# Commission Implementing Decision (EU) 2019/2174 of 17 December 2019 on the existence of market conditions, within the meaning of Article 35 of Commission Implementing Regulation (EU) 2019/317, in respect of some of the terminal air navigation services at the airports of Alicante and Ibiza (notified under document C(2019) 8919) (Only the Spanish text is authentic)

## COMMISSION IMPLEMENTING DECISION (EU) 2019/2174

of 17 December 2019

on the existence of market conditions, within the meaning of Article 35 of Commission Implementing Regulation (EU) 2019/317, in respect of some of the terminal air navigation services at the airports of Alicante and Ibiza

*(notified under document C(2019) 8919)*

(Only the Spanish text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the Single European Sky (the service provision Regulation)[(1)], and in particular Article 16(1) thereof,

Having regard to Commission Implementing Regulation (EU) 2019/317 of 11 February 2019 laying down a performance and charging scheme in the single European sky[(2)], and in particular Article 35(3) thereof,

Whereas:

(1) On 29 July 2019, Spain notified the Commission of the intended decision of that Member State, that some of the terminal air navigation services at the airports of Alicante and Ibiza are subject to market conditions ('the intended decision of Spain'). Those services concern aerodrome control air traffic. The intended decision of Spain concerns the third reference period within the meaning of Article 7(1) of Implementing Regulation (EU) 2019/317.

(2) Pursuant to Article 35(3) of Implementing Regulation (EU) 2019/317 and on the basis of a detailed assessment against all the conditions laid down in Annex X to that Regulation, the Spanish authorities consider that the services concerned are subject to market conditions. The Spanish authorities consulted the airspace users' representatives, as well as other stakeholders such as airport operators and air navigation services providers.

(3) The assessment of the Spanish authorities has taken account of all six criteria provided for in Annex X of Implementing Regulation (EU) 2019/317. In accordance with point 6 thereof, the preceding criteria were assessed individually for each airport. For the criteria set out in points 1 and 2 thereof, the Spanish authorities found that

there were no significant barriers that would prevent a service provider from offering aerodrome control air traffic services. The draft service provision contract provides for the conditions and procedures under which the airports could terminate the contract and move towards self-supply. The assessment of the Spanish authorities demonstrates also that there are procedures in place providing for the transfer of staff and assets to a different company. As regards point 3 of Annex X, it is noted that Spain organised a call applying an existing public tendering process for the provision of the services in question. At the moment of the tender process, eight different air navigation service providers had been certified in Spain, constituting credible alternative service providers to participate in the tendering process. Some of those service providers had previously already provided air navigation services. As regards the criterion set out in point 4 of Annex X, the airports of Alicante and Ibiza are both subject to commercial pressures and indeed actively competing for touristic traffic. The selected bidder is distinct and independent from the current provider of *en route* air navigation services, which ensures separate accounting and reporting, as referred to in point 5 of Annex X.

(4) The Commission has examined the intended decision of Spain and its underlying assessment and came to the conclusion that the assessment of market conditions for the provision of aerodrome air traffic control services as notified by Spain on 29 July 2019, was carried out in accordance with the conditions laid down in Annex X to Implementing Regulation (EU) 2019/317,

HAS ADOPTED THIS DECISION:

*Article 1*

The assessment of market conditions for the provision of aerodrome air traffic control services in the Spanish terminal charging zones at the airports of Alicante and Ibiza during the third reference period within the meaning of Article 7(1) of Implementing Regulation (EU) 2019/317, as notified by Spain on 29 July 2019, was carried out in accordance with the conditions laid down in Annex X to Implementing Regulation (EU) 2019/317.

*Article 2*

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 17 December 2019.

*For the Commission*

Adina-Ioana VĂLEAN

*Member of the Commission*