DECISIONS

COMMISSION DECISION

of 25 July 2012

on measure SA.23324 — C 25/07 (ex NN 26/07) — Finland Finavia, Airpro and Ryanair at Tampere-Pirkkala airport

(notified under document C(2012) 5036)

(Only the Finnish and Swedish versions are authentic)

(Text with EEA relevance)

(2013/664/EU)

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 provisions cited above [1],

Whereas:

1. PROCEDURE

(1) In February 2005 the Commission received a complaint from Blue1 Oy ('Blue1'), a Finnish airline that is part of the SAS Group. Blue1 alleged, among other things, that Ryanair Ltd ('Ryanair') was receiving aid due to lower-than-average airport charges at Tampere-Pirkkala airport ('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.

(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] ('the opening decision') in respect of the agreement between Airpro Oy and Ryanair and 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 the Association of European Airlines). It transmitted these comments to Finland by letter dated 13 February 2008. Finland transmitted its comments on 15 April 2008.

(6) By letter dated 25 June 2010 the Commission requested further information. Finland replied by letter dated 1 July 2010. By letter dated 5 April 2011 the Commission requested further information on the financing of the airport. Finland replied by letter dated 5 May 2011. However, Finland's reply was incomplete. Therefore, the Commission sent a reminder pursuant 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 Treaty [4]. Finland replied 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. It is the third largest airport in Finland (measured in number of passengers, see table in paragraph (10)). Besides handling civil aviation, the airport also serves as a base for the Finnish Air Force.

[1] OJ C 244, 18.10.2007, p. 13.

[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 provisions are identical in substance. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should, where appropriate, be understood as references to Articles 87 and 88, respectively, of the EC Treaty. 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.

(8) TMP airport has two scheduled passenger terminals:

— Terminal 1 (also 'T1') was built in 1998 and is currently used by Finnair, Flybe, SAS, Blue1 and Air Baltic. In 2003 the capacity of T1 was 550 000 passengers a year.

— Terminal 2 (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 a year.

(9) TMP airport, with the exception of T2, is owned and operated by Finavia Oyj ([5]) ('Finavia'). T2 is rented out by Finavia to its subsidiary Airpro Oy ([6]) ('Airpro'). Airpro operates the terminal and provides ground handling services there. Furthermore, Airpro entered into an agreement with Ryanair […] (*) starting from 3 April 2003.

(10) Passenger traffic at the airport increased from 304 025 in 2003 to 617 397 in 2010. This is due to the development of passenger numbers at T2. In 2010, Ryanair's passenger share at TMP airport amounted to approximately […]. The following table summarises the development of passenger numbers at TMP airport from 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
2010	[…]	[…]	617 397

([5]) Until the end of 2009 Finavia Oyj (formerly known as the Finnish Civil Aviation Administration) was a state enterprise. On 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 operating Finnish airports, Finavia provides air navigation services at its own airports and it is also responsible for the supervision of Finnish airspace. Finavia's real estate operations are managed by its subsidiary Lentoasemakiinteistöt Oyj. That 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 wholly-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.

(*) Business secret

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

(11) The opening decision raised the following questions:

— firstly, whether Finavia acted as a market economy investor when it decided to convert a cargo hangar into T2, a low-cost terminal, in which case 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

— secondly, whether a market economy operator would have entered into an agreement similar to Airpro's agreement 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 as to 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 as to whether the investments made by Finavia to transform this former cargo hangar into a low-cost terminal could also be considered a 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 prospects of long-term profitability and whether the advantage allegedly conferred on Ryanair was an advantage it would not have obtained under normal market conditions. The Commission expressed, in particular, doubts as to whether the 'all-inclusive charge' paid by Ryanair was based on costs for the provision of services to the airline by Airpro. Furthermore, Finland did not provide the Commission either with the terms of the agreement with Ryanair or with the business plan evaluating the profitability of the agreement for Airpro. Hence in its opening decision the Commission expressed doubts as to whether the behaviour of Airpro had been guided by prospects of long-term profitability. Accordingly, it could not be excluded that the agreement provided Ryanair with an advantage it would not have benefited from under normal market conditions.

(14) The Commission expressed doubts as to whether the conditions for compatibility as set out in the Community guidelines on financing of airports and start-up aid to airlines departing from regional airports ([7]) ('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 its observations by providing background information on Finavia's and Airpro's low-cost strategy at TMP airport. Finland explained that T2 was built in 1979 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 lease agreement and the terminal became vacant.

(16) Finland indicated that, as Finavia was not able to attract any other cargo operator to Tampere 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 had by that time already been depreciated and the refurbishment of the terminal required only minor renovations ([8]). 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-voltage installations	[…]
Conveyors	[…]
Security screening equipment	[…]
Total amount	**760 612**

(17) In view of the above calculation Finland indicated that even if Finavia had been able to find another tenant to use T2 as a cargo hangar, it would have been necessary to carry out certain construction engineering works amounting to approximately EUR 100 000. Furthermore, the conveyors could always be used at Finavia's other airports.

(18) Finland explained further that Finavia's intention 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 of facilities at T1 and T2 at TMP airport:

	Terminal 1 (T1)	Terminal 2 (T2)
Operational model	Traditional model: check-in operations, security checks, transportation, sorting, loading and unloading of luggage are carried out by different professional groups and companies.	Low-cost model: the same persons perform all the tasks of the different professional groups at T1, such as check-in, security checks, loading and unloading of luggage. The functions are located in a restricted area of the terminal, which requires only minimum staff and speeds up passenger flows.
Ground handling capacity	Three to five (depending on the type of aeroplane) simultaneous take-offs or landings.	One outbound aeroplane an hour
Facilities	Facilities providing good service including a 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.

([7]) OJ C 312, 9.12.2005, p. 1.

([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 the refurbishment of electricity, piping, heating and air-conditioning systems as well as modifications of the infrastructure outside the terminal for pedestrians and motorists.

(19) Finland indicated that as T2 could provide ground handling services for only one outbound aeroplane an hour, it was suitable only for point-to-point carriers using large aircraft. At the same time, in order to optimise the use of its staff, the operator of the terminal required airlines to enter into long-term agreements and also agreements on timetables; for instance flights could not always be operated at the times requested by the airlines, as was the case in T1. According to Finland, the optimisation of staff expenses and the service levels provided allowed cost savings of approximately […] compared to T1.

(20) Finland indicated that before starting the refurbishment of T2 and adopting a low-cost strategy there, the issue was discussed several times at the meetings of Finavia's board of directors. A business plan was also prepared for this purpose. The following table summarises the business plan (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 the costs expected in the last years of the period under consideration. Under the other scenarios the low-cost strategy was expected to be even more profitable. The all-inclusive charges paid by the airlines using T2 varied in the different scenarios between […] per aircraft turnaround. As the decision on the low-cost strategy was made by Finavia's board of directors on the basis of calculations and studies, it was not imputable to the State. The measures were not the result of requirements or orders by authorities, nor were the authorities involved in the adoption of the measures.

(22) Finland indicated that Finavia and Airpro operated in compliance with business principles and financed their operations from the service charges and revenues collected from customers and from other business operations. In particular, neither Finavia nor Airpro received funding from the State budget: they operated profitably and annually distributed part of their profit to the State in accordance with the profit requirements imposed on them.

(23) Finland indicated that the Ministry of Transport and Communications decided on Finavia's performance targets. These performance targets, however, concern the group as a whole and individual business decisions were taken at Finavia's own discretion. In the past few years (2003 to 2005) Finavia's profit requirement had been 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 did not prepare airport-specific financial statements, as all its airports were part of the same legal entity. However, since 2000 Finavia had nevertheless collected airport-specific information based on its own internal calculations (actual data). This information was 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) Besides commercial operations, the financial results of Finavia at TMP airport also included operations falling within the 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 had to be available for military purposes 24 hours a day, 365 days a year. The runway was indeed used for military purposes (at least 30 % of the actual aircraft movements a year). The air traffic control cost amounted to approximately […]. The above figures took into account the rent paid by Airpro to Finavia for the use of T2 and the landing charges as well as other airport charges for the services provided to airlines using T2.

(26) As regards Airpro, Finland explained further that it was a limited company and legally distinct from Finavia. The following table summarises the actual financial results of Airpro's operations at TMP airport: […]

(27) Airpro's financial results at TMP airport included costs, such as the rent for T2 at TMP airport, Airpro's own costs for personnel and equipment, and also the cost of services provided by Finavia. The financial statements included revenues, such as the all-inclusive charge paid by Ryanair, parking fees and other commercial revenues.

(28) Consequently, Finland argued that Finavia and Airpro acted as market economy investors when they decided to implement the low-cost strategy and convert the cargo hangar into a low-cost passenger terminal.

(29) Finland argued that even if the financing of the refurbishment of T2 were considered State aid, it would be compatible on the basis of Article 107(3)(c) of the TFEU, as it complied with the compatibility criteria set out in the 2005 Aviation Guidelines.

(30) Finland argued further that the measures could be considered to meet objectives of general interest, which in its view related 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 met the needs of the residents and society. According to Finland, therefore, the alterations to T2 were proportional to their purpose and to the result achieved.

(31) In addition, Finland stated that the operations of airports had special characteristics that needed to be taken into account. For example TMP airport helped to improve mobility at more congested airports in accordance with the Union's objective. Operating TMP airport contributed to regionally balanced development in a sparsely populated country such as Finland. In this regard, it was particularly important to safeguard traffic connections from the more remote regions in Finland to Europe, since other forms of transport were not a viable alternative. The costs incurred for the construction of the terminal were proportional to the purpose as well as necessary. On the basis of the business plans and the actual figures, the infrastructure in question had sufficient medium-term prospects for use. T2 was open in a fair and non-discriminatory manner to all airlines. So far, however, no airline but Ryanair had shown interest in it.

(32) According to Finland the infrastructure in question did not affect trade to an extent contrary to the interests of the Union. TMP airport was small and therefore the impact of the measures at Union level was not significant. In addition, the benefits of the measures for the region outweighed any negative impact at 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 (referred to also as 'the lease agreement'). Even though Finavia originally paid for the costs of the refurbishment, Airpro would reimburse Finavia for these costs in its rent. Finland also provided a copy of the lease agreement.

(34) Pursuant 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 […] a month. The agreement provides that in addition to the basic rent the rent also includes the costs incurred for turning the cargo hangar into a low-cost passenger terminal, plus the related interest.

(35) Finland indicated that at the time of concluding the lease agreement, the alterations to T2 were still ongoing and the refurbishment costs of the terminal had to be estimated in order to determine the amount of rent. The costs were estimated at EUR 700 000 and their monthly impact on the rent was expected to be approximately […]. 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 compensated Finavia for the costs incurred by the alterations to T2 with a monthly rent amounting to […].

(36) Finland argued that the monthly rent paid by Airpro was not below the market price. The rent paid by Airpro was actually higher than the rent paid by the previous tenant, DHL. DHL paid a monthly rent amounting to […] excluding VAT for the use of the facilities, which corresponded to approximately […] ([9]). The share of VAT amounted to […], so the total monthly rent including VAT was […], which corresponded to approximately […].

(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 remained vacant, which would have encumbered the finances of TMP airport.

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

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 discussions with airlines had started earlier. There had been ongoing discussions for example with Ryanair for a few years before the decision was taken to implement 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 operations at the low-cost terminal was only one part of the marketing strategy for T2. T2 at TMP airport was actively marketed at the Routes trade fair ([10]) for several years starting in 2002. It was assumed that other airlines, in addition to Ryanair, would also be interested in establishing their operations at this terminal.

(40) Finland provided a copy of the marketing letter. The letter indicates the charges applicable at T2, such as the 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 are to pay the normal landing, terminal navigation and security charges.

(41) Finland provided a copy of the agreement with a period of validity of […] concluded between Airpro and Ryanair on 3 April 2003 ('the agreement'). The agreement sets out the operational and financial conditions under which Ryanair is to establish and operate commercial flights to and from T2 at TMP airport. The agreement took effect on the day after the signature of that agreement (i.e. 4 April 2003) and will end on […].

(42) For services provided at TMP airport Ryanair is to pay a single charge for each aircraft turnaround (departure and arrival), i.e. an all-inclusive charge, for each B737-800 aircraft or other variant of the B-737 aircraft with a maximum MTOW ([11]) of 67 000 kg 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.

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

([11]) The Maximum Take-off Weight (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 the MTOW is the heaviest weight at which the aircraft has been shown to meet all airworthiness requirements

(43) As summarised in the tables below the all-inclusive charge depends on the daily frequencies of Ryanair at the airport and on the year of the agreement: […]

(44) In the agreement, Ryanair commits itself to commencing operations at TMP airport with […] daily turnarounds. Furthermore Ryanair agrees to give […] notice of any reduction in the number of daily turnarounds at the airport.

(45) […]

(46) Pursuant 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) Pursuant to the agreement, T2 at TMP airport has a maximum capacity of one turnaround an 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 (T1) and will provide reservations facility for Ryanair's passengers. Pursuant to the agreement Ryanair pays a commission to Airpro at the rate of […] for all Ryanair flights (excluding taxes, fees and other charges) sold by Airpro and paid by debit/credit card.

(49) The agreement also provides for arrangements during the necessary maintenance 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 was on commercial terms and did not involve State aid. Other airlines had also had the possibility to agree with Airpro on similar contractual terms and conditions to those obtained by Ryanair. For example

the marketing brochure *The Case for Tampere-Pirkkala Airport*, which had been prepared for the 2004 trade fair, highlighted the fact that T2 was open to all operators, as at that time the terminal still had capacity available for two more airlines.

(51) Finland considered further that the charges paid by Ryanair at TMP airport were cost-based and generated an economic profit for Airpro's and Finavia's operations at TMP airport. Airpro collected charges from Ryanair for services it provided and also for services provided by Finavia. Airpro subsequently disbursed to Finavia the charges resulting from Ryanair's operations at the airport pursuant to Finavia's Aeronautical Information Publication ('AIP') ([12]). Any differences in charges were based on the nature and scale of the services concerned.

(52) Finland indicated that all airlines using TMP airport paid the same charges for services of the same quality. For instance, the passenger charge collected for the services provided at T2 depended on the quality of the services provided at the terminal. Neither Finavia nor Airpro played any role in the collection of the passenger service charge marked on Ryanair's air ticket, which was collected by Ryanair from its passengers. Contrary to the allegations of Blue1, Ryanair was not exempted from paying the passenger charge. The fact that Airpro's operations at T2 were profitable was evidence that Ryanair had to pay a charge for the services provided by Airpro.

(53) Finavia collected the following charges from Ryanair through Airpro at TMP airport, amounting to […] in total:

— landing charge ([13]): […]

— air navigation services charge: […]

(54) As regards the air traffic navigation charges, Finland stated that they depended on the weight of the aircraft, the length of the flight and the content of the services used. Finavia's profits also included an annual route charge ([14]), which amounted to approximately […] in 2006 and would increase with the additional frequencies operated by Ryanair.

(55) Finland explained further that in 2005 the operating benefit from Ryanair's operations at TMP airport totalled […]. Finally, Finland argued that pursuant to the agreement, Ryanair had also committed itself to increasing traffic and to meeting 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 unfair and unnecessary. It also stated that it regretted that the Commission had not given Ryanair the possibility to participate in the preliminary examination.

(58) On the substance of the case Ryanair was of the opinion that the Commission should have based itself on standard commercial arrangements and decided that the agreement complied with the market economy operator principle and hence did not involve State aid. As in Ryanair's opinion both Finavia and Airpro benefitted from its presence at TMP airport, both were acting as market economy operators and the financing of T2 was void of any aid.

(59) As regards the development of the low-cost terminal at TMP airport, Ryanair explained that there were ongoing projects to differentiate services provided by airports in the Union in order to serve the needs of low-cost airlines and their passengers. The differentiated level of services provided by airports resulted in differentiated charges paid by airlines. TMP airport was among the first to follow the model of differentiated service levels at the same airport. Ryanair confirmed that the airport operator Finavia had decided on 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 was of the opinion that the development of the low-cost terminal did not contain any elements of State aid towards Finavia's activity at TMP airport.

([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 also deals with Finavia's air traffic charges.

([13]) Assuming that MTOW of the aircraft is 69 900 kg.

([14]) This charge is collected by Eurocontrol and disbursed by it to Finavia.

(60) With regard to the management of T2, Ryanair explained that competition between terminals at the same airport resulted in improved efficiency and reduced costs. In Ryanair's view, the higher efficiency standards at T2 improved the efficiency of T1 to the benefit of all airlines using the airport. To Ryanair's knowledge, Airpro was renting the terminal on commercial terms. Finavia benefitted additionally from 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 was 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 stated that its business model was based on increasing efficiency, which was passed on to passengers in the form of lower air fares. The all-inclusive fee paid at TMP airport included all charges applicable to airlines at the airport. The differentiated charges for the use of T2 were justified by the level of services provided. With regard to the discount on airport charges related to the increase in frequencies, Ryanair argued that this was normal commercial behaviour applied in all industries. Most of the conditions of the agreement between Ryanair and Airpro at T2 were generally applicable to all airlines willing to fly from T2. Therefore, Ryanair was of the opinion that its agreement with Airpro was not selective. Ryanair further argued that both Finavia and Airpro benefitted 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 focused on the link between Finavia and Airpro, the costs of the conversion of T2, and 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 Finavia decided to lease T2 to Airpro. In addition, the close link between Finavia and Airpro was evident in the publication *Tampere-Pirkkala Airport Finland's Future-Ready Airport*.

(64) SAS Group argued that Finavia was cross-subsidising T2 with revenues from T1. SAS Group was in particular of the opinion that no passenger charges were paid at T2. Furthermore, Airpro administered the car park located outside T2 and kept the revenues generated by the car park. The parking charges at the car park next to T2 were twice as high as those at T1.

(65) As regards the costs for the services at T2, SAS Group argued that Finland had not granted it access to this information. SAS Group had no information on whether T2 or TMP airport were profitable and whether Airpro paid for the infrastructure supplied by Finavia. For example Finavia had acquired security screening equipment for T2. SAS Group stated that according to Finland and Airpro the price level at T2 related to the level of services. SAS Group argued that the level of services was normally based on the ground handling concept agreed between an airline and the ground handling company and not on the space or facilities available.

(66) SAS Group argued further that the arrangements concerning T2 at TMP airport favoured one business model and were 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 by explaining its commercial situation in Finland. In Finland, Air France did not operate services from and to TMP airport. However it operated five daily frequencies between Charles de Gaulle airport in Paris and Helsinki airport (located approximately 180 kilometres from TMP airport) through a code sharing arrangement with Finnair.

(68) Air France said it endorsed the 2005 Aviation Guidelines and the preliminary assessment conducted by the Commission as regards the financial arrangement at TMP airport. In particular, Air France was of the opinion that an exception from the payment of the passenger fee provided benefits to Ryanair and was clearly of a discriminatory nature, and therefore should not be considered compatible with the internal market.

4.4. **Association of European Airlines**

(69) The Association of European Airlines ('AEA') provided its comments by letter of 16 November 2007. AEA's comments were entirely 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 Ryanair's comments, Finland observed that the airline had commented on both general developments in the aviation market in Europe and on developments at TMP airport. With respect to these aspects, Finland referred to its earlier observations submitted following the opening of the formal investigation procedure.

(72) Finland observed that SAS Group's comments raised new issues that needed to be clarified. Finland stated that, as it had already pointed out, Airpro was a legally distinct company and did not benefit from any support from its owner Finavia.

(73) Finland indicated that TMP airport's managing director was not a member of the board of directors of Airpro at the time when the lease agreement was signed. TMP airport's managing director was on 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 operations could not prejudge the legal and economic links between the companies concerned. SAS Group, which operated from T1 at TMP airport, was not mentioned in the publication, because the publication was aimed at marketing TMP airport's low-cost strategy.

(74) As regards SAS Group's allegations concerning possible cross-subsidisation between T2 and T1 at TMP airport, Finland stated that it had already provided evidence that Airpro's operations at TMP airport were profitable and that Airpro did not receive any subsidies from Finavia.

(75) As regards the different infrastructure adjustments related to the refurbishment of T2, Finland indicated that the rent paid by Airpro to Finavia covered these costs plus interest. With regard to the purchase of security screening equipment for T2 by Finavia, Finland indicated that these costs were reflected in the rent paid. The car park located next to T2 was part of the area rented out to Airpro. Airpro was free to set the charges as long as it did so in a transparent way.

(76) As regards SAS's allegations concerning differentiated pricing at TMP airport's T2, Finland referred to its comments on the opening of the procedure.

6. EXISTENCE OF AID

(77) Article 107(1) TFEU states that '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 set out in Article 107(1) are cumulative. A measure constitutes aid within the meaning of Article 107(1) of the TFEU only if all of the following conditions are fulfilled. The financial support must:

— 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. Do the financial arrangements in the context of implementing the low-cost strategy at TMP airport constitute State aid?

(79) In assessing whether there is any aid component in the financial arrangements related to the low-cost strategy at TMP airport, in particular with regard to the conversion of a vacant cargo hangar into a low-cost terminal and the subsequent lease agreement with Airpro, the Commission has to examine whether in similar circumstances a market economy investor would have entered into the same or similar commercial arrangements as Finavia ([15]).

([15]) In order to carry out its assessment the Commission ordered a study from Ecorys ('the Commission's expert'). The Commission's expert analysed the financial data and assumptions underpinning the business plan for the low-cost strategy of Finavia and Airpro, the lease agreement between Finavia and Airpro for the operation of T2, and the agreement.

(80) Pursuant 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 long-term profitability ([16]). In addition, pursuant to the *Charleroi* judgment ([17]), 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 in the context of the period when Finavia took the decision to refurbish the vacant cargo hangar and subsequently to rent it out to Airpro i.e. the 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 on the financial arrangements for the implementation of the low-cost strategy were taken.

(83) Finland argues that Finavia acted rationally and substantiates 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 not be able to attract another air cargo company to TMP airport. In addition, low-cost airlines were not ready to use Terminal 1 at the airport, because the costs of the ground-handling services were higher than these airlines were ready to accept. However, the 2002 forecasts for the aviation transport sector indicated a high growth potential for low-cost carriers, such as Ryanair, of approximately 30 % a year.

(85) The Commission observes further that the empty cargo hangar was fully depreciated and the refurbishment costs for transforming the hangar into a low-cost passenger terminal amounted to EUR 760 612. Even if the cargo hangar had not been converted into a passenger terminal, Finavia would have nonetheless had to undertake certain refurbishment works amounting to approximately EUR 100 000.

(86) In addition, Finavia was obliged to keep TMP airport's runway available for military purposes 24 hours a day, 365 days a year. Therefore, an increase in traffic at the airport might well result in a better allocation of resources and a reduction in possible overcapacities. At the same time, the diversification of airlines using the airport might also reduce the business risks of the airport (such as the risk of unused capacity in the event that one of the airlines terminated its operations) and improve the efficient utilisation of the runway.

(87) This situation is explained in Finavia's business plan for implementing the low-cost strategy. As shown in the worst-case scenario in Finavia's business plan, the investment project was expected to make a positive contribution: the average profit margin ([19]) was expected to be around […] (see table in paragraph (20)), which according to the data available to the Commission is broadly in line with the profit margins of other airports in the Union ([20]). The Commission observes further that the *ex ante* business plan was based on prudent assumptions which led to an underestimation of the revenue and an overestimation of the costs in the last years of the period under consideration. In addition, the *ex ante* business plan did not take into account the profit gained by Finavia from the landing charges, as these costs were deducted from the expected revenue. Furthermore the refurbishment costs and an appropriate remuneration for the capital invested were fully reflected in the rent paid by Airpro to Finavia, which was also deducted from the expected revenue.

([16]) Case C-305/89 *Italy* v *Commission* [1991] ECR I-1603, paragraph 20 (the '*Alfa Romeo*' case); Case T-296/97 *Alitalia* v *Commission* [2000] ECR II-3871, paragraph 84.

([17]) Case T-196/04 *Ryanair* v *Commission* [2008] ECR II-3643, paragraph 59 (the '*Charleroi*' case).

([18]) Case C-482/99 *France* v *Commission* [2002] ECR I-4397, paragraph 71 (the '*Stardust Marine*' case).

([19]) The profit margin (the return on sales) compares the net profit to sales (revenues). This ratio shows whether an undertaking's return on sales is sufficient, as it determines how much profit is being produced for one euro of sales revenue; it is an indicator of profitability and efficiency.

([20]) See Table 6 of Commission Decision of 27 January 2010 in State aid case C 12/2008 *Slovakia – agreement between Bratislava Airport and Ryanair*, OJ L 27, 1.2.2011, p. 24.

(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 costs of the *ex ante* business plan (base-case scenario). In particular, the inter-company payments (such as the rent paid by Airpro to Finavia for the use of T2, landing charges and terminal navigation charges) were taken into account as revenue. The following table summarises the revenue and cost calculations related to the implementation of the low-cost strategy at TMP airport as described above and its contribution to the earnings before interest and taxes ('EBIT') at a consolidated level (i.e. for Finavia and Airpro) over the next ten years: […] ([21])

(89) The Commission observes that on the basis of the *ex ante* business plan and the positive NPV ([22]) Finavia's decision to implement the low-cost strategy at TMP airport was in line with the behaviour of a market economy investor. The positive NPV of the low-cost strategy increased the equity value of Finavia. The Commission further notes that the assumptions of the *ex ante* business plan and the 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 in paragraph (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 in paragraphs (24) and (26)) show that due to the operation of the low-cost terminal the entire airport's activity became profitable.

(90) In view of the above, the Commission can conclude that Finavia's decision to implement 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 in Article 107(1) of the TFEU is not fulfilled, the Commission considers that Finavia's decision to implement 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.

([21]) […]

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

(92) As regards a possible cross-subsidisation of Airpro by Finavia (such as lost rent revenue or compensation for operating losses), the Commission notes that given that all financial arrangements related to the low-cost strategy at TMP airport are based on an *ex ante* business plan in accordance with the market economy investor principle, that Airpro pays a market rent for the use of T2 and the full costs of Airpro's activity at TMP airport are covered by the charges paid by the airlines using T2 (i.e. Ryanair), and that Finavia's activity at TMP airport is profitable only due to the operation of T2, the cross-subsidisation of Airpro by Finavia can be excluded.

6.2. **Does the agreement between Airpro and Ryanair constitute State aid?**

(93) As regards the agreement between Airpro and Ryanair, Finland has argued that Airpro 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 market economy conditions and guided by prospects of long-term profitability would have entered into the same or similar commercial arrangements as Airpro ([23]). 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 of an integrated approach taking into account all the features of the measure in question ([24]).

(95) In order to be able to apply the private investor test, the Commission has to place itself in the context of the period when the agreement was signed. The Commission must also base its assessment on the information and assumptions available to the operator when the agreement was signed. Airpro signed the agreement with Ryanair on 3 April 2003 for a period of validity of […].

(96) Pursuant to the agreement, Ryanair committed itself to commencing operations at TMP airport with […] daily

([23]) *Alfa Romeo*, paragraph 20, *Alitalia* v *Commission*, paragraph 84.

([24]) *Charleroi*, paragraph 59.

turnarounds. On this basis Ryanair expected to generate approximately […] departing passengers at TMP airport during the first 12 months, and approximately […] departing passengers during the following 12 months. The agreement provides for a schedule of charges per turnaround depending on the number of daily frequencies (see in particular the tables in paragraph (43)). The average price for one turnaround (based on three flights a day) is […]. The following table compares the charges paid by airlines using T1 at TMP airport and the average price paid by Ryanair:

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

(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 the 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 reduction achieved in underlying costs, in particular personnel costs, represents approximately […] of Airpro's total costs (including the rent, landing and terminal navigation charges paid to Finavia). Contrary to T1, the number of staff at T2 is kept at a low level and the staff performs a variety of operations related to check-in, security checks and ground handling. According to the information provided by the airport to the Commission's expert, T2's personnel costs are about […] lower than T1's. In addition, the Commission observes that the airport charges paid by Ryanair for the terminal (passenger) services and ground handling are only around […] lower than the charges paid at T1. The divergence between the cost savings (around […]) and the difference in the charges paid by airlines using the two terminals (around […]) reflects the additional profit margin generated by Airpro (around […], see also table in paragraph (20)). Hence, the Commission considers that the difference between the charges paid by Ryanair at T2 and those 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. Airpro assumed that in year 1 Ryanair would perform […] daily turnarounds with a load factor of […]; as of year 2 it was expected that Ryanair would operate […] daily turnarounds for the remaining period of validity of the agreement with the same load factor as in year 1. The result takes into account Airpro's aeronautical and non-aeronautical revenues (including the car park revenue, etc.). Airpro's costs over the period of validity of the agreement were estimated by using the projected costs related to the implementation of the low-cost strategy at TMP airport. For instance, the costs of personnel were expected to amount to […] per turnaround (and […] when calculated on the basis of daily aircraft turnaround).

(99) The following table summarises the revenue and cost calculations related to the agreement and the positive contribution of the agreement to the equity value of Airpro during its period of validity. These calculations are based on the business plan provided by Finland and the assumptions set out above. […] [25]

(100) The Commission notes that during its period of validity the agreement with Ryanair was expected to generate a positive contribution to Airpro's equity value, with an NPV amounting to EUR 0,5 million. Furthermore Airpro's and Finavia's overall activity at TMP airport was expected to be positive over the period of validity of the agreement.

(101) The Commission also observes that the revenues stemming from the agreement cover all of Airpro's costs at TMP airport and all of Finavia's costs related to the agreement. The full-cost approach in this case includes the cost of capital (i.e. depreciation costs for the airport infrastructure) and operating costs (such as costs of personnel, energy, material, etc.). It also includes costs for security and safety measures that may represent measures falling within the public policy remit which would not be considered 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 may indeed be even higher.

[25] […]

(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 in question with Ryanair was in line with the conduct of a market economy investor. The Commission further notes that the assumptions of the *ex ante* business plan and the 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 in paragraph (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 in paragraphs (24) and (26)) show that not only the operations of the low-cost terminal but also those of the airport as a whole became profitable.

(103) On the basis of the foregoing, the Commission concludes that Airpro's decision to enter into the agreement in question with Ryanair is in line with the market economy investor test and therefore free of any economic advantages that do not correspond to normal market conditions.

(104) As the cumulative criteria in 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 taken by Finavia Oyj and Airpro Oy consisting of the financial arrangements related to the implementation of the low-cost strategy at Tampere-Pirkkala airport, in particular the refurbishment costs of Terminal 2 and the lease agreement for Terminal 2 concluded between Finavia Oyj and Airpro Oy on 23 February 2003, 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 between Airpro Oy and Ryanair Ltd on 3 April 2003 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, 25 July 2012.

For the Commission
Joaquín ALMUNIA
Vice-President