarding the commitment to make from one aircraft stand available in February 2009 to two to three aircraft stands from October 2009 (recital (372)(iv)), the works to expand the airport apron was taken in October 2007 and works were done over 2007, 2008 and 2009.

(378) Consequently, the Commission finds that the commitments taken in the Memorandum of Understanding and the Operation Agreement have either not materialised or have been decided upon prior to the date of the 2008 Agreements. No investment was made which was due to the Wizz Air presence at Timişoara International Airport.

(379) The Commission notes that the Oxera Report included the incremental depreciation costs of the investments made by the Airport Manager's own resources based on the expected Wizz Air share in the airport capacity. Nevertheless as explained above, the Commission finds that the Airport Manager did not incur any investment costs induced by the presence of the airline at the Timişoara International Airport. Consequently, the Commission considers that the analysis should not include any depreciation costs associated with the 2008 Agreements.

(380) On the basis of the above, the incremental costs, revenues and profits that could have been expected at the time were the 2008 Agreements were signed as recalculated by the Commission based on the Oxera Report are summarised in Table 17.

([93]) According to Romania, the Operation Agreement which revised the commitment in the Memorandum of Understanding foresaw legally binding actions while the Memorandum of Understanding has only a voluntary nature (no sactions were foreseen).

([94]) See https://aerotim.ro/istoric-ait.

Table 17: Oxera incremental revenues, incremental costs and incremental profits expected from the 2008 Agreements – recalculated by the European Commission

(RON '000s)		2008	2009	2010	2011
Number of Wizz Air departing passengers	[A]	5 586,9	100 000	150 000	164 931,5
Aeronautical revenues	[B]	255	4 564,7	6 824,4	7 507,3
Non-aeronautical revenues	[C]	112,4	2 084,7	3 241,1	3 693,8
Total incremental revenues	[D] = [B] + [C]	367,4	6 649,4	10 065,5	11 201,1
Operating costs	[E]	47,4	879,1	1 366,8	1 557,7
Marketing costs	[F]	29,6	2 955,7	4 410,9	4 853,6
Total incremental costs	[G] = [E] + [F]	76,9	3 834,8	5 777,7	6 411,2
Incremental profits	[H] = [D] – [G]	290,4	2 814,6	4 287,8	4 789,9
Discount factor		1	0,8	0,7	0,6
NPV		**8 786,8**			

(381) To conclude on the Oxera Report as recalculated by the Commission, the 2008 Agreements were expected to be incrementally profitable for the Airport Manager.

Carpatair *ex-ante* profitability analysis of the 2008 Agreements

The Carpatair study

(382) On 10 November 2014, Carpatair submitted to the Commission a study setting out Carpatair's view on the *ex ante* analysis and the assessment of the compliance with the MEO test of the Airport Manager when setting up the arrangement with Wizz Air on 25 June 2008.

(383) The study presented a base case scenario which is the scenario were no agreement with Wizz Air existed and three scenarios assuming the existance of the agreements with Wizz Air (an optimistic, a realistic and a pessimist scenario).

(384) Carpatair assumes that in the absence of any commitment by the airline with respect to a certain period of time to maintain its operations, the agreement does not have a definite duration and the appropriate duration for the profitability analysis is the time horizon of the Development Plan which covered the period up to 2015. Based on this consideration, the timeframe of the analysis included in its study is 2009 – 2015.

Table 18: "BASE CASE" Scenario: revenues, costs, cash flows

	Base Year 2008 Estimate	Year 1 2009 Forecast	Year 2 2010 Forecast	Year 3 2011 Forecast	Year 4 2012 Forecast	Year 5 2013 Forecast	Year 6 2014 Forecast	Year 7 2015 Forecast
Growth Rate		*4 %*	*10 %*	*10 %*	*10 %*	*10 %*	*10 %*	*10 %*
Passengers, incl.	**887 630**	**921 082**	**1 013 190**	**1 114 509**	**1 225 960**	**1 348 556**	**1 483 412**	**1 631 753**
O&D Timişoara Pax	579 032	600 854	660 939	727 033	799 736	879 710	967 681	1 064 449
Transfer Pax	308 598	320 228	352 251	387 476	426 224	468 846	515 731	567 304
Pax break down per Carrier:								
Carpatair O&D Timişoara	257 739	267 452	294 198	323 617	355 979	391 577	430 735	473 808
Carpatair Transfer	308 598	320 228	352 251	387 476	426 224	468 846	515 731	567 304
Tarom	144 311	149 750	164 725	181 197	199 317	219 248	241 173	265 291
Lufthansa	46 947	48 716	53 588	58 947	64 841	71 326	78 458	86 304

Austrian Airlines	52 421	54 397	59 836	65 820	72 402	79 642	87 606	96 367
Other Carriers	77 614	80 539	88 593	97 452	107 197	117 917	129 709	142 680
All inclusive Charge, EUR/PAX								
O&D Timişoara Pax	29,0	29,0	29,0	29,0	29,0	29,0	29,0	29,0
Transfer Pax	1,50	1,50	1,50	1,50	1,50	1,50	1,50	1,50
Note: the O&D Timişoara Pax Charge includes the aircraft related charges (landing charge, lighting, parking, handling) and other non-aviation revenues								
Total Net Revenues, EUR	**8 615 136**	**8 939 814**	**9 833 793**	**10 817 172**	**11 898 891**	**13 088 780**	**14 397 662**	**15 837 426**
Net Revenues break down per Carrier:								
Carpatair O&D Timişoara	3 731 751	3 872 389	4 259 627	4 685 590	5 154 149	5 669 564	6 236 522	6 860 174
Carpatair Transfer	231 449	240 171	264 188	290 607	319 668	351 634	386 798	423 478
Tarom	2 089 450	2 168 195	2 385 014	2 623 515	2 885 867	3 174 454	3 491 900	3 841 089
Lufthansa	679 736	705 353	775 888	853 477	938 825	1 032 708	1 135 979	1 249 576
Austrian Airlines	758 993	787 597	866 357	952 992	1 048 292	1 153 121	1 268 433	1 395 276
Other Carriers	1 123 757	1 166 108	1 282 719	1 410 991	1 552 090	1 707 299	1 878 029	2 065 832
Total Costs as % of Total Revenues	82,0 %	82,0 %	82,0 %	82,0 %	82,0 %	82,0 %	82,0 %	82,0 %
Total Costs, EUR	**7 065 242**	**7 331 509**	**8 064 658**	**8 871 124**	**9 758 237**	**10 734 061**	**11 807 470**	**12 988 216**
Costs break down per Carrier:								
Carpatair O&D Timişoara	3 060 396	3 175 732	3 493 305	3 842 635	4 226 899	4 649 589	5 114 549	5 626 004
Carpatair Transfer	189 810	196 963	216 660	238 326	262 158	288 374	317 212	348 933
Tarom	1 713 550	1 778 129	1 955 941	2 151 535	2 366 689	2 603 358	2 863 694	3 150 063
Lufthansa	557 449	578 458	636 303	699 934	769 927	846 920	931 612	1 024 773
Austrian Airlines	622 447	645 906	710 496	781 546	859 700	945 670	1 040 238	1 144 261
Other Carriers	921 589	956 321	1 051 953	1 157 148	1 272 863	1 400 150	1 540 165	1 694 182
Profit Before Tax, EUR	**1 549 894**	**1 608 305**	**1 769 135**	**1 946 048**	**2 140 653**	**2 354 719**	**2 590 191**	**2 849 210**
CAPEX, EUR	0	0	0	5 679 646		0	0	0
Cash Flow As Is Scenario, EUR	**1 549 894**	**1 608 305**	**1 769 135**	**- 3 733 598**	**2 140 653**	**2 354 719**	**2 590 191**	**2 849 210**

(385) In the base case scenario, that is "No Wizz Air arrangement", the investment in the PCN (pavement classification number) strengthening of the airside infrastructure was considered to be necessary only in 2011 and no investment in increasing the terminal capacity were considered necessary (see recital (388) for further explanations).

(386) No discount rate was used and no NPV was calculated for the base case scenario.

(387) As explained above, the Carpatair study presents three scenarios under the hypothesis "Wizz Air Arrangement". The Commission will present in more detail the realistic scenario. ([95])

Table 19: Realistic Scenario"Wizz Air arrangement entered": profits, costs, cash flows

	Base Year 2008 Estimate	Year 1 2009 Forecast	Year 2 2010 Forecast	Year 3 2011 Forecast	Year 4 2012 Forecast	Year 5 2013 Forecast	Year 6 2014 Forecast	Year 7 2015 Forecast
Incremental Profit from Wizz Air, EUR	**0**	**- 375 518**	**- 558 394**	**- 733 496**	**- 813 040**	**- 914 694**	**- 1 042 962**	**- 1 194 727**
Incremental CAPEX due to Wizz Air, EUR	**5 679 646**	**3 000 000**	**10 000 000**	**11 320 354**	**0**	**0**	**0**	**0**

([95]) The only difference between the three scenarios is the level of estimated aeronautical revenues. Based on the consideration that 50 % of the actual Timişoara International Airport origin and destination traffic of Carpatair is at risk of being transferred from Carpatair to Wizz Air, in the realistic assumptions scenario the study considered that 50 % of such traffic would be transferred from Carpatair to Wizz Air, in the optimistic scenario 25 % and in the pessimistic scenario 75 %.

Incremental Cash Flow, EUR	**- 5 679 646**	**- 3 375 518**	**- 10 558 394**	**- 12 053 850**	**- 813 040**	**- 914 694**	**- 1 042 962**	**- 1 194 727**
Incremental Cash Flow, cumulative	- 5 679 646	- 9 055 164	49 613 558	- 31 667 408	- 32 480 449	- 33 395 142	- 34 438 104	35 632 832
Required Rate of Return (Cost of Capital)	8,0 %	8,0 %	8,0 %	8,0 %	8,0 %	8,0 %	8,0 %	8,0 %
Discount Factor	1,00	0,93	0,86	0,79	0,74	0,68	0,63	0,58
Present Value, EUR	**- 5 679 646**	**- 3 125 480**	**- 9 052 121**	**- 9 568 735**	**- 597 609**	**- 622 525**	**- 657 243**	**- 697 112**
Present Value cumulative	- 5 679 646	- 8 805 126	- 17 857 247	- 27 425 982	- 28 023 591	- 28 646 116	- 29 303 359	30 000 471

		Condition	**State**
Net Present Value (NPV), EUR	**- 30 000 471**	**0**	**NOT OK**
Internal Rate of Return (IRR)	**#NUM!**	**>=8 %**	**NOT OK**
Payback period, Years	**Never**	**< 7 years**	**NOT OK**
Discounted Payback period, Years	**Never**	**< = 7 years**	**NOT OK**

(388) The results in Table 19 were based on the following considerations:

- The Wizz Air expected number of passengers was assumed based on the following:

  (a) The study presents the airport's traffic forecast from the development plan 2005 – 2015 presented in March 2005 as well as the updated traffic forecasts included in the development plan 2005 – 2015 presented in March 2006. Since the later development plan mentioned the possibility of attracting low cost airlines, Carpatair study assumed that the additional traffic growth assumed in the later development plan compared to the development plan from March 2005 should be attributed to LCC's/Wizz Air expected arrival.

  (b) The study assumes 25 % of total Carpatair origin and destination traffic will switch to Wizz Air. ([96])

- Based on the estimated number of passengers, the retained amount was considered of EUR 4 per departing passenger in 2009 and EUR 3,5 per departing passenger from 2010 to 2015.

- Non- aeronautical revenues were estimated to be EUR 1 per embarked passenger as, according to the study, this was the amount received as non- aeronautical revenue by the airport from the other carriers operating point-to-point destinations in 2007.

- While Carpatair believed security fees should be considered a non-economic activity revenue and should be excluded from aeronautical revenues steming from economic activities, the study assumes security fees and security costs of EUR 2 per passenger.

- The study assumes incremental variable costs of EUR 70 per movement for aircraft handling basic services (fuel, consumables) and costs with electricity for lighting.

- The study considers that in order to enable Wizz Air to operate at Timișoara International Airport with heavy airplanes (MTOW 71t), the airport had to undertake prior to the start of operations of Wizz Air PCN (pavement classification number) strengthening works for the runway, taxiways and apron. Carpatair believes that these investments for works for the PCN strengthening should be seen as incremental costs associated with the presence of Wizz Air at Timișoara International Airport. This is due to the fact that, according to Carpatair, all other carriers operated at Timișoara International Airport at that time with much lighter aircrafts which did not require an increased PCN of the airside infrastructure. According to Carpatair, a report received by the Airport Manager in March 2007 ([97]) calculated that to accept heavier aircrafts the investment for PCN strenghtening would amount to RON 19 137 000 (EUR 5 679 646). The Carpatair study considers this amount as incremental cost due to the presence of Wizz Air at the Airport in 2008 (as it considers this PCN improvement had to be done before Wizz Air started operations).

([96]) See also footnote 101.

([97]) IPTANA Study of Timișoara airport airside infrastructure 2006.

- Given the commitments in the MoU to increase the capacity of the terminal to three million passenger per year, the investment with the terminal is also considered to be an incremental cost associated with the presence of Wizz Air (this investmest is estimated at EUR three million in 2009, EUR 10 million in 2010 and EUR 17 million in 2011). The study explains these estimations of capital expenditure to build the passenger terminal was based on the Government decison 1212/2007 from 4 October 2007 approving the airport strategic development plan of March 2006.

- The assumed discount rate was 8 %. ([98])

(389) Based on these considerations, the NPV over seven years was estimated at EUR - 30 000 471. ([99]) Therefore, the study found that, based on the realistic scenario the agreement with Wizz Air was not profitable and, therefore, did not comply with the MEOP. ([100])

The Commission's assessment of Carpatair study

(390) The Commission finds the Carpatair study to be based on a number of assumptions which do not seem reasonable, including the following:

- For the reasons explained in recital (335), the Commission finds that the time framework for the assessment of the profitabily analysis should be limited to the initial duration of the 2008 Agreements and, therefore, should be shorter than seven years. Furthermore, the 2009 – 2015 period used in the Carpatair study is allegedly based on the Development Plan which, however, covered the whole period 2006 -2015. The time period taken into account in the study therefore seems arbitrary and does not reflect neither the duration of the Development Plan, nor the duration of the 2008 Agreements.

- The number of Wizz Air passengers are assumed to increase by 292 590 passengers from 2009 to 2010 in the realistic scenario, by 276 743 in the pesimistic scenario and by 300 513 in the optimistic scenario. These increases for the Wizz Air traffic are bigger than the increase of the overall traffic at the Airport foreseen in the Development Plan from March 2006 (namely an increase by 253 423 passengers from 2009 to 2010). The study seems to suggest that such an increase is partly due to a switch of passengers of Carpatair to Wizz Air on competing routes. Nevertheless, in all three scenarios the overall increase in the number of estimated passengers at Timişoara International Airport is 359 490 from 2009 to 2010, which is also bigger than the increase forecasted in the Development Plan for the overall traffic at the Timişoara International Airport (which was, as already mentioned of 253 423 passengers). In addition, the Commission notes that the Development Plan foresaw as main trigger for the traffic increase a positive influence of the accession of Romania to the EU in 2007. The Commission therefore doubts that the increase in the traffic forecast as set in the original development plan of March 2005 when compared to the Development Plan of March 2006 could be entirely attributed to low cost airlines, or Wizz Air in particular. Consequently, the Commission finds that this assumption casts doubts on the reliability of the calculations included in the study.

- The basic assumption of the study relates to the estimation as to which parts of the investment costs, if any, should be attributable to Wizz Air. This assumption is fundamental to the overall calculations of the profitability of the arrangement in question. For the reasons explained in recitals (372) to (378), the Commission finds that no incremental investment costs should be attributed to the presence of the Wizz Air at the Timişoara International Airport. Therefore, the approach in the study whereby the investments in the new terminal buiding and in the PCN strengthening of the airside infrastructure are to be considered as incremental costs is not acceptable. In addition, Romania submitted that TAROM airline also used aircraft above 70 MTOW (tons). Therefore, the assummption of the study to attribute the investments with the PCN strengthening of the runway, taxiway and apron to Wizz Air does not seem reasonable.

([98]) According to the study, the average costs of capital in airlines industry during 2002 – 2009 was in range of 7-10 %.
([99]) The NPV was estimated at EUR - 32 061 035 for the pessimistic scenario and EUR - 25 879 341 for the optimistic scenario.
([100]) Given that an arrangement with Wizz Air was found *ex-ante* not to be profitable, the Carpatair study also considered as an alternative to such an arrangement, a scenario where a start-up aid for launching new routes was granted to Wizz Air (based on the 2005 Aviation Guidelines). This scenario assumed, inter alia, that the marketing support was to be granted only for new routes for three years, that no passenger would switch from Carpatair to Wizz Air and that the necessary capital expenditure would be significantly lower. Based on these assumption, in such a start-up aid scenario, the study calculated an NPV of 1 977 176 over seven years.

(391) Furthermore, the Commission also notes that the study assumes the incremental cash flows as the difference between the cash flow from the base scenario and the cash flows from the three scenarios assuming a Wizz Air agreement. Nevertheless, the study does not calculate the incremental cash flow in this way and each scenario assuming a Wizz Air agreement has its own incremental cash flow calculations (not by comparison to the base case scenario). This therefore casts further doubts on the data- related conclusions of the study.

(392) Therefore, the Commission finds the *ex-ante* profitability analysis provided by Carpatair cannot be used as a proof for non- compliance of the 2008 Agreements with the MEOP.

Ex-post profitability studies for the 2008 Agreements

(393) The expected profitability of the 2008 Agreements with Wizz Air is supported by *ex post* studies, which were provided to the Commission by:

— Oxera;

— Timişoara Polytechnic University; and

— RBB.

(394) The Commission will provide below a short description of these *ex-post* studies as a complementary evidence to the findings of the *ex-ante* studies. Nevertheless, the *ex-ante* analysis of profitability remains the decisive evidence in the Commission's assessment compliance with the MEOP.

Oxera

(395) On 27 October 2011, Oxera submitted an *ex-post* report prepared for Wizz Air. Oxera report calculated the following incremental costs and revenues in connection with the 2008 Agreements:

Table 20: Revenues per Wizz Air passenger departure 2008- 2010 (EUR)

Category	2008	2009	2010
Aeronautical revenues[1]			
Landing charges[2]	2,50	2,00	2,00
Handling charges[2]	0,99	0,99	0,99
Embarked passenger charges	8,00	6,40	5,04
PRM charges	0,20	0,20	0,20
Security charges	10,00	10,00	10,00
Non-aeronautical revenues	**0,78**	**1,16**	**1,74**
Total revenue	**22,47**	**20,75**	**20,70**

Note: [1] Aeronautical revenues are shown after discounts and reimbursements of charges and before marketing payments. It is assumed that 50 % of revenue from landing charges is subject to the discounts set out in the AIP. [2] Aeornautical revenues from charges that are related to air traffic movements or weight (ie, landing and ground handling charges) have been estimated using outturn passenger numbers and assuming an Airbus A320-200 aircraft is used with 72 tonnes MTOW and a seat capacity of 180 assuming a load factor of 84 %. This represents Wizz Air's average load factor in 2010 (for further details, see http://wizzair.com/about_us/news/#wizen068).

Source: Oxera analysis, based on data received from the Airport Manager.

Table 21: Expected costs associated with the 2008 Agreements (EUR)

Category	2008	2009	2010
Operational costs			
Personnel	1,56	1,56	1,56
Energy	0,70	0,70	0,70
Materials	- 0,45	- 0,45	- 0,45
Services and other OPEX	1,65	1,65	1,65

Marketing costs	**13,70**	**15,59**	**14,95**
Investment cost	**0,89**	**0,87**	**2,06**
Total cost	**18,04**	**19,92**	**20,47**

Source: Oxera analysis, based on data received from the Airport Manager.

(396) The results in Table 20 and Table 21 are based on the following considerations:

- The aeronautical revenues are estimated based on a mix of an *ex-post* and an *ex-ante* approach. They are based on actual Wizz Air passengers and turnarounds (*ex-post* perspective). The discounts are estimated through an *ex-ante* approach. The aeronautical revenues assume a 25 % discount for landing charges ([101]) and a 20 % discount for the embarked passenger charges in 2009 and 30 % discount in 2010 (no discount on landing charges was assumed in 2008 due to the low number of Wizz Air turnaround in that year). Lighting and parking charges for the aircraft are excluded as Oxera believed it was not possible to ascertain the extent to which a private investor might have taken into account revenues from these two types of charges. The security charges are included.

- An *ex-ante* approach was taken to estimate non-aeronautical revenues (e.g. related to car parking, car rentals, restaurants). These were assumed in the first year, i.e. 2008, to be broadly equal to non-aeronautical revenues accrued from airlines ([102]) other than Wizz Air in the same year (i.e. about EUR 0,78 per departing passenger). For 2009 and 2010, it was assumed that non-aeronautical revenue per passenger to increase by 50 % per year, in line with the actual growth of non-aeronautical revenues at the airport in 2008.

- Regarding incremental operating costs, the costs that vary with passenger numbers ([103]) (personnel cost, cost of energy, cost of materials and costs of purchased services and other operational expenditure) have been attributed to Wizz Air in proportion to the airline's share of passenger departures. According to Oxera, security costs are included in the incremental operating costs. The calculation is based on outturn data for the operating costs and is therefore *ex-post*.

- Marketing payments have been calculated according to the Marketing Agreement based on the actual number of Wizz Air passengers and taking into account the amount of the airport fees estimated as explained above.

- An *ex-post* approach was taken for the calculation of the incremental investment costs, which are based on investment data for the period 2007-2010 provided by the airport. The investments funded by the state for the terminal building and security equipment were not attributed to Wizz Air. According to Oxera, these were costs that would have incurred regardless of Wizz Air's presence as they were due to Romania's obligation to meet the requirement for acceding to the Schengen area. The depreciation costs for the investments funded through airport's own resources were taken into account and have been allocated proportionate to Wizz Air's passenger share of the passenger capacity of the airport. The passenger capacity has been estimated as being equal to the maximum number of passengers handled at the airport over the period 2007 – 2010 as Oxera understood from the Airport Manager that the Timişoara International Airport at the moment of the study (October 2011) operated at full capacity with regards to air traffic movements.

(397) On the basis of the above costs and revenues, Oxera found that the 2008 Agreements were incrementally profitable. The profit per passenger (i.e. the incremental contribution per passenger calculated as the difference between the estimates of incremental revenues and costs) are shown in Table 22.

([101]) According to Oxera, this is equivalent to assuming that 50 % of Wizz Air's traffic relates to new routes and therefore benefits from a 50 % discount on landing charges, with the remaining 50 % of traffic charged the full landing charges.

([102]) Austrian Airlines, Carpatair, Deutsche Lufthansa, Tarom.

([103]) Oxera used regression analysis to determine the part of the costs that might be considered fixed with regard to the changes in passenger numbers and the part of the costs that vary.

Table 22: Incremental contribution associated with the 2008 Agreements (EUR)

Category	2008	2009	2010
Average incremental revenue per departing passenger	22,47	20,75	20,70
Average incremental cost per departing passenger	18,04	19,92	20,47
Incremental contribution per departing passenger	4,43	0,84	0,23
Total incremental contribution	**19 404**	**107 198**	**37 833**

Source: Oxera analysis, based on data received from the Airport Manager.

(398) Based on the calculations above Oxera found that the 2008 Agreements has a positive NPV of EUR 145 249 over the three-year period of the 2008 Agreements, taken into account a discount rate of 12,02 %.

(399) Commission notes that the Oxera *ex-post* profitability assessment mixes an *ex-ante* and an *ex-post* data for calculating incremental revenues, while the incremental costs calculations are entirely *ex-post*.

(400) The Commission notes that both security charges and costs are included and assumes this will not affect the overall profitability calculation.

(401) Regarding aeronautical revenues, the Commission notes that lighting and parking charges (of EUR 2,10 per tonne of MTWO per use and EUR 0,15 per tonne of MTOW per use respectively) are excluded from the calculations, which represents a conservative approach. In addition, the assumed 20 % discount for the embarked passenger charge for 2009 and 30 % for 2010 seems over- estimated as this would assumed more than 300 000 embarked passenger in 2009 and more than 500 000 embarked passengers in 2010 which is not in line with the outturn data for Wizz Air passengers. The Commission finds that, based on the outturn data of Wizz Air passengers, no discount for the passenger charges should be assumed for 2008 and 2009 and only a 10 % discount rate should be assumed for 2010. However, the Commission notes that based on the formula in the Marketing Agreement, the correction of the airport charges (to take into account the lighting and parking charges and to correct the discount rate to be assumed for the passenger charge) would lead to a similar correction in the marketing payments by the same amount and, therefore, the overall profitability would not be affected.

(402) On the costs sides:

(a) The Commission finds the approach for calculating the incremental operating costs, based on outturn data available prior to the signature of the 2008 Agreements, reasonable.

(b) The Commission notes that the study included the incremental depreciation costs of the investments made by the Airport Manager's own resources based on the expected Wizz Air share in the airport capacity. Nevertheless, as explained in recital (372), the Commission finds that the airport did not incur any investment costs induced by the presence of Wizz Air at the airport. Consequently, the Commission considers that the analysis should not include any depreciation costs associated with the agreements.

(403) For the reasons explained in recital (401), the Commission finds that overall the costs seems over- estimated.

(404) However, as the correction of the aeronautical revenues would trigger a similar correction of the marketing payment, this would not affect the profitability calculation. Moreover, the costs seem over- estimated. The Commission therefore concludes that the overall conclusion of the 2011 Oxera study would hold and the NPV would remain positive.

(405) Based on the recitals (399) to (404), the Commission finds the results of the report by Oxera from 27 October 2011 regarding the 2008 Agreements as acceptable.

Timişoara Polytechnic University

(406) The Airport Manager submitted a cost- benefit analysis undertaken by Timişoara Polytechnic University in April 2011. The analysis considers the marketing payments of the airport to Wizz Air as an "investment" of the Airport Manager towards achieving the objective to increase the number of passengers and implicitly revenues. The analysis takes into account two time horizons for this "investment" five years (2008- 2012) and seven years (2008- 2014). The study based its calculations on *ex post* data from 2008 to 2010, and estimations for the year 2011- 2014. To assess the profitability of the "investment", the university calculated the NVP, by taking into account four elements:

— The cost to the Airport Manager of annual marketing payments was made under the agreement with Wizz Air of EUR 77 192,01 in 2008, EUR 2 051 031,32 in 2009 and EUR 223 038 in 2010;

— The incremental cost to the Airport Manager of serving Wizz Air was estimated as a proportion of total costs (1 % in 2009, 15 % in 2010, 20 % in 2011 and 22 % for the period 2011-2014). It can be noted that in each year the share of total costs allocated to Wizz Air is equal or greater to Wizz Air's share in the total flights at the Airport;

— With regard to the revenues received by the Airport Manager from Wizz Air, the actual revenues were used for 2008 to 2010, the 2010 AIP being used to forecast future airport charge revenues for the period 2011- 2014;

— A discount rate of 5 % was applied.

(407) The analysis found that over five years (2008-2012), the "investment" comprising three years of upfront marketing expenditure in 2008 to 2010, accompanied by revenue from Wizz Air over the five year period 2008 to 2012, produces a NPV of EUR 590 389,80 (approximately RON 2,5 million). Over a seven year time horizon (2008-2014), taking account of revenues over the period 2008 to 2014, the NPV rises significantly, to EUR 2 282 687,31 (approximately RON 10 million).

(408) The Commission notes a positive NPV calculated by the Timişoara Polytechnica. The Commission finds the approach to the allocation of overall costs reasonable (equal or greater to the share of Wizz Air flights in the total flights at Timişoara International Airport). Nevertheless, the study does not include any details regarding how revenues from Wizz Air were calculated (e.g. based on which assumed discounts and which data for passenger and turnarounds traffic was used). Therefore, the Commission does not have the necessary information to be able to assess whether the revenues estimations are reasonable. In addition, the profitability analysis does not seem to be specific to the 2008 Agreements and the 2010 Amendment Agreements, but covers a wider period. Therefore, the Commission cannot rely on the overall result of this study.

RBB

(409) The Airport Manager also submitted a study prepared by RBB compiled on 27 October 2011. RBB found that the 2008 Agreements had already proven profitable by 2010, and could only be expected to become more profitable as the ongoing annual benefits of Wizz Air's operations at Timişoara International Airport continued to accrue, while marketing expenditures paid in 2008 to 2010 ceased. According to RBB, the incremental costs that can be attributed to Wizz Air between 2008 and 2010 range from EUR 3,5 million (RON 15,2 million) to EUR 3,8 million (RON 16,8 million), depending on the allocation of operating costs. This was compared to airport fees paid by Wizz Air, leading to incremental revenues of EUR 5,5 million (RON 23,9 million) in total. From this, a surplus of between EUR 2 million (RON 8,7 million) to EUR 1,7 million (RON 7,1 million) was derived. RBB concluded therefrom that the 2008 Agreements have produced a positive return for the Airport Manager. This calculation did not take account of non- aeronautic revenues.

(410) RBB further found that the operation of Wizz Air improved efficiency at the Timişoara International Airport, as Wizz Air carried a significantly higher number of passengers per aircraft movement than other airlines operating at Timişoara International Airport. This was argued to have contributed to the overall profitability of the Airport from 2008 to 2010, as total operating revenues increased by 39 %, while total operating costs increased by 22 %. Similarly, operating profits per passenger increased by 74 %, from EUR 1,4 (RON 5,9) to EUR 2,4 (RON 10,25) over the period from 2008 to 2010.

(411) Finally, RBB calculated that Wizz Air bore a share of aeronautic revenues commensurate to, or greater than, its share of both the passengers and aircraft movements at the Airport.

(412) Regarding, the incremental costs and revenues analysis, the Commission notes that RBB only based Wizz Air's revenues on airport charges and thefore it can be considered conservative as it does not include non-aeronautical charges. The Commission finds the approach used in the calculation of the incremental costs and incremental revenues for the purposes of finding the incremental profitability steming from the 2008 Agreements with Wizz Air over the period 2008- 2010 reasonable.

Conclusion on economic advantage for the 2008 Agreements

(413) Based on the Oxera *ex ante* study reconstructed *ex-post* from 10 February 2015, as recalculated by the Commission (recital (380)) the arrangement between the Airport Manager and Wizz Air was expected to be incrementally profitable for the Airport Manager. The Commission notes the *ex-post* studies made by Oxera and RBB bring complementary evidence to the findings of the *ex-ante* Oxera study.

(414) Moreover, there are indications, in particular based on the Development Plan 2006-2015 that the 2008 Agreements with Wizz Air were part of an overall strategy and long-term effort towards overall profitability of the airport.

(415) Consequently, the Commission finds that a prudent market economy operator would have entered into such arrangement. It therefore concludes that the 2008 Agreements between The Airport Manager and Wizz Air did not confer an economic advantage on Wizz Air, which it would not have obtained under normal market conditions.

9.1.4.6. Profitability analysis of the 2010 Amendment Agreements

(416) The Oxera Report from 10 February 2015 also calculated the incremental costs, revenues and profits that could have been expected at the time when the Amendment Agreements from 25 June 2010 were signed (summarised in Table 23 below). On 14 May 2015, Oxera re-submitted the expected profitability calculations to correct a data issue found in the report on 10 February 2015. The correction concerned an overestimation of the total costs of investments resulting from a double-counting of the investment funded by the state in the original submission. This data issue affected the expected profitability of the 2010 Amendment Agreement, which was originally underestimated.

(417) Oxera concluded that the Amendment Agreements from 25 June 2010 were expected to have a NPV of RON 2 326 million.

Table 23: Oxera incremental revenues, incremental costs and incremental profits expected from the 2010 Amendement Agreements

(RON '000s)		**2010**	**2011**
Number of Wizz Air departing passengers	[A]	71 925	13 665
Aeronautical revenues	[B]	1 253	238
Non-aeronautical revenues	[C]	1 713	336
Total incremental revenues	*[D] = [B] + [C]*	*2 967*	*574*
Operating costs	[E]	801	157
Depreciation	[F]	120	23
Total incremental costs	*[G] = [E] + [F]*	*921*	*181*
Incremental profits	*[H] = [D] – [G]*	*2 046*	*394*
Discount factor		1,0	0,9
NPV		**2 326**	

(418) The results in Table 23 are based on the following considerations:

(a) Forecasts of Wizz Air passenger traffic has been calculated based on outturn of Wizz Air passenger traffic in 2009 uprated by Eurocontrol's (2008) estimate of expected growth in European air traffic. ([104])

(b) Forecasts of Wizz Air turnarounds have been calculated on the basis that Wizz Air operated Airbus 320-200 with a maximum take-off weight (MTOW) of 72 tonnes, a seat capacity of 180 and a load factor of 82 %. These assumptions are based on the assumptions in the *ex-ante* profitability analysis provided by Romania for the 2008 Agreements.

(c) Forecasts of aeronautical revenues are based on the per- departing passenger and per- turnaround charges and discounts stipulated in the 2010 Amendment Agreements. The analysis does not include the security fee as Oxera concluded that this falls outside the scope of MEOP assessment since such fees finances activities that fall under state responsibility in the exercise of its official powers (point 35 of the 2014 Aviation Guidelines).

(d) As in the case of the 2008 Agreement, the forecast of non-aeronautical revenues are derived from the estimates of non-aeronautical revenues per departing passenger from the *ex-ante* analysis provided by Romania uprated with expected inflation and applied to the traffic projections as explain in recital a) above.

(e) As explained above, regarding the incremental operating costs (staff services, energy, materials), The Airport Manager considers that about 20 % of the operating costs can be considered incremental, i.e. varying according to the number of passengers. The Oxera Report estimates incremental operating costs from the outturn data for the period 2007 – 2009 uprated by expected inflation and assuming 20 % of costs are incremental. Security costs are excluded.

(f) The Oxera Report estimates does not include any incremental marketing costs incured by the Airport Manager as the Marketing Agreement was terminated on 10 February 2010.

(g) As explained for the 2008 Agreements above, regarding the incremental investment costs, the Oxera Report takes into account the data provided by the Airport Manager for the investments undertaken by the Airport Manager and financed both by state funding and own resources for the period 2007 – 2011. The Oxera Report assumes no additional investments were expected as a result of Wizz Air operation. The governement funding received by the Airport Manager for terminal buidling and security equipment has been excluded as it was not considered to be attributable to the presence of Wizz Air at the Timișoara International Airport. The depreciation of other investments financed by the Airport Manager's own resources was allocated based on the expected share of Wizz Air traffic relative to the airport capacity. The airport capacity was assumed to be three million passenger per year over the duration of the agreements. This assumption is based on the 2008 Memorandum of Understanding which stipulated that the airport's capacity was expected to reach three million passenger per year by 2011. A straight line depreciation was considered when calculating the depreciation costs.

(h) The estimated profits have been discounted using the Commission's reference rates, plus a margin of 100 basis points which results in a discount rate of 8,82 %.

(419) The Commission finds the approach taken by Oxera in estimating the passenger numbers and calculating on that basis the expected aeronautical revenue taking into account the rebates foreseen in the 2010 Amendments Agreements reasonable. The Commission also agrees with the exclusion of the the security fee for the reasons explained in recital (365).

(420) The Commission accepts the estimation of incremental non- aeronautical revenues. This is based on the Airport Manager's estimation, based on previous year data, according to which non-aeronautical represent 15- 20 % of the Airport Manager's revenues, which seems reasonable.

(421) The Commission also agrees with the discount rate used for the calculation, in particular given that the period of the analysis is less than a year.

([104]) Eurocontrol (2008), "Challenges of Growth 2008", Summary report, p. 14.

(422) The Commission agrees that no incremental marketing costs are to be included in the calculations.

(423) As regards incremental operating costs, the Oxera Report bases itself on the assumption provided by Romanian according to which 80 % of the operating costs are fixed and only 20 % vary with the number of passengers. The Commission finds this assumption reasonable. ([105]) Oxera estimates the incremental operating costs by using outturn data for operating costs per departing passenger prior to the signature of the agreements and uprated for expected inflation and applying such per passenger operating costs to the estimated number of Wizz Air passengers. The Commission finds the estimates of the incremental operating costs therefore acceptable.

(424) Regarding the incremental investment costs, the Commission finds the approach in the Oxera Report reasonable. In particular, the Oxera Report does not expect any additional investments to be the result of Wizz Air operation at Timișoara International Airport. The Amendment Agreement did not bring any new commitments of the Airport Manager vis-à-vis Wizz Air in term of additional infrastructure compared to the 2008 Agreements assesed in recital (372) above. Therefore, the Commission agrees no investment was made which was due to the Wizz Air presence. Moreover, the Commission notes that the Oxera Study included the incremental depreciation costs of the investments made by the Airport Manager's own resources based on the expected Wizz Air share in the airport capacity. Nevertheless, as explained in recital (372), the Commission finds that the Airport Manager did not incur any investment costs induced by the presence of Wizz Air. Consequently, the Commission considers that the analysis should not include any depreciation costs associated with the 2010 Amendment Agreements. ([106])

(425) On the basis of the above, the incremental costs, revenues and profits that could have been expected at the time when the 2010 Amendment Agreements were signed, as recalculated by the Commission based on the Oxera Report, are summarised in Table 24.

Table 24: Oxera incremental revenues, incremental costs and incremental profits expected from the 2010 Amendement Agreements recalculated by the European Commission

(RON '000s)		**2010**	**2011**
Number of Wizz Air departing passengers	[A]	71 925	13 665
Aeronautical revenues	[B]	1 253	238
Non-aeronautical revenues	[C]	1 713	336
Total incremental revenues	*[D] = [B] + [C]*	*2 967*	*574*
Operating costs	[E]	801	157
Total incremental costs	*[F] = [E]*	*801*	*157*
Incremental profits	*[G] = [D] – [F]*	*2 165*	*417*
Discount factor		1,0	0,9
NPV		**2 462**	

Ex-post profitability study for the 2010 Amendment Agreements

(426) On 27 October 2011, Oxera sumbitted an *ex-post* report prepared for Wizz Air. Oxera's report calculated the following incremental costs and revenues resulting from the 2010 Amendment Agreements.

([105]) See footnote 92.

([106]) To the extent the depreciation costs were included, this assumption is conservative and over-estimates the incremental costs. In such a scenario the Commission has the same remark as in recital (379).

Table 25: Revenues per Wizz Air passenger departure 2010- 2011 (EUR)

Category	2008	2009	2010
Aeronautical revenues[1]			
Landing charges[2]	2,50	2,00	2,00
Handling charges[2]	0,99	0,99	0,99
Embarked passenger charges	8,00	6,40	5,04
PRM charges	0,20	0,20	0,20
Security charges	10,00	10,00	10,00
Non-aeronautical revenues	**0,78**	**1,16**	**1,74**
Total revenue	**22,47**	**20,75**	**20,70**

Note: [1] Aeronautical revenues are shown after discounts and reimbursements of charges and before marketing payments. It is assumed that 50 % of revenue from landing charges is subject to the discounts set out in the AIP. [2] Aeornautical revenues from charges that are related to air traffic movements or weight (ie, landing and ground handling charges) have been estimated using outturn passenger numbers and assuming an Airbus A320-200 aircraft is used with 72 tonnes MTOW and a seat capacity of 180 assuming a load factor of 84 %. This represents Wizz Air's average load factor in 2010 (for further details, see http://wizzair.com/about_us/news/#wizen068). Source: Oxera analysis, based on data received from The Airport Manager.

Table 26: Estimated costs associated with the 2010 Agreements (EUR)

Category	2008	2009	2010
Operational costs			
Personnel	1,56	1,56	1,56
Energy	0,70	0,70	0,70
Materials	- 0,45	- 0,45	- 0,45
Services and other OPEX	1,65	1,65	1,65
Marketing costs	13,70	15,59	14,95
Investment cost	0,89	0,87	2,06
Total cost	**18,04**	**19,92**	**20,47**

Source: Oxera analysis, based on data received from the Airport Manager.

(427) The results in Table 25 and Table 26 are based on the following considerations:

- The period covered is June 2010 to February 2011 which is the validity of the 2010 Amendment Agreements.
- The aeronautical revenues are estimated based on a mix of an *ex-post* and an *ex-ante* approach. They are based on actual Wizz Air passengers and turnarounds for 2010 (*ex-post* perspective) and estimated for January and February 2011 by Oxera based on the figure in December 2010 (*ex-ante* perspective). The discounts are estimated through an *ex-ante* and take into account the base tariffs and the rebates set out in the 2010 Amendment Agreements. A 10 % discount on landing charges and a 10 % discount on the embarked passenger charge is assumed. Security charges are included.
- The non- aeronautical revenues per passenger departure was estimated in line with the average outturn non-aeronautical revenues for 2010 for Wizz Air, i.e. EUR 3,04 per passenger.
- Regarding incremental costs, the costs that vary with passenger numbers (personnel cost, cost of energy, cost of materials and costs of purchased services and other operational expenditure) have been attributed to Wizz Air in proportion to the airline's share of passenger departures. The calculation is based on outturn data for the operating costs and is therefore *ex-post*.
- No marketing payments are included in the analysis as the Marketing Agreement was terminated in February 2010.

- The incremental investment costs were estimated taking into account investment made in 2010. The investments funded by the state for the terminal building and security equipment were not attributed to Wizz Air. According to Oxera, these are costs that would have incurred regardless of Wizz Air's presence as they were due to Romania's obligation to meet the requirement for acceding to the Schengen area. Investments funded through Airport Manager's own resources were taken into account. The investment costs financed from the Airport Manager's own resources including depreciation and interest have been allocated proportionate to Wizz Air's passenger share of the passenger capacity of the Airport. The passenger capacity has been estimated as being equal to the maximum number of passengers handled in 2010 as Oxera understood from the Airport Manager that at the moment of the study (October 2011), Timișoara International Airport operated at full capacity with regards to air traffic movements.

(428) On the basis of the above costs and revenues, Oxera found that, from an *ex post* perspective (with some *ex ante* elements), the 2010 Amendment Agreements were incrementally profitable. The profit per passenger (i.e. the incremental contribution per passenger calculated as the difference between the estimates of incremental revenues and costs) are show in Table 27.

Table 27: Incremental contribution associated with the 2010 Agreements (EUR)

Category	2008	2009	2010
Average incremental revenue per departing passenger	22,47	20,75	20,70
Average incremental cost per departing passenger	18,04	19,92	20,47
Incremental contribution per departing passenger	4,43	0,84	0,23
Total incremental contribution	**19 404**	**107 198**	**37 833**

Source: Oxera analysis, based on data received from the Airport Manager.

(429) Based on the calculations aboven Oxera found that the 2010 Amendment Agreements has a positive NPV of EUR 483 147 over the nine- month duration of the 2010 Amendment Agreements. The cash flows from the 2010 Amendment Agreements have not been discounted as the duration of the 2010 Amendment Agreements was less than one year.

(430) Commission notes that the Oxera *ex-post* profitability assessment mixes an *ex-ante* and an *ex-post* for calculating incremental revenues, while the incremental costs calculations are entirely *ex-post*.

(431) Regarding aeronautical revenues, the Commission notes that lighting and parking charges are excluded from the calculations, which represents a conservative approach.

(432) The Commission notes that both security charges and costs are included and assumes this will not affect the profitability calculation.

(433) On the costs sides:

(a) The Commission finds the approach for calculating the incremental operating costs, based on outturn data available prior to the signature of the agreements reasonable.

(b) The Commission notes that based on the formula in the marketing agreement, the recalculation of the airport charges to take into account the lighting and parking charges also leads to the overestimation of the marking payments by the same amount.

(c) The Commission notes that the study included the incremental depreciation costs of the investments made by the airport own resources based on the expected Wizz Air share in the airport capacity. Nevertheless as explained in recital (372), the Commission finds that the Airport Manager did not incur any investment costs induced by the presence of the airline at the Timișoara International Airport. Consequently, the Commission considers that the analysis should not include any depreciation costs associated with the agreements.

(434) For the reasons explained in recital (433), the Commission finds that overall the costs seems over-estimated.

(435) Based on the fact that the correction of the aeronautical revenues would trigger a similar correction of the marketing payment which would not affect the profitability calculation and on the fact that the costs seem over- estimated, the Commission concludes that the overall conclusion of the 2011 Oxera study would hold and the NPV would remain positive.

(436) Based on the recitals (430) to (435), the Commission finds the results of the report by Oxera from 27 October 2011 regarding the 2010 Amendment Agreements as acceptable.

Conclusion on the economic advantage

(437) Based on the Oxera *ex ante* study reconstructed *ex-post* from 10 February 2015, as recalculated by the Commission (recital (425)), the 2010 Amendment Agreements were expected to be incrementally profitable for the Airport Manager. Consequently, the Commission finds that a prudent market economy operator would have entered into such arrangements. The Commission notes the *ex-post* report made by Oxera brings complementary evidence to the findings of the *ex-ante* Oxera study.

(438) Moreover, there are indications, in particular based on the Development Plan that the 2010 Amendment Arrangements with Wizz Air were part of the an overall strategy and long-term effort towards overall profitability of the airport.

(439) The Commission therefore concludes that the 2010 Amendment Agreements did not confer an economic advantage on Wizz Air, which it would not have obtained under normal market conditions.

9.1.5. *Conclusion on Measure 3*

(440) For the reasons explained in recitals (301) to (439) the Commission finds that the 2008 Agreements and the 2010 Amendment Agreements do not constitute State aid within the meaning of Article 107(1) TFEU.

10. MEASURE 4 – FOREBEARANCE OF INVOICED AIRPORT CHARGES TO WIZZ AIR FOR THE PERIOD OCTOBER 2009 – FEBRUARY 2010

(441) In its Opening Decision, the Commission noted that it cannot be excluded that the forebearance of payment of airport charges provides an economic advantage to Wizz Air. The Commission noted that at the time of the Opening Decision, Wizz Air had not paid the airport charges for the period from October 2009 to February 2010 amounting to EUR 2,6 million. While the outstanding payments had been taken into account as receivables against Wizz Air in the Airport Manager's financial statement, no court actions had been undertaken.

(442) Romania submitted that the Airport Manager sued Wizz Air for obtaining a writ of execution. At the same time, Wizz Air sued the Airport Manager for a writ of execution regarding outstanding payments for marketing services made by Wizz Air. According to Romania both court actions/arbitration awards were resolved with final decisions, upholding both payment requests. Romania stated that mutual debts were set off in line with the provisions of the Romanian Civil Code through the Settlement Agreement (recital (109)).

(443) The Commission recalls that the 2008 Agreements between the Airport Manager and Wizz Air were in line with the MEO Principle, i.e. it did not confer an advantage on Wizz Air, and therefore did not constitute State Aid.

Conclusion

(444) The Commission therefore concludes that since the outstanding airport charges were set off against Wizz Air's claims for marketing payments in line with the applicable laws, the alleged State aid has become without object.

11. **CONCLUSION**

(445) In the light of the above, the Commission finds that the financing of the non-Schengen terminal development, the improvement of the runway and extension of the aircraft apron and the lighting equipment constitutes unlawful State aid which is compatible with the internal market on the basis of Article 107(3)(c) TFEU.

(446) The Commission further finds that the following measures do not constitute State aid: i) the public financing of the access road and the development of the parking area in 2007, ii) the public financing for the security equipment in 2008; iii) the airport charges in the 2007 AIP, 2008 AIP and 2010 AIP and iv) the 2008 Agreements with Wizz Air (including the 2010 Amendment Agreements).

HAS ADOPTED THIS DECISION:

Article 1

1. The public financing that Romania has provided in the period 2007- 2009 to the Airport Manager for the non-Schengen terminal development, the improvement of the taxiway and the extension of the apron and the lighting equipment amounting to RON 29 194 600 constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union. It was implemented in breach of Article 108(3) of the Treaty on the Functioning of the European Union.

2. The State aid referred to in paragraph 1 is compatible with the internal market within the meaning of Article 107(3)(c) of the Treaty on the Functioning of the European Union.

Article 2

The public financing of the access road and the development of the parking area in 2007 and for the security equipment in 2008, the airport charges in the 2007 AIP, 2008 AIP and 2010 AIP and the 2008 Agreements with Wizz Air (including the 2010 Amendment Agreements) do not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

Article 3

This decision is addressed to Romania.

Done at Brussels, 24 February 2020.

For the Commission
Margrethe VESTAGER
Executive Vice-President