



EUROPEAN COMMISSION

Brussels, 25.7.2012

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<p>In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].</p>		<p>PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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COMMISSION DECISION

of 25.07.2012

on the measure SA.23324 - C 25/2007 (ex NN 26/2007) - Finland

Finavia, Airpro and Ryanair at Tampere-Pirkkala airport

(Text with EEA relevance)

(Only the Finnish and Swedish versions are authentic)

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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 above¹,

Whereas:

1. PROCEDURE

- (1) In February 2005 the Commission received a complaint from Blue1 Oy (hereinafter "Blue1"), a Finnish airline that is part of the SAS Group. Blue1 alleged among others that Ryanair Ltd. (hereinafter "Ryanair") is receiving aid due to too low airport charges at Tampere-Pirkkala airport (hereinafter "TMP airport" or the "airport").
- (2) The Commission requested Finland to provide further information in relation to the complaint by letters of 2 March 2005 and 23 May 2006. Finland replied by letters of 27 April 2005 and 27 July 2006.

¹ OJ C 244, 18.10.2007, p. 13.

- (3) By letter dated 10 July 2007 the Commission informed Finland of its decision to initiate the procedure provided for in Article 108(2) of the Treaty on the Functioning of the European Union (TFEU)² (hereinafter "opening decision") in respect to the Agreement between Airpro Oy and Ryanair and with regard to the implementation of the low cost strategy by Finavia and Airpro Oy at TMP airport. Finland provided its comments on the opening decision on 28 November 2007.
- (4) The Commission's decision to initiate the procedure was published in the *Official Journal of the European Union*³. The Commission invited interested parties to submit their comments on the measure in question within one month of the publication date.
- (5) The Commission received comments on the subject from four interested parties (Ryanair, SAS Group, Air France and Association of European Airlines). It transmitted these comments to Finland by letter dated 13 February 2008. Finland was given the opportunity to respond to them within one month. Finland transmitted its comments on 15 April 2008.
- (6) By letter dated 25 June 2010 the Commission requested further information, Finland responded by letter dated 1 July 2010. By letter dated 5 April 2011 the Commission requested further information in relation to the financing of the airport. Finland replied by letter dated 5 May 2011. However, the reply of Finland was incomplete. Therefore, by letter dated 23 May 2011 the Commission sent a reminder according to Article 10(3) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty⁴. Finland responded by letter dated 15 June 2011.

2. DESCRIPTION OF THE MEASURES AND GROUNDS FOR INITIATING THE PROCEDURE

2.1. Background to the investigation

TMP airport

- (7) TMP airport is located in Pirkkala, 13 kilometres south-west of the City of Tampere in southern Finland. The airport is the third largest airport in Finland (measured in number of passengers, see table following recital (10)). Besides the civil aviation, the airport also serves as a base for the Finnish Air Force.
- (8) TMP airport has two scheduled passenger terminals:

² With effect from 1 December 2009, Articles 87, and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the Treaty on the Functioning of the European Union (TFEU). The two sets of Articles are in substance identical. For the purposes of this Decision references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88 of the EC Treaty when appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this Decision.

³ See footnote 2.

⁴ OJ L 83, 27.3.1999, p. 1.

- Terminal 1 (hereinafter also "T1") was constructed in 1998 and is currently used by Finnair, Flybe, SAS, Blue1 and Air Baltic. In 2003 the capacity of T1 was 550 000 passengers per annum.
 - Terminal 2 (hereinafter also "T2") was initially used as a cargo hangar by DHL and (after it became vacant in 2002) converted into a low-cost terminal. T2 currently serves Ryanair only. The capacity of T2 is 425 000 passengers per annum.
- (9) TMP airport is owned and operated by Finavia Oyj⁵ (hereinafter "Finavia"), with the exception of T2. T2 is rented out by Finavia to its subsidiary Airpro Oy (hereinafter "Airpro")⁶. Airpro operates the terminal and provides ground handling services at this terminal. Airpro also entered into an agreement with Ryanair for the duration of [...] starting from 3 April 2003.
- (10) The passenger traffic at the airport increased from 304 025 in 2003 to 617 397 in 2010. This is due to the development of the passengers at T2. In 2010 Ryanair's passenger share at TMP airport amounted to approximately [...]. The following table summarises the development of passengers at TMP airport in 2003 to 2010:

Year	Number of passengers T1	Number of passengers T2	Total number of passengers at TMP airport
2003	[...]	[...]	304 025
2004	[...]	[...]	495 892
2005	[...]	[...]	597 102
2006	[...]	[...]	632 010
2007	[...]	[...]	687 711
2008	[...]	[...]	709 356
2009	[...]	[...]	628 105

⁵ Until end of 2009 Finavia Oyj (formerly known as the Finnish Civil Aviation Administration) was a state enterprise.. From 1 January 2010 Finavia was transformed into a public limited company by Act 877/2009 on the transformation of the Civil Aviation Administration into a public limited company. It manages 25 airports in Finland; only three Finnish airports are not managed by Finavia. Besides the operation of the Finnish airports, Finavia provides air navigation services at Finavia's airports and it is also responsible for the supervision of the Finnish airspace. Finavia's real estate operations are managed by Finavia's subsidiary Lentoasemakiinteistöt Oyj. The company offers facility services to companies operating at the airport and operates as a developer of construction projects and owner of premises located at the airports.

⁶ Airpro Oy is a fully owned subsidiary of Finavia (100 %). It develops and provides airport and travel services at Finavia's airports. Airpro has a subsidiary providing ground handling services called RTG Ground Handling Ltd.

* Confidential information.

2.2. The measures under investigation and the initial assessment by the Commission

(11) The opening decision raised the following questions:

- First, whether Finavia acted as a market economy investor when it decided to convert a cargo hangar into T2, a low-cost terminal, and thus this investment decision does not involve State aid in favour of Airpro. And if not, whether such aid could be considered compatible with the internal market; and
- Second, whether a market economy operator would enter into a similar agreement as Airpro with Ryanair. And if not, whether the aid contained in the agreement could be deemed compatible with the internal market.

(12) As regards the first question, the Commission expressed doubts whether Finavia was guided by prospects of long-term profitability when it decided to transform the cargo hangar into a low-cost terminal. Furthermore, the Commission had doubts whether the investments made by Finavia to transform this former cargo hangar into a passenger terminal may also be considered as selective advantage in favour of Airpro that it would not have obtained under normal market conditions.

(13) As regards the second question, the Commission had to examine whether, in this particular case, the behaviour of Airpro had been guided by long-term prospects for profitability and whether the advantage Ryanair allegedly benefits from, is an advantage it would not have obtained under normal market conditions. The Commission expressed in particular doubts whether the "all-inclusive charge" paid by Ryanair was based on costs for the provision of the services to the airline by Airpro. Furthermore, Finland did not provide the Commission either with the terms of the agreement with Ryanair nor with the business plan evaluating its profitability for Airpro. Hence in its opening decision the Commission expressed doubts whether the behaviour of Airpro was guided by prospects of long-term profitability. Accordingly, it could not be excluded that the agreement provided Ryanair an advantage it would not have benefited from under normal market conditions.

(14) The Commission expressed doubts whether the conditions for the compatibility as set out in the Communication from the Commission – Community guidelines on financing of airports and start-up aid to airlines departing from regional airports⁷ (hereinafter the "2005 Aviation Guidelines") had been satisfied in the present case and whether the State aid measures could be declared compatible with the internal market pursuant to Article 107(3)(c) of the TFEU.

3. COMMENTS FROM FINLAND

3.1. The low cost strategy of Finavia and Airpro at TMP airport

(15) Finland began their observations by providing background information on Finavia's and Airpro's low cost strategy at TMP airport. Finland explained that T2 was built

⁷ OJ C 312, 9.12.2005, p. 1.

in 1979 as a provisional facility for temporary use as an airport building. In 1995 it was converted into a cargo hangar suitable for freight operations and was used by DHL. In 2002 DHL terminated the rental agreement and the terminal became vacant.

- (16) Finland indicated that, as Finavia was not able to attract any other cargo operator to Tampere and/or to rent out the hangar, it decided to convert the hangar into a low-cost terminal suitable for basic ground handling services. The initial construction costs of T2 were at that time already depreciated and the refurbishment of the terminal required only minor renovation works⁸. The following table details the investment costs of the refurbishment of T2 amounting to EUR 760 612.

Refurbishment works	Investment costs in EUR
Planning	[...]
Copies, permits, travel	[...]
Construction engineering	[...]
Heating/pipes/air conditioning	[...]
Electricity	[...]
Low-current installations	[...]
Conveyors	[...]
Security screening equipment	[...]
Total amount	760 612

- (17) In view of the above calculation Finland indicated that even if they had been able to find another tenant using T2 as cargo hangar, in any event certain works on the construction engineering amounting to approximately EUR 100 000 would have needed to be carried out. Furthermore, the investments into conveyors can in any case be used at Finavia's other airports.

- (18) Finland explained further that the intention of Finavia was to make the new low-cost terminal available to all airlines willing to accept the lower quality of service. The following table provides a comparison of the level of service and level of facilities at T1 and T2 at TMP airport:

	Terminal 1 (T1)	Terminal 2 (T2)
Operational model	Traditional model: Check-in activities, security checks, transportation, sorting,	Low-cost model: The same persons perform all the tasks of the different

⁸ The renovation works included the creation of a check-in lobby, office facilities, toilet facilities and facilities for outbound and inbound passengers, facilities for personal security checks and for luggage, a cafeteria/restaurant and refurbishment of electricity, piping, heating and air-conditioning systems as well as modifications of the infrastructure outside the terminal for pedestrians and motorists.

loading and unloading of luggage are carried out by different professional groups and different companies	professional groups at T1, such as check-in, security checks, loading and unloading of luggage. The functions are located at terminal in a restricted area requiring only minimum staff and fast passenger flows.
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Ground handling capacity	Three to five (depending on the type of the airplane) simultaneous take-offs or arrivals.	One outbound airplane per hour
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Facilities	Facilities providing good service level including sophisticated luggage transportation system, pleasant waiting rooms with associated services, facilities to accommodate the needs of several ground handling providers etc.	Basic facilities that correspond mainly to warehouse standards (e. g. concrete floors), with only few windows
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- (19) Finland indicated that as T2 can provide ground handling services for only one outbound airplane per hour, it is only suitable for point-to-point carriers using large airplanes. At the same time, in order to optimise the use of its staff, the operator of the terminal would require from airlines long-term agreements and also agreements on time tables, for instance flights would not always be operated at times requested by the airlines, as it is the case in T1. According to the Finland, the optimisation of the staff expenses and the service levels provided allows at T2 for cost savings amounting to approximately [...]of the cost in comparison to T1.
- (20) Finland indicated that before starting the refurbishment of T2 and adopting a low cost strategy at T2 this issue was discussed several times at the meetings of Finavia's Board of Directors. For this purpose also a business plan was prepared. The following table summarises the business plan (a worst case scenario) for the refurbishment of T2 and the implementation of a low cost strategy: [...]
- (21) Finland indicated that the *ex ante* business plan was based on prudent assumptions leading to an underestimation of the revenues and an overestimation of costs expected during the last years of the period under consideration. Finland demonstrated further that under the other scenarios even higher profitability of the low cost strategy was expected. The all-inclusive charges paid by the airlines using T2 varied in the different scenarios between [...] per aircraft turnaround. Finland considered that as the decision for the low cost strategy was made at the level of the Board of Directors based on calculation and studies, it is not imputable to the State. Finland argued further that the measures were not subject to requirements or orders by authorities, and the authorities were not involved in the adoption of the measures.
- (22) Finland indicated that Finavia and Airpro operate in compliance with business principles and finance their operations from the service charges and revenues collected from its customers and from other business operations. They stated in particular that neither Finavia nor Airpro received funding from the State budget, but operate profitably and annually distribute part of their profit to the State in accordance to the profit requirements imposed on them.
- (23) Finland indicated that the Ministry of Transport and Communications decides on Finavia's performance targets. These performance targets however concern the group as a whole and individual business decisions are taken at Finavia's own discretion.

During the past few years (2003 to 2005) Finavia's profit requirement was approximately 4 % of the invested capital. The following table summarises Finavia's performance:

Key financial data of Finavia in million EUR (actual figures)

Year	2003	2004	2005
Revenues	219	234	243
Profit	17	15	22
Dividends paid to the State	6	5	10

- (24) Finland indicated that Finavia does not prepare airport-specific financial statements as all its airports are part of the same legal entity. However, since 2000 Finavia has nevertheless airport-specific information from internal calculations (based on actual data). This information is based on airports' volume trends and associated revenue and on the costs of the resources used at airports, namely personnel, contracted services and the depreciation of fixed assets. The overall performance of Finavia at TMP airport (excluding services provided by Airpro) is summarised in the following table: [...]
- (25) The financial results of Finavia at TMP airport include, besides commercial activities, also activities that may fall within public policy remit, such as air traffic control and use of the runway at TMP airport for military purposes. Finland explained that the runway at TMP airport has to be available for military purposes 24 hours a day, 365 days per year. The runway of the airport is also actually used for military purposes (at least 30 % of the actual aircraft movements per annum). The air traffic control cost amounts to approximately [...]. The above figures take into account also the rent paid by Airpro to Finavia for the use of T2 and the landing charges and other airport charges for the services provided to airlines using T2.
- (26) As regards Airpro Finland explained further that it is a limited liability company and legally fully separated from Finavia. The following table summarises the actual financial results of Airpro's activities at TMP airport: [...]
- (27) Airpro's financial results at TMP airport include costs, such as the rent for T2 at TMP airport, own cost of personnel, equipment and also cost of services provided by Finavia, and its revenues, such as all-inclusive charge paid by Ryanair, parking and other commercial revenues.
- (28) Consequently, Finland argued that Finavia and Airpro acted as a market economy investor when deciding for the implementation of the low cost strategy and refurbishment of the cargo hangar into a low-cost passenger terminal.
- (29) Furthermore, Finland argued that even if the financing of the refurbishment of T2 would be considered as State aid, it would be compatible on basis of Article 107(3)(c) of the TFEU as the compatibility criteria set out in the 2005 Aviation Guidelines are complied with.

- (30) Finland argued further that the measures can be considered to meet objectives of general interest, which in their view relate not only to the general-interest nature of airport operations, but also to the diversification of traffic connections in the region in a manner that meets the needs of the residents and the society. According to Finland therefore the alterations of T2 were proportional to their purpose and the result achieved.
- (31) In addition, Finland stated that the operations of airports have special characteristics that need to be taken into account. For example TMP airport is suitable to improve mobility at more congested airports in accordance with the Union's objective. According to Finland operating the TMP airport contributes to a regionally balanced development in a sparsely populated country such as Finland. In this regard, Finland argued that it is particularly important to safeguard traffic connections from the more remote regions in Finland to Europe, since other forms of transport are not a viable alternative. In the view of the Finland the costs incurred for the construction of the terminal were proportional to the purpose and necessary. According to Finland, on the basis of the business plans and the actual figures, the infrastructure at stake has sufficient medium-term prospects for use. Finland stated that T2 is open on equal and non-discriminatory manner to all airlines. Until now, however, besides Ryanair there was no other airline signalling its interest for it.
- (32) According to Finland the infrastructure at stake does not affect trade to an extent contrary to the Union interest. Finland argued that TMP airport is a small airport and therefore the impact of the measures at the Union level is not significant. In addition, Finland stated that the benefits of the measures for the region outweigh the possible negative impact at the Union level.

3.2. The lease agreement between Finavia and Airpro for T2 at TMP airport

- (33) Finland indicated that on 23 February 2003 Finavia concluded a lease agreement with Airpro concerning T2 for the period between 1 April 2003 and 31 March 2013 (hereinafter referred to also as the "lease agreement"). Finland stated further that even though Finavia originally paid for the costs incurred by the refurbishment, Airpro will reimburse Finavia for these costs in its rent. Finland provided also a copy of the lease agreement.
- (34) According to the lease agreement, Airpro pays a monthly rent amounting to [...] plus [...] VAT for the use of the facilities. Accordingly, the rent including VAT totals [...] per month. The agreement provides that in addition to the basic rent the rent shall include also the costs incurred by the change in the operations of the cargo hangar into a low-cost passenger terminal taking into account the interest.
- (35) Finland indicated that at the time of concluding the lease agreement, the alterations of T2 were still on-going and the refurbishment costs of the terminal had to be estimated in order to determine the amount of rent. The costs were estimated to amount to EUR 700 000 and their monthly impact on the rent was expected to be approximately [...]. Finland stated further that in addition to the estimated refurbishment costs Finavia estimated that the costs of additional works and arrangements made after the commencement of the operations of T2 would be approximately [...] and their monthly impact on the rent would be [...]. In accordance with the calculations above,

Airpro compensates Finavia for the costs incurred by the alterations of T2 with a monthly rent amounting to [...]

- (36) Finland argued that the monthly rent paid by Airpro is not below the market price. Finland stated further that the rent paid by Airpro is actually higher than the rent paid by the earlier tenant, DHL. DHL paid a monthly rent amounting to [...] excluding VAT for the use of the facilities, which corresponds approximately to [...]⁹. The share of VAT amounted to [...], so the total monthly rent including VAT was [...], which corresponds approximately to [...].
- (37) Finland noted further that without the implementation of the low cost strategy and conversion of the cargo hangar into a low-cost terminal, T2 might have been left vacant to encumber the finances of TMP airport.

3.3. The implementation of the low cost strategy by Airpro and the agreement of 3 April 2003 between Airpro and Ryanair

- (38) As regards the implementation of the low cost strategy by Airpro, Finland explained that the discussions with airlines started already earlier. Finland indicated that for instance there were on-going discussions with Ryanair already a few years before the decision for the implementation of a low cost strategy at TMP airport.
- (39) According to Finland the letter sent by Airpro to a number of airlines inviting them to consider starting-up activities at the low-cost terminal was only a part of the marketing strategy for T2. Finland stated for example that T2 at TMP airport was actively marketed at the so-called Routes trade fair¹⁰ for several years from 2002 onwards. It was assumed that other airlines, in addition to Ryanair, would be interested to establish their operation at this terminal.
- (40) Finland provided also a copy of the marketing letter. The letter indicated the charges applicable at T2, such as a charge for ground handling and terminal use, the amount of which depends on the aircraft type used. In addition, to the charges applicable at T2, the airlines would have to pay the normal landing, terminal navigation and security charges.
- (41) Finland provided a copy of an agreement with a duration of [...] which was signed between Airpro and Ryanair on 3 April 2003 (hereinafter referred to as the "Agreement"). The Agreement sets out the operational and financial conditions under which Ryanair establishes and operates commercial flights to and from T2 at TMP airport. The Agreement took effect on the day after the signature of that Agreement (that is to say 4 April 2003) and ends on [...].
- (42) Ryanair will pay for services provided at TMP airport a single charge per each aircraft turnaround (departure and arrival), the so-called "all-inclusive charge" for aircraft type B737-800 or other variant of B-737 aircraft with maximum MTOW¹¹ of 67 000

⁹ The exchange rate of the euro as decided on 31 December 1998: FIM 5.94573.

¹⁰ The Routes trade fair is an annual flight route sale fair for airlines and airports.

¹¹ The Maximum Take-off Weight (hereinafter: MTOW) of an aircraft is the maximum weight at which the pilot of the aircraft is allowed to attempt to take off, due to structural or other limits. In other words MTOW is the heaviest weight at which the aircraft has been shown to meet all the airworthiness.

as from 4 April 2003. This charge includes the landing and take-off charge, lighting charges, noise and night fees, the terminal navigation charge, ramp and passenger handling charges including the security and safety charges, and the passenger charge.

- (43) As summarised in the tables below the all-inclusive charge depends on the daily frequencies of Ryanair at the airport and the year of the Agreement: [...]
- (44) Ryanair committed itself in this Agreement to commence its operations at TMP airport with [...] daily rotations. Ryanair was obliged to give [...] notice of any reduction in the number of daily rotations at the airport.
- (45) [...]
- (46) According to the Agreement Ryanair expected to generate approximately [...] departing passengers at TMP airport during the first 12 months, and approximately [...] departing passengers during the following 12 months.
- (47) According to the Agreement T2 at TMP airport has a maximum capacity of one turnaround per hour between 7:00 and 24:00. Ryanair and Airpro will agree beforehand on the flight schedules.
- (48) Airpro will operate a passenger service desk in a prime location in the main airport terminal (namely T1) and will provide a reservations facility to Ryanair's passengers. According to the Agreement Ryanair shall pay a commission to Airpro at the rate of [...] of all Ryanair fares (excluding taxes, fees and other charges) sold by debit/credit card by Airpro.
- (49) The Agreement also foresees arrangements during the necessary maintenance works of the runway at TMP airport during summer 2003, when the airport will be closed to all traffic. During this period the traffic of TMP airport will be diverted to Pori airport and Airpro will arrange bus transportation for Ryanair's passengers.
- (50) According to Finland the Agreement between Airpro and Ryanair is based on commercial terms and does not involve State aid. Finland stated that other airlines also have had the possibility to obtain similar contractual terms and conditions from Airpro to those obtained by Ryanair. Finland explained further that for example a marketing brochure – "The Case for Tampere-Pirkkala Airport" - prepared for the 2004 trade fair highlights T2 openness to all operators as at that time there was still available capacity for two more airlines at this terminal.
- (51) Finland considered further that the charges paid by Ryanair at TMP airport are cost-based and generate an economic profit for Airpro's and Finavia's activity at TMP airport. Finland indicated that Airpro collects charges from Ryanair for services it has provided itself and also charges for services provided by Finavia. According to Finland Airpro subsequently disburses to Finavia the charges resulting from Ryanair's operations at the airport according to Finavia's Aeronautical Information Publication¹²

¹² According to Finland AIP Finland is prepared in accordance with Annex 15 to the Convention on International Civil Aviation and the Aeronautical Information Services Manual (ICAO Doc 8126). The general section of AIP includes Finavia's air traffic charges.

(hereinafter: "AIP"). Any differences in charges are based on the nature and scale of the services concerned.

- (52) Finland indicated that all airlines using TMP airport pay the same charges for services of the same quality. For instance, the passenger charge collected for the services provided at T2 has been differentiated according to the quality of services provided at the terminal. Finland explained that as regards the collection of the so-called "passenger service charge" marked in Ryanair's air ticket, neither Finavia nor Airpro can influence this charge as it is collected by Ryanair from its passengers. Finland stated further that contrary to the allegations of Blue1, Ryanair is not exempted from paying the passenger charge. According to Finland the fact that Airpro's activities at T2 are profitable indicates that Ryanair has to pay a charge for the services provided by Airpro.
- (53) Finavia at TMP airport receives through Airpro the following charges from Ryanair amounting to [...] in total:
- Landing charge¹³: [...]
 - Air navigation services charge: [...]
- (54) As regards the air traffic navigation charges, Finland stated that they depend on the weight of the aircraft, the length of the flight and the content of the services used. Finland explained further that Finavia's profits also include an annual route charge¹⁴, which amounted to approximately [...] in 2006 and will increase with additional frequencies operated by Ryanair.
- (55) Finland explained further that in 2005 the operating profit from Ryanair's operation at TMP airport totalled [...]. Finland finally argued that according to the Agreement, Ryanair also committed itself to increase traffic and to meet the passenger targets indicated in the Agreement.

4. OBSERVATIONS FROM THIRD PARTIES

- (56) The Commission has received observations from four interested parties.

4.1. Ryanair

- (57) Ryanair began its observations dated 16 November 2007 by stating that in its opinion the initiation of a formal investigation procedure was unjustified and unnecessary. It also stated that it regrets that the Commission did not give Ryanair the possibility to engage itself in the preliminary examination.
- (58) On the substance of the case Ryanair is of the opinion that the Commission should have based itself on standard commercial arrangements and on this basis it should have decided that the Agreement complies with the market economy operator principle, hence it does not involve State aid. As in Ryanair's opinion both Finavia and

¹³ Assuming that MTOW of the aircraft is 69 900 kg.

¹⁴ This charge is collected by Eurocontrol and disbursed by Eurocontrol to Finavia.

Airpro are profiting from its presence at TMP airport, both acted as market economy operator and the financing of T2 is void of any aid.

- (59) As regards the development of the low-cost terminal at TMP airport, Ryanair explains that there is an on-going development of differentiated services provided by airports in the Union to serve the needs of low cost airlines and passengers. Ryanair states that the differentiated level of services provided by airports resulted in differentiated charges paid by airlines. Ryanair states further that TMP airport was amongst the first to follow the model of differentiated service levels at one airport. Ryanair confirms that the airport operator Finavia decided for the development of T2 on the basis of a sound business plan that was swiftly implemented and resulted in an increase in Finavia's revenue. Therefore, Ryanair is of the opinion that the development of the low-cost terminal does not contain any elements of State aid in favour of Finavia's activity at TMP airport.
- (60) With regard to the management of T2, Ryanair explains first that competing terminals at one airport stimulate competition and result in improved efficiency and reduction in costs. In the view of Ryanair, the higher efficiency standards at T2 are improving the efficiency at T1 to the benefit of all airlines using the airport. Ryanair states further that, to its knowledge, Airpro is renting the terminal on commercial terms. Ryanair argues also that Finavia is additionally benefiting from an increased traffic at the airport and an increase in revenue from landing and air traffic control charges. Consequently, in Ryanair's view no State aid is involved in the commercial agreements between Finavia and Airpro with regard to the management of T2.
- (61) As regards the agreement concluded between Ryanair and Airpro, Ryanair first states that its business model is based on an increase in efficiencies that are passed to the passengers in form of low air fares. Ryanair states that the all-inclusive fee paid at TMP airport includes all charges applicable to airlines at the airport. It further argues that the differentiated charges for the use of T2 are justified by the level of services provided. With regard to the discount on airport charges related to the increase in frequencies, Ryanair argues that this is a normal commercial behaviour applied in all industries. It states that the conditions of the agreement between Ryanair and Airpro at T2 are generally applicable to all airlines willing to fly from T2. Therefore, Ryanair is of the opinion that its agreement with Airpro is not selective. Ryanair further argues that both Finavia and Airpro are profiting from its presence at TMP airport.

4.2. SAS Group

- (62) SAS Group submitted its comments by letter dated 16 November 2007. SAS Group pointed out that its comments will focus on the link between Finavia and Airpro and the costs of the transformation of T2 as well as the preferential treatment of Ryanair at TMP airport.
- (63) As regards the link between Finavia and Airpro, SAS Group stated that the managing director of TMP airport, was a member of the board of directors of Airpro when the decision to lease T2 to Airpro was taken. In addition, SAS Group stated that the close link between Finavia and Airpro is evident in the publication "Tampere-Pirkkala Airport Finland's Future-Ready Airport".

- (64) SAS Group argued that Finavia is cross-subsidising T2 with revenues at T1. SAS Group is in particular of the opinion that no passenger charges are paid at T2. Furthermore, Airpro administers the car park located outside T2 and keeps the revenues generated by the car park. SAS Group stated further that the parking charges at the car park next to T2 are twice as high as those at T1.
- (65) As regards the costs for the services at T2, SAS Group argues that Finland have not granted it the access to this information. SAS Group has no information whether T2 or TMP airport at all are profitable and whether Airpro pays for the infrastructure supplied by Finavia. SAS Group stated that for instance Finavia has acquired security-screening equipment for T2. As regards the price level at T2, SAS Group stated that Finland and Airpro argue that this price level relates to the level of services. SAS Group argued that the level of services is normally based on the ground handling concept agreed between an airline and the ground handling company, but not on the space or facilities available.
- (66) SAS Group argued that the arrangements concerning T2 at TMP airport favour one business model and are clearly contrary to Article 107(1) of the TFEU.

4.3. Air France

- (67) Air France provided comments by letter dated 16 November 2007. Air France started its observations with the explanation of its commercial situation in Finland. In Finland, Air France does not operate services from and to TMP airport; however it operates five daily frequencies between Charles de Gaulle airport in Paris and Helsinki airport (that is located approximately 180 kilometres from TMP airport) through a code sharing arrangement with Finnair.
- (68) Moreover, Air France supports the 2005 Aviation Guidelines and the preliminary assessment conducted by the Commission as regards the financial arrangement at TMP airport. In particular, Air France is of the opinion, that an exception from the payment of the passenger fee provides benefits to Ryanair and is clearly of a discriminatory nature and therefore, it should not be considered as compatible with the internal market.

4.4. Association of European Airlines

- (69) Association of European Airlines (hereinafter "AEA") provided its comments by letter of 16 November 2007. AEA's comments were fully in line with those provided by SAS Group and Air France.

5. COMMENTS FROM FINLAND ON THIRD PARTY COMMENTS

- (70) Finland received the comments of the four interested parties.
- (71) As regards the comments of Ryanair, Finland observed that the airline provides comments on the developments of the general aviation market in Europe and the developments at TMP airport. On these aspects Finland referred to the earlier observations submitted following the opening of the formal investigation procedure.
- (72) With regard to comments of SAS Group Finland observed that this third party has put forward new issues that need to be clarified. Finland stated that, as they have already

clarified, Airpro is a legally separated company and does not benefit from any support provided by its owner Finavia.

- (73) Finland indicated that TMP airport's manager was not a member of the board of directors of Airpro at the time when the lease agreement was signed. Finland stated further that TMP airport's manager was in Airpro's board of directors only from May 2003 to April 2007. As regards the marketing publication concerning TMP airport and its low cost strategy, Finland argued that such marketing activities cannot prejudice the legal and economic links between the companies concerned. Finland indicated that, as the publication was aimed at marketing TMP airport's low cost strategy, SAS Group that operates from T1 at TMP airport was not mentioned in this publication.
- (74) As regards SAS Group's allegations concerning possible cross-subsidisation between T2 and T1 at TMP airport, Finland stated that they have already provided evidence that Airpro's activities at TMP airport are profitable and that Airpro does not receive any subsidies from Finavia.
- (75) As regards the different infrastructure adjustments in relation to the refurbishment of T2, Finland indicated that the rent paid by Airpro to Finavia includes these costs including interest. With regard to the purchase of security-screening equipment for T2 by Finavia, Finland indicated that these costs are also reflected in the rent paid. The parking lot located next to T2 is part of the area rented out to Airpro. According to Finland Airpro is free to set the charges as long as they are set in a transparent way.
- (76) As regards the allegations of SAS concerning the differentiated pricing at TMP airport's T2, Finland referred to their comments on the opening of the procedure.

6. EXISTENCE OF AID

- (77) By virtue of Article 107(1) of the 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.*"
- (78) The criteria provided for in Article 107(1) of the TFEU are cumulative. Therefore, in order to determine whether the measure in question constitutes aid within the meaning of Article 107(1) of the TFEU all of the following conditions need to be fulfilled. Namely, the financial support should:
- be granted by the State or through State resources;
 - favour certain undertakings or the production of certain goods;
 - distort or threaten to distort competition; and
 - affect trade between Member States.

6.1. Aid nature of financial arrangements in the context of the implementation of the low cost strategy at TMP airport

- (79) In assessing whether the financial arrangements in relation to the low cost strategy at TMP airport, in particular with regard to the refurbishment of a vacant cargo hangar into a low cost terminal and the subsequent lease agreement with Airpro, are void of any aid, the Commission has to examine whether in similar circumstances a market economy investor would have entered into the same or similar commercial arrangements as Finavia¹⁵.
- (80) According to the principles established in the case law, the Commission has to compare the conduct of Finavia to a market economy investor who can be guided by prospects of profitability in the longer term¹⁶. In addition, according to the Charleroi Judgement¹⁷ when assessing the measures in question the Commission has to take into account all the relevant features of the measures and their context. In other words, the Commission has to analyse the decision of Finavia to refurbish the cargo hangar at TMP airport and the planned implementation of the low cost strategy at TMP airport by Airpro on the basis of an integrated approach taking into account all the features of the measures in question.
- (81) The Court declared in the Stardust Marine Judgment that, "[...] *in order to examine whether or not the State has adopted the conduct of a prudent investor operating in a market economy, it is necessary to place oneself in the context of the period during which the financial support measures were taken in order to assess the economic rationality of the State's conduct, and thus to refrain from any assessment based on a later situation.*"¹⁸
- (82) In order to be able to apply the market economy investor test the Commission has to place itself at the time when the decision to refurbish the vacant cargo hangar and subsequently to rent it out to Airpro was taken by Finavia (that is beginning of 2003). The Commission must also base its assessment on the information and assumptions which were at the disposal of the operator when the decisions for the financial arrangements in context of the implementation of the low cost strategy were taken.
- (83) Finland argues that Finavia acted rationally and substantiate its arguments with a copy of Finavia's *ex ante* business plan and the actual results of Finavia and Airpro at TMP airport.
- (84) In this context, the Commission notes that the cargo hangar at TMP airport became vacant after DHL had terminated its rental agreement. Finavia was losing the monthly rent of approximately [...]. After some months, it became evident that Finavia would

¹⁵ In order to carry out its assessment the Commission has also commissioned a study to Ecorys (hereinafter: "Commission's expert"). The Commission's expert analysed the financial data and assumptions underpinning the business plan in relation to the low cost strategy of Finavia and Airpro, the lease agreement between Finavia and Airpro for the operation of T2 and the Agreement.

¹⁶ Case C-305/89 Italy v Commission [1991] ECR I-1603, paragraph 20.; Case T-296/97 *Alitalia v Commission* [2000] ECR II-3871, paragraph 84. ("*Alfa Romeo*").

¹⁷ Case T-196/04 *Ryanair v Commission* [2008] ECR II-3643, paragraph 59 ("*Charleroi Judgement*").

¹⁸ Case C-482/99 *France v Commission* [2002] ECR I-04397, paragraph 71 ("*Stardust Marine Judgement*").

not be able to attract another air cargo company to TMP airport. In addition, the low cost airlines were not ready to use Terminal 1 at the airport, as the costs of the underlying ground handling services would be higher than accepted by these airlines. However, the 2002 forecasts for the aviation transport sector indicated a high growth potential for low cost carriers, such as Ryanair, of approximately 30% per annum.

- (85) The Commission observes further, that the empty cargo hangar was fully depreciated and the refurbishment costs of the hangar into a low-cost passenger terminal amounted to EUR 760 612. Even if the cargo hangar would not have been converted into a passenger terminal, Finavia would have had to undertake certain refurbishment works amounting to approximately EUR 100 000.
- (86) In addition, Finavia is obliged to keep the TMP airport's runway available for military purposes 24 hours a day, 365 days a year. Therefore, an increase in traffic at the airport could lead to a better allocation of resources and reduction of possible overcapacities. At the same time, the diversification of airlines using the airport could also lead to the reduction of business risks of the airport (such as of the unused capacity in the event one of the airlines would terminate its operation) and a more appropriate utilisation of the runway.
- (87) This situation is reflected in Finavia's business plan for the implementation of the low cost strategy. As shown in the worst case scenario of Finavia's business plan the investment project was expected to achieve a positive contribution, the average profit margin¹⁹ was expected to be around [...] (see table following recital (20)) and according to the data available to the Commission is broadly in line with the profit margins of other airports in the Union²⁰. The Commission observes further that the *ex ante* business plan is based on prudent assumptions which lead to an underestimation of the revenue and an overestimation of the costs during the last years of the period under consideration. In addition, the Commission notes that the *ex ante* business plan does not take into account the positive contributions of the landing charges to Finavia as these costs are deducted from the expected revenue. Also the refurbishment costs and an appropriate remuneration for the capital invested are fully reflected in the rent paid by Airpro to Finavia, which is also deducted from the expected revenue.
- (88) In order to assess the low cost strategy of Finavia and Airpro on the basis of an integrated approach, the Commission's expert consolidated the revenues and the costs of the *ex ante* business plan (base case scenario). In particular, the inter-company payments were taken into account as revenue (such as the rent paid by Airpro to Finavia for the use of T2, payments of landing and terminal navigation charges). The following table summarises the revenue and cost calculations in relation to the implementation of the low cost strategy at TMP airport as described above and its contribution to the Earnings before interest and taxes (hereinafter "EBIT") at a consolidated level (that is of Finavia and Airpro) during the next ten years: [...]

¹⁹ The profit margin (also the so-called Return on Sales) compares the net profit to sales (revenues). This ratio shows whether an undertaking is making enough of a return on sales as it determines how much profit is being produced per one Euro of sales revenue; it is a profitability and efficiency indicator.

²⁰ See Table 6 of Commission Decision of 27 January 2010 State aid case C 12/2008 – Slovakia – Agreement between Bratislava Airport and Ryanair, OJ L 27, 1.2.2011, p. 24.

- (89) The Commission observes that on the basis of the *ex ante* business plan and a positive NPV²¹ the decision of Finavia for the low cost strategy at TMP airport is in line with the behaviour of a market economy investor. The positive NPV of the low cost strategy increases the equity value of Finavia. The Commission further notes that the assumptions of the *ex ante* business plan and expected results of the low cost strategy are further supported by the actual positive results of Airpro's activity at TMP airport (see in particular the table following recital (26)). Moreover, the combined actual financial results of TMP airport (taking into account the financial results of Airpro's and Finavia's activity at TMP airport, see tables following recitals (24) and (26)) show that only due to the operation of the low cost terminal the airport's activity became profitable.
- (90) In view of the above, the Commission can conclude that Finavia's decision for the implementation of the low cost strategy at TMP airport and the underlying financial arrangements are in line with the market economy investor test and therefore free of any economic advantage that does not correspond to normal market conditions.
- (91) As one of the cumulative criteria provided for by Article 107(1) of the TFEU is not fulfilled, the Commission considers that the decision of Finavia for the implementation of the low cost strategy at TMP airport and the underlying financial arrangements are void of any State aid within the meaning of Article 107(1) of the TFEU.
- (92) As regards a possible cross-subsidisation of Airpro by Finavia (such as foregone rent revenue or compensation of operating losses), the Commission notes that since all financial arrangements in relation to the low cost strategy at TMP airport are on the basis of an *ex ante* business plan in line with the market economy investor principle, Airpro pays a market rent for the use of T2 and the full cost of Airpro's activity at TMP airport are covered by the charges paid by the airlines using T2 (that is to say Ryanair), and only due to the operation of T2 Finavia's activity at TMP airport became profitable, the cross-subsidisation of Airpro by Finavia can be excluded.

6.2. Aid nature of the Agreement between Airpro and Ryanair

- (93) Also as regards the Agreement between Airpro and Ryanair Finland argues that Airpro has acted as a market economy operator would have done in a similar situation. If this is the case, Ryanair has not been favoured by the Agreement and no State aid is involved.
- (94) In assessing whether the Agreement was concluded 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 would have entered into same or similar commercial arrangements as Airpro²². Furthermore, the Commission has to analyse the expected impact of the Agreement on Airpro's and Finavia's activity at TMP airport on the basis

²¹ NPV indicates whether the income from a given project exceeds the (opportunity) costs of capital. The project is considered as an economically profitable investment when it generates a positive NPV. Investments producing lower income as the (opportunity) costs of capital are not economically profitable. The (opportunity) costs of capital are reflected in the discount rate.

²² *Alfa Romeo Judgement*, paragraph 20, *Alitalia v Commission judgement*, paragraph 84.

of an integrated approach taking into account all the features of the measure in question²³.

- (95) In order to be able to apply the market economy investor test the Commission has to place itself at the time the Agreement was signed. The Commission must also base its assessment on the information and assumptions which were at the disposal of the operator when the Agreement was signed. Airpro signed the Agreement with Ryanair on 3 April 2003 with duration of [...].
- (96) According to the Agreement, Ryanair committed itself to commence its operation at TMP airport with [...] daily rotations. On this basis Ryanair expected to generate approximately [...] departing passengers at TMP airport during the first 12 months, and approximately [...] passengers during the following 12 months. The Agreement provides for a schedule of charges per turn around depending on the number of daily frequencies (see in particular the tables following recital (43)). The average price for one rotation (based on three flights per day) is [...]. The following table compares the charges paid by airlines using the T1 at TMP airport and the average price paid by Ryanair:

Services provided	Airport charges applicable at Terminal 1 (T1) in EUR	Airport charges paid by Ryanair (average fee) at Terminal 2 (T2)
Landing charges	442	442
Terminal navigation charges	92	92
Security charge	410	410
Terminal (passenger) services and ground handling	[...]	[...]
Total price per rotation	[...]	[...]

- (97) The Commission observes that Ryanair pays the same landing, terminal navigation and security charges as airlines using T1 at TMP airport. According to the information provided by Finland Ryanair is not exempted from a passenger fee. The only difference in the price paid by Ryanair relates to the charges paid for terminal (passenger) services and ground handling. However the quality of the services provided to Ryanair and its passengers at T2 is lower than the quality of services provided at T1 and the achieved reduction in underlying costs, in particular the costs of personnel, represents approximately [...] of the total costs (including the rent paid to Finavia, landing and terminal navigation charges paid to Finavia) of Airpro. Contrary to T1, the number of staff of T2 is kept at a low level and the staff is performing different activities from check-in, security checks to ground handling. According to the information provided by the airport to the Commission's expert this results in savings in costs of personnel of T2 amounting to around [...] in comparison

²³ *Charleroi Judgement*, paragraph 59.

to T1. In addition, the Commission observes that the airport charges paid by Ryanair for the terminal (passenger) services and ground handling are only around [...] lower as the charges paid at T1. The difference between the costs savings (around [...]) on the one hand and the difference in charges paid by airlines using the two terminals (around [...]) reflects the additional profit margin generated by Airpro (around [...]) (see also table following recital (20)). Hence, the Commission notes that the difference in the charges paid by Ryanair at T2 in comparison to the charges paid at T1 is justified.

- (98) On the basis of the above, Airpro was able to forecast the revenue generated by the Agreement with Ryanair. It was assumed that in year 1 Ryanair would perform [...] daily rotations with a load factor of [...], as of year 2 it was expected that Ryanair would operate [...] daily rotations for the remaining duration of the Agreement with the same load factor as in the year 1. The revenue takes into account the aeronautical and non-aeronautical revenues (in particular the parking revenue etc.) of Airpro. The estimates of Airpro's costs over the duration of the Agreement were done by using the projected costs in relation to the implementation of the low cost strategy at TMP airport. For instance, the costs of personnel were expected to amount to [...] per rotation (for both [...] daily rotations).
- (99) The following table summarises the revenue and cost calculations in relation to the Agreement and its positive contribution to the equity value of Airpro during its duration. These calculations are based on the business plan provided by Finland and the previously described assumptions. [...].
- (100) The Commission notes that the Agreement with Ryanair generates over its duration a positive contribution to the equity value of Airpro with a NPV which amounts to EUR 0.5 million. Also the overall Airpro's and Finavia's activity at TMP airport was expected to be positive over the duration of the Agreement.
- (101) The Commission also observes that the revenues stemming from the Agreement cover all costs of Airpro at TMP airport and all costs of Finavia attributed to it. The so-called "full cost approach" in the case at stake includes cost of capital (that is to say depreciation costs for the airport infrastructure) and operating costs (such as costs of personnel, energy, material) and also costs for security and safety measures which may represent measures which fall within the public policy remit and would not be considered as an economic activity within the meaning of Article 107(1) of the TFEU. Thus, the calculated NPV is underestimated and the positive contribution of the Agreement might be indeed even higher.
- (102) The Commission observes that on the basis of the *ex ante* business plan the decision of Airpro, as a subsidiary of Finavia, to conclude the Agreement at stake with Ryanair is in line with the conduct of a market economy investor. The Commission further notes that the assumptions of the *ex ante* business plan and expected results of the Agreement are further supported by the actual positive results of Airpro's activity at TMP airport (see in particular the table following recital (26)). Moreover, the combined actual financial results of TMP airport (taking into account the financial results of Airpro's and Finavia's activity at TMP airport, see in particular the tables following recitals (24) and (26)) show that not only the operation of the low cost terminal, but also the airports activity as a whole became profitable.

- (103) On the basis of the foregoing the Commission concludes that Airpro's decision to enter into the Agreement at stake with Ryanair are in line with the market economy investor test and therefore free of any economic advantages that does not correspond to normal market conditions.
- (104) As the cumulative criteria pursuant to Article 107(1) of the TFEU are not fulfilled, the Commission considers that the Agreement of 3 April 2003 between Airpro and Ryanair is void of any State aid within the meaning of Article 107(1) of the TFEU,

HAS ADOPTED THIS DECISION:

Article 1

The measures of Finavia Oyj and Airpro Oy consisting of the financial arrangements in relation to the implementation of the low cost strategy at Tampere-Pirkkala airport, in particular the refurbishment costs of the Terminal 2 and the lease agreement concluded on 23 February 2003 between Finavia Oyj and Airpro Oy for the Terminal 2 do not constitute aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

Article 2

The Agreement concluded on 3 April 2003 between Airpro Oy and Ryanair Ltd. does not constitute 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 the Republic of Finland.

Done at Brussels,

For the Commission
Joaquín ALMUNIA
Vice President of the Commission