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Subject: State aid N 286/2010 – Finland – investment aid to Finavia Oyj for expansion of Oulu airport

1. PROCEDURE

- (1) By letter of 30 June 2010, the Finnish authorities notified to the Commission, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (hereinafter- TFEU), a State aid measure in favour of Finavia Oyj with respect to extension of the Oulu airport. The notification has been registered under case number N286/2010. An update was received on 19 July 2010.

2. DESCRIPTION OF THE MEASURE

2.1. Beneficiary

- (2) Finavia Oyj is a limited liability company which maintains Finland's network of 25 airports and the air navigation system. 100% of Finavia's shares are owned by the Finnish State. At the end of 2009, Finavia employed approximately 2500 people.
- (3) On 30 December 2008 Finavia submitted an application for aid to the Ministry of Transport and Communications and Oulu Local Regional Authority with respect to the development of its Oulu airport which is the second largest airport in Finland serving 605 534 passengers in 2009. Oulu Airport is one of the eight airports located in Northern Finland and by far the largest servicing the Northern regions of Finland. It is the only airport in the Northern Finland which operates not only domestic but also international routes.
- (4) The other 7 regional airports in Northern Finland (including passenger amounts for 2009) are: Ivalo (130 592), Enontekiö (17 683), Kittilä (245 292), Rovaniemi

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(309 731), Kemi-Tornio (95 609) Kuusamo (94 045) and Kajaani (73 397). Of these airports only Kajaani (approximately 180 km from Oulu), Kemi-Tornio (112 km from Oulu) and Kuusamo (212 km from Oulu) could to a very limited extent be geographically considered each other's substitutes.

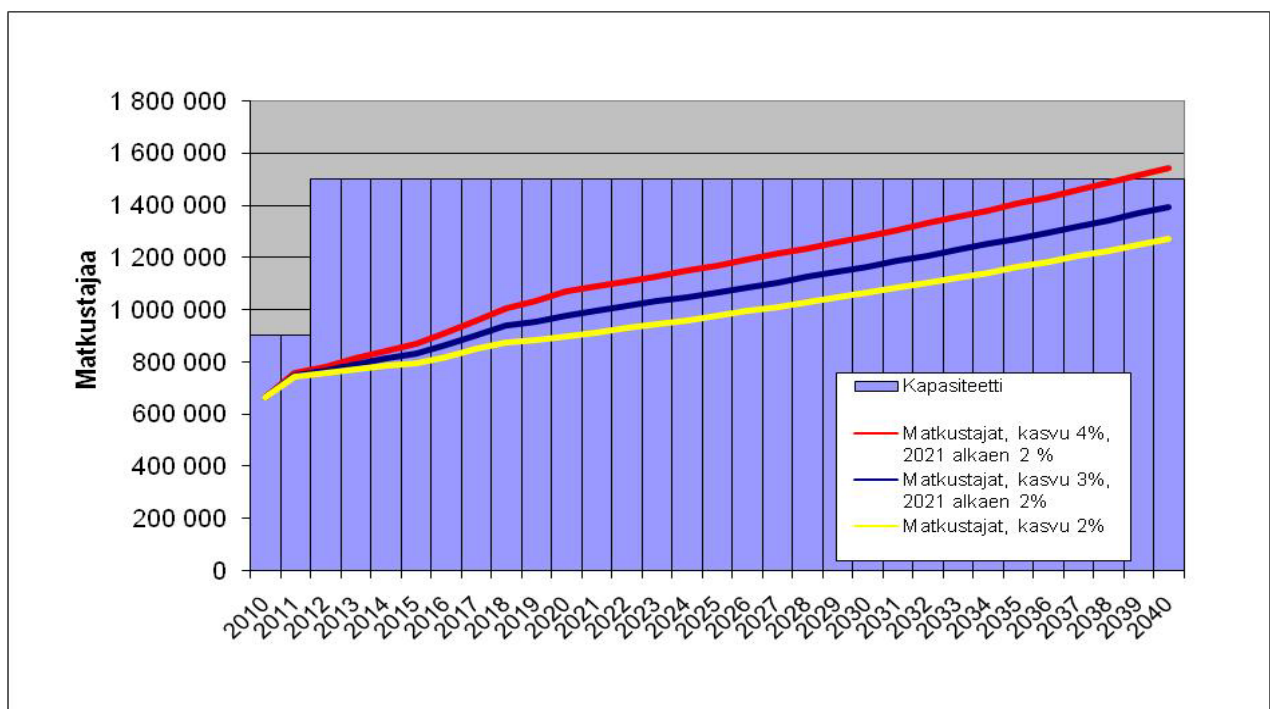
- (5) The commercial airlines operating out of Oulu are Finnair, Air Baltic, SAS/Blue 1 and Wingo. Additionally, Oulun Tilauslento Oy operates chartered flights, freight transport flights and medical flights out of Oulu. There are direct scheduled flights from Oulu to Helsinki, Turku, Tampere and Stockholm and charter flights from Oulu to the Canary Islands, Cyprus, Greece and Turkey to name a few holiday destinations.

2.2. Development objectives for Oulu airport

- (6) At present the airport has the capacity to serve approximately 900 000 passengers a year. It clearly needs to be extended given that already in 2006-2007 the passenger numbers were nearing the maximum capacity at approximately 850 000. While Oulu airport has badly suffered from the crisis, with passenger numbers falling by more than 200 000, it is only a temporary situation and is without prejudice to the long-term growth trends.
- (7) According to the Finnish authorities, improving accessibility and connectivity are essential objectives. In view of the geographical location of the Oulu region, there is lack of other reasonably substitutable modes of transport (e.g. road, rail or ship). Whilst a flight from Oulu to Helsinki takes approximately 55 minutes, the train connection between the same cities takes approximately six to eight and a half hours (depending on the route and type of train) and driving will take at least eight hours. Thus, increasing the capacity level of Oulu airport is the only feasible way to increase connectivity of the Northern Finland.
- (8) The plan is therefore to expand and develop as a Northern Finnish "hub" for the purposes of furthering the regional connectivity and international expansion of the economic and social environment in the Oulu and surrounding regions.
- (9) The objective of Finavia and the Finnish government is to increase the transport capacity of Oulu Airport to cater to 1,5 million passengers a year and make it possible to provide for Schengen/non-Schengen transfer services in the largest airport of the Northern Finland (currently no airport in the region can provide such services). Furthermore, the intention is to increase the landing possibilities of wide-body aircraft in Oulu. Such development is seen as a direct and necessary catalyst for the further development of the region of Oulu and its business and economic community.
- (10) The Oulu region has actively participated in the development of the Barents strategy in which the expansion of the Oulu airport plays an important role in guaranteeing sufficient transport routes to the Northern international transport corridor (point 4 of the Barents Strategy: Development of transport links between northern Finland and the Russian Barents).

2.3. Aided investment project

- (11) The expansion is intended to cover the addition of two new extensions to the present passenger terminal in Oulu Airport (the main of which would provide Schengen/non-Schengen transfer services and thus will provide the airport a possibility to accommodate flights which so far were not possible. *Inter alia* this concerns flights from the Russian Barents region). Additionally, four new gates will be added; three for small and mid-sized aircraft (e.g. types A320, A321, B757 200 and one for wide-body aircraft (e.g. type A340).
- (12) The scale of the investment project was decided on the basis of the passenger traffic forecast for the next 30 years which is reflected in the table below:



(translation of terms in table¹)

- (13) Without this increase in capacity the further internationalization and development of Oulu Airport and the surrounding regions will be hindered.
- (14) The forecast takes into account the planned further development of Oulu as important ICT industry centre and further "internationalisation" of Oulu (already today a number of international and global companies are established in Oulu, including Nokia Corporation). Similarly, new cost item resulting from the inclusion of the aviation sector in the Emission Trading System was taken into account.

¹ Matkustajaa = passengers; kapasiteetti = capacity. Red line = passengers, growth 4%, 2021 onwards 2%. Blue line = passengers, growth 3%, 2021 onwards 2%. Yellow line = passengers, growth 2%.

- (15) Annual growth of 4% represents average annual growth expected for the period covered by the forecast. In some years the growth will be lower, in some - higher (it is enough that one additional daily direct flight from the rest of Europe is opened that annual passenger number growth by 60 000). At the beginning of the period covered by the forecast, a faster growth is expected (correction after a steep fall in 2008 and 2009 related to the economic crisis).
- (16) The measure was included in the economic stimulus package agreed by the Finnish Government on 30 January, 2009. This is also the main reason why it was decided to implement the investment programme for the next few decades in one step.
- (17) According to calculations done by Finavia and verified by the State without any public support the Net Present Value and Internal Rate of Return of the project would be negative.
- (18) All the construction works will be implemented on the basis of competitive tendering procedures.

2.4. Budget and granting authorities

- (19) There will be two granting authorities - the Ministry of Transport and Communications and Oulu Local Regional Authority which will together contribute 57% of the overall cost of the project in a form of grants. The rest will come from Finavia's own resources:

The budget of the Ministry of Transport and Communications	10 MEUR
Oulu Local Regional Authority (<i>Oulun Seutukunta</i>)	2 MEUR
Finavia Oyj (not including any state aid)	9 MEUR
Total	21 MEUR

2.5. National legal basis

- (20) The legal basis for the 10 MEUR investments by the Ministry of Transport and Communication in the present measure is the Act on Discretionary Government Transfers (Valtionavustuslaki, 688/2001).
- (21) The legal basis for the 2 MEUR investment of the Oulu Local Regional Authority is the Oulu Local Regional Authority's decision of 25 March 2009 to partake in the public financing of the expansion of the airport. 10 municipalities belonging to the Oulu region would all contribute a part of the 2 MEUR calculated on the basis of the number of inhabitants residing in each municipality.

2.6. Cumulation

- (22) The above aid cannot be cumulated with State aid received from other schemes.

3. ASSESMENT OF THE NOTIFIED MEASURES

3.1. Existence of aid

- (23) 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.
- (24) The criteria laid down in Article 107(1) are cumulative. Therefore, in order to determine whether the notified measures constitute State aid within the meaning of Article 107(1) of TFEU, all the abovementioned conditions need to be fulfilled. Namely, the financial support should:
- (a) be granted by the State or through State resources,
 - (b) favour certain undertakings or the production of certain goods,
 - (c) distort or threaten to distort competition,
 - (d) affect trade between Member States.
- (25) In relation to the financing by public authorities of airports the Commission has put in place the Community guidelines on financing of airports and start-up aid to airlines departing from regional airports² (hereinafter – 2005 Guidelines). These guidelines are designed to provide a framework for determining if public financing of airports gives rise to issues of State aid concern.
- (26) In particular, the 2005 guidelines highlight the importance of determining whether the beneficiary is engaged in an economic activity³.
- (27) In assessing whether the operation of an airport is such an activity the European Court of Justice ruled in the “Aéroports de Paris” case⁴, that airport management and operation activities consisting in the provision of airport services to airlines and to the various service providers within airports are economic activities because they consist in the provision of airport facilities to airlines and the various service providers, in return for a fee at a rate freely fixed by the manager. Thus, the airport operator, in principle, is engaged in an economic activity within the meaning of Article 107 (1) of TFEU, to which the rules on State aid apply.
- (28) At the same time, the European Court of Justice has held that activities that normally fall under State 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. Such activities include security, air traffic control, police, customs, etc.

² OJ C312/1, 9.12.2005.

³ According to Court of Justice case law, any activity consisting in offering goods and services on a given market is an economic activity. See Case C-35/96 *Commission v Italy* [1998] ECR I-3851 and Cases C-180/98 to 184/98 *Pavlov* [2000] ECR I-6451.

⁴ Case T-128/98, *Aéroports de Paris v Commission of the European Communities* [2000] ECR II-3929, confirmed by Case C-82/01 [2002] ECR I-9297, points 75-79.

As the notified project does not concern these aspects of the airport activity all off the financing envisaged has to be scrutinised under State aid rules.

3.1.1. Transfer of State resources

- (29) The concept of State aid applies to any advantage, granted directly or indirectly, financed out of State resources, granted by the State itself or by any intermediary body acting by virtue of powers conferred on it. The notion of State resources covers also resources of regional authorities.
- (30) In this context, the decision of the Finnish authorities (the Ministry of Transport and Communications and the Oulu Local Regional Authority) to provide a grant to Finavia Oyj for investments into the expansion of its Oulu airport constitutes a transfer of State resources.

3.1.2. Selective economic advantage

- (31) In the present case, the funding is granted to a single undertaking, namely Finavia Oyj which will be engaged in an economic activity related to the provision of air transport services. The funding reduces the costs that this undertaking should normally bear.
- (32) The Finnish Authorities have not acted as private investors because the Net Present Value of the Project is negative.
- (33) In this case it cannot be said that the public authorities concerned are "*acting as a private investor*" in a market economy. The Finnish authorities providing funds to Finavia Oyj with respect to expansion of the Oulu airport do not have any expectation of a financial return on the investment in question and, although it is their intention to make the airport more attractive to users and therefore more profitable they are not exclusively guided by prospects of profitability in the longer term⁵. Rather the stated aim of the public financing is to improve the connectivity of the surrounding regions.
- (34) The Commission can therefore conclude that a selective economic advantage is present.

3.1.3. Effect on competition and trade between Member States

- (35) When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Union trade the latter must be regarded as affected by that aid. The air-transport market in the EU is completely liberalised so the beneficiary airport operator competes with airport operators in other EU Member States. In accordance with settled case law⁶, for a measure to distort competition it is sufficient that the recipient of the aid competes with other

⁵Case C-305/89 *Italy v Commission* ("*Alfa Romeo*") [1991] ECR I-1603, point 20. Case T 228/99 *Westdeutsche Landesbank Girozentrale v Commission* [2003] ECR II-435, points 250-270.

⁶ Judgment of the Court of First Instance of 30 April 1998, Case T-214/95 *Het Vlaamse Gewest v Commission*, Rec.1998, p. II-717.

undertakings on markets open to competition⁷. Finavia Oyj competes to some extent with other EU airport operators if not for direct passengers then at least for transit passengers (this is the case of Helsinki Vantaa airport).

- (36) Therefore, the Commission can conclude that the measure is liable to affect trade between Member States and to distort competition.⁸

3.1.4. Conclusion on existence of aid

- (37) In view of the above, as well as taking into consideration that the funding is not provided in the context of a contract to provide services of a general economic interest, which would be awarded through an open tender procedure, the Commission concludes that the measure under scrutiny constitutes State aid within the meaning of Article 107 (1) of TFEU

3.2. Compatibility of the aid

- (38) Article 107 (3) TFEU provides for certain exemptions to the general rule of incompatibility set out in Article 107(1) TFEU. (As Finavia Oyj does not have any contracts to provide services of a general economic interest as far as operations of its Oulu airport are concerned, Article 106(2) TFEU is not applicable).

3.2.1. Compliance with the 2005 Airport Guidelines

- (39) The 2005 Guidelines mentioned above provide a framework for assessing whether aid to airports falling within the scope of Article 107(1) may be declared compatible pursuant to Article 107(3) TFEU. They mention a number of criteria which the Commission takes into account in this regard.
- (40) In accordance with point 61 of the 2005 Guidelines, the Commission examines in particular whether:
- (a) the construction and operation of the infrastructure meets a clearly defined objective of general interest (regional development, accessibility, etc.);
 - (b) the infrastructure is necessary and proportional to the objective which has been set;
 - (c) the infrastructure has satisfactory medium-term prospects for use, in particular as regards the use of existing infrastructure;
 - (d) all potential users of the infrastructure have access to it in an equal and non-discriminatory manner;
 - (e) the development of trade is not affected to an extent contrary to the Community interest.

⁷ In the 2005 Guidelines, the Commission recognised that the public funding granted to an airport could be used to maintain airport charges at an artificially low level in order to attract traffic and could significantly distort competition (paragraph 38).

⁸ For the purpose of categorising a national measure as State aid, it is not necessary to demonstrate that the aid has a real effect on trade between Member States and that competition is actually being distorted, but only to examine whether the aid is liable to affect such trade and distort competition (see, *inter alia*, case C – 494/06 P *Commission v Italy* and *Wam* [2009] ECR I-3639, paragraph 50).

3.2.1.1. Construction and operation of the infrastructure meets a clearly defined objective of general interest

- (41) As previously stated, the primary objective of the measure under scrutiny is connectivity, by means of a more intensive and efficient use of the existing airport. Without the measure the airport will be congested in a few years' time. In addition, without the measure the situation when no Northern Finland airport is able to provide Schengen/non-Schengen transfer services would persist.
- (42) While being a small airport, Oulu airport is the main airport in the North of Finland and therefore has an important role in promoting accessibility to the region and its development.
- (43) This approach is in line with the Commission's 2007 Action Plan for Airport Capacity⁹, where the Commission emphasises the importance of regional airports to the development of an integrated European air transport network¹⁰. The Action Plan further acknowledges the necessity to unlock existing latent capacity at regional airports provided that Member States respect Community legal instruments relating to state aid, i.e. Articles 107 to 109 TFEU and the 2005 Guidelines.
- (44) Moreover, according to the Action Plan, connectivity stands at the basis of economic competitiveness, social and regional cohesion and cultural development¹¹. The Action Plan underlines the need for a more efficient use of existing runways and support for new infrastructure in regional airports.
- (45) Accordingly, the Commission can conclude that the public funding provided for by the present measure for infrastructure upgrading at this airport meets the clearly defined objective of improving regional connectivity.

3.2.1.2. The infrastructure is necessary and proportional to the objective which has been set

- (46) As explained above, currently Oulu airport is by far the largest airport in Northern Finland and the only one able to accommodate international flights at present.
- (47) In order to expand and develop as a Northern Finnish “hub” for the purposes of furthering the regional connectivity and international expansion of the economic and social environment in the Oulu region, Oulu Airport needs to expand its terminal and aircraft gate space as described above.
- (48) The Commission notes that the measure at stake will facilitate the development of the airport and give a response to the forecasted increase in demand of air transport services. The investments will lead to a better use of the existent airport

⁹ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, "An action plan for airport capacity, efficiency and safety in Europe", COM(2006)819 Final, 24 January 2007.

¹⁰ Point 12 therein.

¹¹ Point 3 therein.

infrastructure, as it will allow the airport to upgrade its facilities and thereby to contribute to the regional development of its catchment area.

- (49) Taking into account that the overall budget of the measure is relatively low (EUR 21 million) and that the foreseen investments will significantly contribute to the overall objective of increased regional accessibility, the Commission can therefore conclude that the proposed extensions of infrastructure are necessary and proportional to the objective that has been set.

3.2.1.3. The infrastructure has satisfactory medium-term prospects for use, in particular as regards the use of existing infrastructure

- (50) As described above, the traffic forecast justifies proposed investments into capacity extension.

3.2.1.4. All potential users of the infrastructure have access to it in an equal and non-discriminatory manner

- (51) All potential users will have access to the improved infrastructure on an equal and non-discriminatory basis. The investments at stake are not tailor-made or reserved for a specific air carrier. At least for the next 20 years, the airport will have sufficient capacities available for every airline wishing to use Oulu airport as destination or origin airport.

3.2.1.5. The development of trade is not affected to an extent contrary to the Community interest

- (52) Oulu airport is included in category D, "small regional airports", as set out in point 15 of the 2005 Guidelines, i.e. it is an airport with an annual passenger volume of less than 1 million passengers (Oulu airport served 605 534 passengers in 2009).
- (53) In relation to Category D airports the 2005 Guidelines state that "funding granted to small regional airports (category D) is unlikely to distort competition or affect trade to an extent contrary to the common interest"¹². Even if the proposed investment will enable the airport to become a C category airport in the longer term perspective, this will definitely not happen in the nearest 5 years.
- (54) The Commission notes that the planned measure does not entail any alteration of market conditions likely to run counter to the Community interest.
- (55) As Finavia is the only airport operator in Finland, the measure cannot create distortions within the airport sector of Finland. As to the competition with the non-Finnish EU airport operators, competition conditions cannot be substantially affected in a way which would be contrary to EU interest as there is no other non-Finnish EU airport in the same catchment area (the nearest non Finnish airport is a small Swedish airport (Luleå) at more than 260km distance which nearly exclusively

¹² Paragraph 39 thereof.

serves domestic needs – connection to Stockholm). Besides, control mechanisms are envisaged to ensure Finavia Oyj is not able to use the funds provided within the context of the notified measure for strengthening its other airports.

- (56) Furthermore it is important to note that Finavia Oyj does not have any other business activity than managing Finnish airports.
- (57) Thus the Commission notes that the planned measure does not entail any alteration of market conditions likely to run counter to the Union interest.

3.2.2. Aid is necessary and proportional

- (58) In addition to the requirement to satisfy specific compatibility criteria specified in the 2005 guidelines, State aid to airports, as any other State aid measure, should be necessary and proportional in order to be cleared as compatible aid¹³.
- (59) The Commission must also assess whether the aid is proportional and necessary. As described above, without the aid, Finavia Oyj would not be able to carry out the aforementioned investments to the same extent and during the same timeframe. In this respect it is recalled that the Net Present Value for the project is negative and the company would not be able to obtain private financing to cover the entire cost of the project.
- (60) The use of competitive tender procedures for the implementation of the investment programme will contribute to keeping the aid amount to the minimum necessary and ensure that there are no distortions of competition on other relevant markets (notably the market for construction services).
- (61) The investment aid intensity of 57% is clearly acceptable for a D category airport, in view of preceding Commission decisions¹⁴ on aid to small airports.

¹³ It is constant case law that the Commission can declare an aid compatible only if it is necessary for achieving a legitimate objective (cf. case 730/79, Philipp Morris, para. 17; case C-390/06, Nuova Agricast, para. 68; case T-162/06, Kronoply, para. 65).

¹⁴ See e.g. Commission decisions in cases N303/2007, N 196/2008 and N397/2009.

4. DECISION

- (62) The European Commission has therefore decided not to raise any objections to the measure in question on the grounds that the aid is compatible with the Internal Market under Article 107(3)(c) of TFEU.
- (63) This Decision is without prejudice to any possible scrutiny under environmental or public procurement rules.
- (64) If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://ec.europa.eu/community_law/state_aids/state_aids_fi.htm. Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
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B-1049 Brussels
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Yours faithfully,

For the Commission

Joaquín ALMUNIA
Vice-President of the Commission