

JUDGMENT OF THE GENERAL COURT (Tenth Chamber, Extended Composition)

14 April 2021 (*)

(State aid – Finnish air transport market – Aid granted by Finland to Finnair in the context of the COVID-19 pandemic – State guarantee on a loan – Decision not to raise any objections – Temporary Framework for State aid measures – Measure intended to remedy a serious disturbance in the economy of a Member State – Failure to weigh the beneficial effects of the aid against its adverse effects on trading conditions and the maintenance of undistorted competition – Equal treatment – Freedom of establishment – Freedom to provide services – Duty to state reasons)

In Case T-388/20,

Ryanair DAC, established in Swords (Ireland), represented by E. Vahida, F.-C. Laprévotte, S. Rating and I.-G. Metaxas-Maranghidis, lawyers,

applicant,

v

European Commission, represented by L. Flynn, S. Noë and F. Tomat, acting as Agents,

defendant,

supported by

Kingdom of Spain, represented by L. Aguilera Ruiz, acting as Agent,

by

French Republic, represented by E. de Moustier and P. Dodeller, acting as Agents,

and by

Republic of Finland, represented by H. Leppo, acting as Agent,

interveners,

APPLICATION under Article 263 TFEU for annulment of Commission Decision C(2020) 3387 final of 18 May 2020 on State Aid SA.56809 (2020/N) – Finland – COVID-19: State loan guarantee for Finnair,

THE GENERAL COURT (Tenth Chamber, Extended Composition),

composed of M. van der Woude, President, A. Kornezov, E. Buttigieg, K. Kowalik-Bańczyk and G. Hesse (Rapporteur), Judges,

Registrar: P. Cullen, Administrator,

having regard to the written part of the procedure and further to the hearing on 4 December 2020,

gives the following

Judgment

Background to the dispute

- 1 On 13 May 2020, the Republic of Finland notified the European Commission, under Article 108(3) TFEU, of an aid measure in the form of a State guarantee on a loan for Finnair, Plc.
- 2 The measure at issue is designed to help Finnair obtain a loan of EUR 600 million from a pension fund to cover its working capital needs. The State guarantee covers 90% of the loan and is limited to a maximum duration of three years. The remaining 10% of the loan is covered by a commercial bank under market conditions. That guarantee is intended to be triggered only in the event of Finnair's default with regard to the pension fund.
- 3 The measure is based on Article 107(3)(b) TFEU, as interpreted by sections 2 and 3.2 of the Communication from the Commission of 19 March 2020 entitled 'Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak' (OJ 2020 C 91 I, p. 1) and amended on 3 April 2020 (OJ 2020 C 112 I, p. 1) ('the Temporary Framework').
- 4 On 18 May 2020, the Commission adopted Decision C(2020) 3387 final on State Aid SA.56809 (2020/N) – Finland – COVID-19: State loan guarantee for Finnair, in which it decided not to raise objections to the measure at issue on the grounds that it was compatible with the internal market, pursuant to Article 107(3)(b) TFEU, as interpreted by the Temporary Framework ('the contested decision').
- 5 In that decision, the Commission found that, in the light of Article 107(1) TFEU, the measure at issue constituted State aid (paragraphs 30 to 35 of the contested decision). As regards the compatibility of that aid with the internal market, the Commission first considered that the scenario presented by the Finnish authorities concerning the liquidity shortage which Finnair was going to face was realistic. Next, it noted that Finnair had attempted to obtain financing from the credit markets, but had not been able to cover all its liquidity needs. In particular, on 29 April 2020, Finnair announced that its board of directors had decided to prepare for a rights offering (share issue) due to losses caused by the COVID-19 outbreak which had decreased the company's equity. The Commission noted inter alia that, at the time the contested decision was adopted, the amount of the offering was approximately EUR 500 million and that it was uncertain whether the transaction would be successful (paragraphs 40 to 44 of the contested decision). Finally, it concluded that, in view of Finnair's importance for the Finnish economy, the measure at issue was necessary, appropriate and proportionate to remedy a serious disturbance in the economy of that Member State (paragraphs 45 to 52 of the contested decision). It also ascertained whether the measure at issue fulfilled all the relevant conditions of the Temporary Framework and found that that was the case (section 53).

Events subsequent to the action being brought

- 6 On 29 July 2020, after the action had been brought, the Commission corrected the contested decision by Decision C(2020) 5339 final, entitled 'Corrigendum to Commission Decision C(2020) 3387 final of 18 May 2020 – State aid SA.56809 (2020/N) – Finland – COVID-19: State loan guarantee for Finnair'. The amended version of the contested decision was published on the Commission's website on 31 July 2020.

Procedure and forms of order sought

- 7 By document lodged at the Court Registry on 26 June 2020, the applicant, Ryanair DAC, brought the present action.
- 8 By document lodged at the Court Registry on the same day, the applicant requested that the present action be decided under an expedited procedure, in accordance with Articles 151 and 152 of the Rules of Procedure of the General Court.

- 9 On 6 July 2020, the Commission requested that the proceedings be stayed pending the final decision in Cases T-238/20 and T-259/20, to which the applicant objected on 9 July 2020. By decision of 10 July 2020, the President of the Tenth Chamber of the Court dismissed the Commission's request for the proceedings to be stayed.
- 10 By decision of 15 July 2020, the Court (Tenth Chamber) granted the request for an expedited procedure.
- 11 On a proposal from the Tenth Chamber, the Court decided, pursuant to Article 28 of the Rules of Procedure, to refer the case to a Chamber sitting in extended composition.
- 12 The Commission lodged its defence at the Court Registry on 31 July 2020.
- 13 Pursuant to Article 106(2) of the Rules of Procedure, the applicant submitted a request for a hearing on 13 August 2020.
- 14 By document lodged at the Court Registry on 16 September 2020, the Kingdom of Spain sought leave to intervene in the present proceedings in support of the form of order sought by the Commission. By document lodged at the Court Registry on 25 September 2020, the applicant requested, in accordance with Article 144(7) of the Rules of Procedure, that some confidential information in the application and in the abbreviated version of the application should not be disclosed to the Kingdom of Spain. It attached a non-confidential version of the application, the abbreviated version of the application and their annexes.
- 15 By document lodged at the Court Registry on 29 September 2020, the Republic of Finland sought leave to intervene in the present proceedings in support of the form of order sought by the Commission. By document lodged at the Court Registry on 6 October 2020, the applicant requested, in accordance with Article 144(7) of the Rules of Procedure, that the information referred to in paragraph 14 above should not be disclosed to the Republic of Finland.
- 16 By document lodged at the Court Registry on 29 September 2020, the French Republic, sought leave to intervene in the present proceedings in support of the form of order sought by the Commission. By document lodged at the Court Registry on 6 October 2020, the applicant requested, in accordance with Article 144(7) of the Rules of Procedure, that the information referred to in paragraph 14 above should not be disclosed to the French Republic.
- 17 By order of 14 October 2020, the President of the Tenth Chamber (Extended Composition) of the Court granted the Kingdom of Spain, the French Republic and the Republic of Finland leave to intervene and provisionally limited disclosure of the application, the abbreviated version of the application and their annexes to the non-confidential versions produced by the applicant, pending the submission of any observations by the interveners on the requests for confidential treatment.
- 18 By measure of organisation of procedure of 14 October 2020, the Kingdom of Spain, the French Republic and the Republic of Finland were authorised, pursuant to Article 154(3) of the Rules of Procedure, to lodge a statement in intervention.
- 19 On 29 October 2020, the Kingdom of Spain, the French Republic and the Republic of Finland lodged their statement in intervention at the Court Registry, without raising any objection to the requests for confidential treatment made by the applicant.
- 20 The applicant claims that the Court should:
- annul the contested decision;
 - order the Commission to pay the costs.
- 21 The Commission contends that the Court should:

- dismiss the action;
- order the applicant to pay the costs.

22 The Kingdom of Spain contends that the Court should dismiss the action in its entirety and order the applicant to pay the costs.

23 The French Republic and the Republic of Finland contend that the Court should dismiss the action.

Law

24 It should be recalled that the Courts of the European Union are entitled to assess, according to the circumstances of each case, whether the proper administration of justice justifies the dismissal of the action on its merits, without first ruling on its admissibility (see, to that effect, judgments of 26 February 2002, *Council v Boehringer*, C-23/00 P, EU:C:2002:118, paragraphs 51 and 52, and of 14 September 2016, *Trajektna luka Split v Commission*, T-57/15, not published, EU:T:2016:470, paragraph 84). Therefore, having particular regard to the considerations which led to the present proceedings being expedited and the importance of a swift substantive response, both for the applicant and for the Commission, the Kingdom of Spain, the French Republic and the Republic of Finland, it is appropriate to begin by examining the merits of the action without first ruling on its admissibility.

25 In support of its action, the applicant puts forward four pleas: first, infringement of Article 107(3)(b) TFEU, second, infringement of the principles of non-discrimination, freedom to provide services and freedom of establishment, third, infringement of Article 108(2) TFEU and fourth, infringement of the duty to state reasons.

26 As a preliminary point, it should be noted that, after the action was brought, the Commission corrected the contested decision (see paragraph 6 above). In that regard, it should be pointed out that the corrigendum relates only to clerical errors which concern only three pieces of information set out in footnote 9 of the contested decision (see paragraphs 117 to 124 below). That corrigendum has no bearing on the subject matter and context of the dispute as established by the action and therefore does not require modification of the application. It is for the Court, in the interests of the sound administration of justice, to take account of that corrigendum when assessing the pleas raised by the applicant in order to give them practical effect.

First plea in law: infringement of Article 107(3)(b) TFEU

27 In essence, the first plea is divided into two parts.

28 First, the applicant claims that an individual measure in favour of Finnair is not appropriate to remedy a serious disturbance in the Finnish economy. It submits that, with the exception of the banking sector, there are very few cases of decisions authorising measures under Article 107(3)(b) TFEU relating to individual undertakings. The applicant also argues that the contested decision does not credibly demonstrate that the value added or the employment created by Finnair would in themselves lead to a finding that the measure at issue is justified to address a serious disturbance in the Finnish economy. Thus, by considering that the measure at issue on its own addressed a serious disturbance in the Finnish economy, the Commission erred in law and committed a manifest error of assessment.

29 Secondly, the applicant claims that the Commission is required to balance the beneficial effects of the aid in terms of achievement of the objectives set out in Article 107(3)(b) TFEU against its adverse effects on trading conditions and the maintenance of undistorted competition. The Commission failed to perform the balancing test and accordingly erred in law and committed a manifest error of assessment of the facts, which justifies annulment of the contested decision. According to the applicant, the Temporary Framework does not exonerate the Commission from performing a balancing test for the measure at issue or for each

individual aid measure notified. On the contrary, section 1.2 of the Temporary Framework requires the Commission to perform such a test.

30 The Commission, supported by the Kingdom of Spain, the French Republic and the Republic of Finland, disputes the applicant's arguments.

The first limb alleging that the measure at issue was inappropriate to remedy a serious disturbance in the Finnish economy

31 Article 107(3)(b) TFEU provides, inter alia, that aid to remedy a serious disturbance in the economy of a Member State may be considered to be compatible with the internal market.

32 In that regard, it must be borne in mind that Article 107(3)(b) TFEU is a derogation from the general principle laid down in Article 107(1) TFEU that State aid is incompatible with the internal market. It is therefore to be interpreted strictly (see judgment of 9 April 2014, *Greece v Commission*, T-150/12, not published, EU:T:2014:191, paragraph 146 and the case-law cited). Article 107(1) TFEU states that any aid granted by a Member State or through State resources is incompatible with the internal market 'in any form whatsoever'. Therefore, it should be noted that Article 107(3)(b) TFEU applies both to aid schemes and to individual aid.

33 According to the case-law, the Commission may declare aid compatible with Article 107(3) TFEU only if it can establish that the aid contributes to the attainment of one of the objectives specified, something which, under normal market conditions, the recipient undertaking would not achieve by using its own resources. In other words, an aid measure cannot be declared compatible with the internal market if it brings about an improvement in the financial situation of the recipient undertaking without being necessary to achieve the objectives laid down in Article 107(3) TFEU (see, to that effect, judgment of 14 January 2009, *Kronoply v Commission*, T-162/06, EU:T:2009:2, paragraph 65 and the case-law cited).

34 In those circumstances, individual aid such as the one in the present case may be declared compatible with the internal market where it is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of the Member State concerned.

35 In the present case, as is apparent from paragraph 44 of the application, the applicant does not dispute that the COVID-19 pandemic led to a serious disturbance in the Finnish economy or that the air transport sector as a whole is particularly affected by the crisis caused by that pandemic.

36 The existence both of a serious disturbance in the Finnish economy as a result of the COVID-19 pandemic and the significant adverse effects it has had on aviation in Finland has, moreover, been established to the requisite legal standard in paragraphs 40 and 41 of the contested decision.

37 In that context, the Finnish authorities noted that Finnair likely faced the risk of insolvency due to the sudden erosion of its business caused by the COVID-19 pandemic. They considered that Finnair's insolvency would, in turn, contribute to the severe impact on the Finnish economy, including its supply chain security. Having an air transport network which functions correctly is instrumental for the economy of the country as a whole, and its potential disappearance would have harsh consequences for many regions. The Finnish authorities therefore concluded that, in view of its importance for the Finnish economy, Finnair's insolvency would further aggravate the current serious disturbance in the country's economy (paragraph 4 of the contested decision).

38 The essential purpose of the measure at issue is to ensure that Finnair has sufficient liquidity to maintain its viability and air services at a time when the COVID-19 pandemic is seriously disrupting the entire Finnish economy and to prevent Finnair's possible insolvency from further disrupting the economy of the Member State concerned (paragraphs 3 and 39 of the contested decision).

- 39 In the contested decision, the Commission noted that the collapse of demand, following the spread of COVID-19 and the flight restrictions, had had an immediate and dramatic negative effect on Finnair's cash flow. The Commission considered that the scenario provided by the Finnish authorities appeared realistic and showed that Finnair would face serious and immediate difficulties in maintaining its operations. The Commission also noted that Finnair had tried to obtain financing from the credit markets, but that, due to the current situation and uncertain outlook, it had not been able to cover all its liquidity needs (paragraphs 40 to 43 of the contested decision). The applicant does not challenge those findings.
- 40 However, the applicant claims that, by considering that the measure at issue, in itself, remedied a serious disturbance in the Finnish economy, the Commission committed an error of law and a manifest error of assessment. That argument is based on a misreading of the contested decision. Contrary to what the applicant claims, the Commission did not state in that decision that the measure at issue, in itself, remedied the serious disturbance in the Finnish economy. The Commission sought to establish that, due to Finnair's importance for the Finnish economy, that measure was intended to remedy the serious disturbance in the Finnish economy caused by the COVID-19 pandemic.
- 41 It must be borne in mind that Article 107(3)(b) TFEU does not require that the aid in question is capable, in itself, of remedying the serious disturbance in the economy of the Member State concerned. Once the Commission has established the reality of a serious disturbance in the economy of a Member State, that State may be authorised, if the other conditions laid down in that article are also satisfied, to grant State aid, in the form of aid schemes or individual aid, which help to remedy that serious disturbance. It could therefore involve a number of aid measures, each contributing to that end. Therefore, for an aid measure to be validly based on Article 107(3)(b) TFEU, it cannot be required, in itself, to remedy a serious disturbance in the economy of a Member State.
- 42 In so far as the applicant claims that the aid at issue is not appropriate to remedy the serious disturbance in the Finnish economy, it is necessary to examine whether, in the contested decision, the Commission sufficiently established that, because of Finnair's importance for the Finnish economy, that measure was in fact intended to remedy the serious disturbance in the Finnish economy caused by the COVID-19 outbreak.
- 43 In reaching that conclusion, the Commission took into account a number of factors, including passenger transport, freight transport, employment, purchases from suppliers and the contribution to gross domestic product (GDP).
- 44 First, the Commission took into account Finnair's importance for passenger transport (paragraph 45 of the contested decision).
- 45 In that regard, it must be pointed out, as the Commission did, that, at the time the contested decision was adopted, Finnair operated a significant domestic and international network which ensured Finland's connectivity. As the Commission stated, which is not disputed by the applicant, Finnair was the principal air service carrier in Finland, with almost 15 million passengers transported in 2019, or 67% of the total passengers transported to, from and within Finland that year. Its status as the leading air carrier is confirmed by Finavia's statistical report of 2019. Finavia is the managing company for Helsinki-Vantaa Airport (Finland) and all regional airports in Finland. According to that report, Finnair's passengers accounted for more than 60% of passengers carried on international flights and at least 80% of passengers carried on domestic flights. Its total market share accounted for more than 40% of the air services market in Finavia's airports in 2019. In the same year, the two other main airlines accounted, respectively, for only 12% and 3.4% of passengers carried. It should also be noted that Finnair has the particular feature of being the only airline to serve the majority of Finnish regional airports all year long and at regular intervals.
- 46 Next, the Commission took into account the role played by Finnair on behalf of Finland in respect of air freight (paragraph 46 of the contested decision).
- 47 In that regard, Finnair is the main air freight operator in Finland and meets the needs of a number of undertakings located in Finnish territory, both for the export and import of goods, which the applicant does

not dispute either. Moreover, Finnair has an extensive Asian network, as is apparent from the press article taken from the online news site, Aviation Business News, cited in footnote 14 of the contested decision. Although that network is crucial for trade between Finnish and Asian businesses, it is all the more important in the context of the crisis caused by the COVID-19 pandemic. Finnair operates daily freight routes to South Korea, China and Japan in order to meet the Finnish demand for products, in particular pharmaceutical products and medical equipment necessary to deal with the COVID-19 crisis. In so far as lockdown measures, such as travel restrictions or the temporary closure of one or more categories of establishments open to the public, have an immediate effect on the economy, the security of supply of pharmaceutical products and medical equipment necessary to deal with the virus is strategic to limit lockdown measures and therefore achieve a rapid recovery of the economy of the Member State concerned.

- 48 The Commission also noted that Finnair was an important direct and indirect employer in Finland (paragraph 47 of the contested decision).
- 49 In that regard, it should be noted that, at the end of 2019, Finnair had approximately 6 800 employees, which the applicant does not call into question. As the Commission stated in paragraph 50 of the contested decision, Finnair's insolvency would therefore have social consequences likely to aggravate the serious disturbance which the Finnish economy is currently facing.
- 50 In addition, the Commission established that Finnair's purchases from its suppliers amounted to EUR 1.9 billion in 2019, 40% of which came from Finnish businesses (paragraph 48 of the contested decision).
- 51 In that regard, it must be stated that one of Finnair's main local suppliers is Finavia. It is apparent from the contested decision that Finavia's situation is highly dependent on Finnair's success or, in the present context, its continuance. Thus, in the short term, the proper functioning of Helsinki-Vantaa airport and of all regional airports in Finland which Finavia operates depends on Finnair's continuance.
- 52 Another contribution by Finnair to the Finnish economy, taken into account by the Commission, concerns research. Finnair is associated with a research project with the aim of developing electric aircraft, as is confirmed by an article from the aviation news website, Simple Flying, which dates from September 2019.
- 53 Finally, the contested decision reveals that, in 2017, according to the Finnish authorities, Finnair was ranked the 16th most important company in Finland in terms of its GDP contribution, with an added value in Finland of EUR 600 million.
- 54 It follows from those findings of fact that the Commission has established to the requisite legal standard Finnair's importance for the Finnish economy. The applicant does not dispute the veracity of those findings. However, while it accepts that the figures relating to employment, purchases and Finnair's contribution to Finland's GDP are 'non-negligible', it considers that those figures are not sufficiently large, in view of the size of the active population and the Finnish economy, to declare the aid compatible with the internal market under Article 107(3)(b) TFEU, whereas the added value created by Finnair would not disappear 'altogether' if the latter were to be declared insolvent.
- 55 First, to compare, as the applicant does, the data relating to Finnair's purchases and employees, referred to in paragraphs 47 to 49 of the contested decision, to Finland's GDP and the number of workers in Finland in fact amounts to arguing that the Commission authorised the measure at issue because the continuation of Finnair's activities was, in itself, capable of remedying the serious disturbance in the Finnish economy. In the applicant's view, Finnair's added value in the sum of EUR 600 million is only minimal compared to that of Finland's GDP of EUR 241 billion. Similarly, Finnair's 6 800 employees are only a minimal fraction of the 2.5 million workers employed in Finland.
- 56 However, a reading of the contested decision shows that the Commission considered that, in view of Finnair's importance in the Finnish economy, its insolvency would have had serious consequences for the Finnish economy in a crisis context and that, therefore, the measure at issue, in so far as it sought to

maintain Finnair's operations, was appropriate to contribute to remedying the serious disturbance in that economy.

57 In that regard, it should be noted that, as the Commission and the Republic of Finland maintain, in essence, Finnair is important for the proper functioning of the Finnish air transport network, which is itself essential to the Finnish economy. At the time the contested decision was adopted, Finnair was uniquely positioned among all the airlines operating in Finland. It is apparent from the contested decision that the main airlines for Finland, apart from Finnair, were Norwegian and SAS, followed by Lufthansa, KLM and Air Baltic. In 2019, Norwegian carried 12% of passengers, while SAS's passengers accounted for 3.4% of the passengers carried. Although Norwegian served four regional airports in the northern part of the country and SAS also served three regional airports, Finnair was the only airline with services at regular intervals to most Finnish regional airports. Finnair also had a vast international network, over 100 routes, linking Finland to the main business centres of Europe and other regions of the world, in particular Asia. Finnair was the only airline regularly serving Finland's domestic network throughout the year. Almost 30% of the demand for air transport services provided by Finnair for international flights to or from Finland was linked to business trips and that number rose to 50% for domestic flights.

58 Finnair's importance for the Finnish economy was not limited to passenger transport. Finnair was also the main airline for air freight operations and its failure would have had the effect of considerably reducing trade between Finnish and Asian businesses, whereas, since the beginning of the crisis, Finnair has been cooperating with Huoltovarmuuskeskus (the national emergency supply agency, Finland) and uses its international network to meet the Finnish demand for equipment needed to deal with the COVID-19 pandemic.

59 Thus, a significant number of businesses, workers, and Finnish and EU nationals rely on Finnair's services which, if it were to fail, would not be provided in the short term and to the same extent by other airlines. It may be added in that regard that, as the Commission pointed out in the contested decision, due to the climate and the relatively isolated geographical position of Finland in Europe, the other modes of transport are not always a satisfactory alternative to flying. Other economic operators were therefore not capable of replacing Finnair, in the short term and to the same extent.

60 In the light of the foregoing, it must be held that, even if the sum of EUR 600 million representing Finnair's added value constitutes only part of the Finnish GDP and Finnair's 6 800 employees are only a fraction of the number of workers employed in Finland, there was probably no viable alternative to Finnair's contribution to the needs of Finland's economy and connectivity. Therefore, in view of that contribution, the measure at issue, which was intended to maintain Finnair's activities during and after the crisis, was, contrary to what the applicant claims, appropriate to remedy the serious disturbance in the Finnish economy.

61 Secondly, as regards the argument that the added value created by Finnair would not disappear 'altogether' if the latter were to become insolvent, it must be stated that the applicant merely makes that assertion, but does not present any explanations or evidence that would enable it to be understood or established in a substantiated manner. It follows that that argument must be rejected as inadmissible on the basis of Article 76(d) of the Rules of Procedure.

62 Thirdly, as regards the applicant's arguments based on the Commission's decision-making practice and on the Communication from the Commission entitled 'The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis' (OJ 2008 C 270, p. 8), first, it must be borne in mind that the legality of the contested decision must be assessed solely in the context of Article 107(3)(b) TFEU, and not in the context of an alleged earlier decision-making practice (see, to that effect, judgment of 27 February 2013, *Nitrogénművek Vegyipari v Commission*, T-387/11, not published, EU:T:2013:98, paragraph 126 and the case-law cited). Second, it must be pointed out that the measure at issue was adopted on the basis of Article 107(3)(b) TFEU, as interpreted by the Temporary Framework. The Communication from the Commission entitled 'The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis' is not

relevant in the present case and is not capable, in any event, of demonstrating that an undertaking such as Finnair could not receive individual aid under Article 107(3)(b) TFEU because it was not a bank representing a systemic risk to the economy in the event of insolvency.

63 In the light of all of the foregoing, there is no need to call into question the merits of the assessment in the contested decision of the appropriateness of the measure at issue in order to remedy the serious disturbance in the economy of the Member State concerned. Therefore, all of the applicant's arguments criticising the Commission for having considered that individual aid, such as the one in the present case, could remedy the serious disturbance in the Finnish economy, within the meaning of Article 107(3)(b) TFEU, must be rejected.

64 Consequently, the first limb of the first plea must be rejected.

The second limb alleging failure to observe the alleged obligation to balance the beneficial effects of the aid in terms of achievement of the objectives set out in Article 107(3)(b) TFEU against its adverse effects on trading conditions and the maintenance of undistorted competition

65 Under Article 107(3)(b) TFEU, 'the following may be considered to be compatible with the internal market: ... aid to ... remedy a serious disturbance in the economy of a Member State'. It follows from the wording of that provision that its authors considered that it was in the interests of the European Union as a whole that one or other of its Member States be able to overcome a major or even an existential crisis which could only have serious consequences for the economy of all or some of the other Member States and therefore for the European Union as a whole. That textual interpretation of the wording of Article 107(3)(b) TFEU is confirmed by comparing it with Article 107(3)(c) TFEU concerning 'aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest', in so far as the wording of the latter provision contains a condition relating to proof that there is no effect on trading conditions to an extent that is contrary to the common interest, which is not found in Article 107(3)(b) TFEU (see, to that effect, judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraphs 20 and 39).

66 Thus, in so far as the conditions laid down in Article 107(3)(b) TFEU are fulfilled, that is to say, in the present case, that the Member State concerned is indeed faced with a serious disturbance in its economy and that the aid measures adopted to remedy that disturbance are, first, necessary for that purpose and, second, appropriate and proportionate, those measures are presumed to be adopted in the interests of the European Union, so that that provision does not require the Commission to weigh the beneficial effects of the aid against its adverse effects on trading conditions and the maintenance of undistorted competition, contrary to what is laid down in Article 107(3)(c) TFEU. In other words, such a balancing exercise would have no *raison d'être* in the context of Article 107(3)(b) TFEU, as its result is presumed to be positive. Indeed, the fact that a Member State manages to remedy a serious disturbance in its economy can only benefit the European Union in general and the internal market in particular.

67 It must therefore be held that Article 107(3)(b) TFEU does not require the Commission to weigh the beneficial effects of the aid against its adverse effects on trading conditions and the maintenance of undistorted competition, contrary to what is laid down in Article 107(3)(c) TFEU, but only to ascertain whether the aid measure at issue is necessary, appropriate and proportionate in order to remedy the serious disturbance in the economy of the Member State concerned. Accordingly, the Court rejects the applicant's argument that the obligation to conduct the balancing test results from the exceptional nature of compatible aid, including aid declared compatible under Article 107(3)(b) TFEU.

68 Nor may the applicant rely on the obligatory nature of a balancing test on the basis of the Temporary Framework, by arguing that that framework binds the Commission and provides a second basis separate from the Commission's obligation in that respect, because such an obligation does not appear in the Temporary Framework. In particular, section 1.2 of that framework, referred to by the Commission, relating to 'the need for close European coordination of national aid measures', contains a single

paragraph, paragraph 10, which contains no requirements in that regard. Consequently, the applicant was not entitled to rely on that section.

69 For the same reasons, the Commission's arguments, presented in the alternative, that the Temporary Framework itself contains such a balancing exercise, must be rejected.

70 Nor is the judgment of 6 July 1995, *AITEC and Others v Commission* (T-447/93 to T-449/93, EU:T:1995:130), relied on by the applicant, capable of supporting the argument that the Commission had to conduct a balancing test in the contested decision. In the case giving rise to that judgment, *the Commission had adopted a decision approving, on the basis of Article 107(3)(b) TFEU, the implementation of a general aid scheme, but made that scheme subject to certain conditions. In that judgment, the Court noted that it was apparent from the wording of those 'conditions' that the Commission had taken the view that, for cases exceeding certain thresholds laid down by that decision, the finding of a serious disturbance in the economy of the Member State concerned was not sufficient in itself to legitimise the aid in question* (judgment of 6 July 1995, *AITEC and Others v Commission*, T-447/93 to T-449/93, EU:T:1995:130, paragraphs 127 to 129). It then criticised the Commission for not having examined the extent to which competition could have been distorted and trade within the European Union could have been affected by the aid in question, whereas, by the decision authorising the aid scheme in question, the Commission had imposed upon itself a requirement to do so (judgment of 6 July 1995, *AITEC and Others v Commission*, T-447/93 to T-449/93, EU:T:1995:130, paragraph 135).

71 It follows that the facts which gave rise to the judgment of 6 July 1995, *AITEC and Others v Commission* (T-447/93 to T-449/93, EU:T:1995:130) are different from those in the present case. That case-law is therefore not capable of establishing that, in the present case, the Commission was required to weigh the beneficial effects of the aid as regards the achievement of the objectives set out in Article 107(3)(b) TFEU against its adverse effects on trading conditions and the maintenance of undistorted competition. The applicant's argument in that regard must therefore be rejected.

72 The other arguments raised by the applicant are not capable of calling into question the conclusion that the Commission was under no obligation to conduct a balancing test in the contested decision.

73 As regards the argument that the contested decision is contradictory in so far as Finnair's market share is concerned, and therefore contains an incorrect assessment of the importance of Finnair and of the other airlines for Finland's connectivity, it is apparent from the examination of the first limb of the first plea that the Commission correctly assessed Finnair's importance for Finland's economy and connectivity. More specifically, as regards the inconsistencies referred to by the applicant, that argument will be dealt with under the fourth plea relating to the inadequacy of the statement of reasons for the contested decision.

74 As regards the argument that the contested decision does not mention the consequences of the aid for the internal market, it must be stated that the contested decision acknowledges, as the applicant does in its application, that the measure at issue conferred an advantage on Finnair in that it releases it from the costs which it would have had to bear under normal market conditions. The Commission thus acknowledged that the measure at issue was liable to distort competition, because it strengthened Finnair's competitive position and trade between Member States was affected – since that undertaking was active in a sector in which there was trade within the European Union (paragraphs 30 to 35 of the contested decision). However, as is apparent from the examination of the first plea above and of the second plea below, the Commission was fully entitled to consider that that measure was necessary, appropriate and proportionate to remedy a serious disturbance in the Finnish economy (paragraphs 36 to 52 of the contested decision). In the present case, it has been demonstrated that the measure at issue satisfied the conditions for the derogation provided for in Article 107(3)(b) TFEU. In those circumstances, the Commission was entitled to declare the individual aid at issue compatible with the internal market.

75 It follows from all of the foregoing that all of the applicant's arguments criticising the Commission for not having weighed the beneficial effects of the aid as regards the achievement of the objectives set out in

Article 107(3)(b) TFEU against its adverse effects on trading conditions and the maintenance of undistorted competition must be rejected.

76 Consequently, the second limb of the first plea must be rejected, as must the first plea in its entirety.

Second plea in law: infringement of the principles of non-discrimination, freedom to provide services and freedom of establishment

77 It should be recalled that, according to the case-law, it is clear from the general scheme of the Treaty that the procedure under Article 108 TFEU must never produce a result which is contrary to the specific provisions of the Treaty. Accordingly, State aid, certain conditions of which contravene other provisions of the Treaty, in particular those relating to the freedom to provide services and the freedom of establishment, cannot be declared by the Commission to be compatible with the internal market. Similarly, State aid, certain conditions of which contravene the general principles of EU law, such as the principle of equal treatment, cannot be declared by the Commission to be compatible with the internal market (judgment of 15 April 2008, *Nuova Agricast*, C-390/06, EU:C:2008:224, paragraphs 50 and 51).

78 In the present case, first, the applicant claims that the Commission's authorisation of State aid measures and decisions must never infringe other provisions of the TFEU, such as the principle of non-discrimination. It claims that the contested decision treats the comparable situation of airlines operating routes to and from Finland differently by favouring Finnair without any objective justification. In support of that argument, the applicant relies in particular on the Commission's practice in relation to aid measures based on Article 107(2)(b) TFEU. The applicant submits that the COVID-19 pandemic has severely affected all the airlines operating in Finland. The need to save Finnair only, to the exclusion of other airlines operating in Finland, has not been established and the aid in question goes beyond what is necessary to attain its objective. The aid in question is a measure of pure economic nationalism. The applicant adds that the earlier measures to rescue financial institutions in 2008 and the Communication from the Commission entitled 'The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis' illustrate the importance of the principle of non-discrimination which has been infringed in the present case.

79 Secondly, the applicant claims that, in its compatibility assessment for the measure at issue, the Commission should have determined whether the form of aid granted in the present case, that is to say a State loan guarantee, conformed to the principles of freedom to provide services and freedom of establishment. By failing to do so, the Commission erred in law. The applicant submits that reserving the aid only to Finnair restricts the rights granted to other EU airlines to provide their services freely within the internal market. The contested decision therefore causes an unjustified restriction of the principles of the freedom to provide services and freedom of establishment.

80 The Commission, supported by the Kingdom of Spain, the French Republic and the Republic of Finland, disputes the applicant's arguments.

The alleged infringement of the principle of equal treatment

81 It should be noted that individual aid such as the one at issue, by definition, benefits only one undertaking, to the exclusion of all other undertakings, including those in a situation comparable to that of the recipient of that aid. Thus, by its nature, such individual aid introduces a difference in treatment, or even discrimination, which is nevertheless inherent in the individual character of that measure. To maintain, as the applicant does, that the individual aid at issue is contrary to the principle of non-discrimination in essence amounts to calling into question systematically the compatibility with the internal market of any individual aid solely on account of its inherently exclusive and thus discriminatory character, even though EU law allows Member States to grant individual aid provided that all the conditions laid down in Article 107 TFEU are satisfied.

- 82 That being said, even if, as the applicant claims, the difference in treatment established by the measure at issue, in so far as it benefits only Finnair, may amount to discrimination, it is necessary to ascertain whether it is justified by a legitimate objective and whether it is necessary, appropriate and proportionate in order to attain that objective. Similarly, in so far as the applicant refers to the first paragraph of Article 18 TFEU, it must be pointed out that, under that provision, any discrimination on grounds of nationality within the scope of application of the Treaties ‘without prejudice to any special provisions contained therein’ is prohibited. Therefore, it is important to ascertain whether that difference in treatment is permitted under Article 107(3)(b) TFEU, which is the legal basis for the contested decision. That examination means, first, that the objective of the measure at issue satisfies the requirements of that provision and, second, that the detailed rules for granting the measure at issue, namely, in the present case, the fact that it benefits only Finnair, are such as to enable that objective to be achieved and do not go beyond what is necessary in order to attain it.
- 83 In the present case, as regards the objective of the measure at issue, as is stated in paragraph 38 above, that objective is intended to ensure that Finnair has sufficient liquidity to maintain its viability and air services while the COVID-19 pandemic seriously disrupts the whole of the Finnish economy and to prevent its possible failure from further disrupting that economy.
- 84 Since the existence both of a serious disturbance in the Finnish economy due to the COVID-19 pandemic and its significant adverse effects on the Finnish air transport market is, as is stated in paragraph 36 above, established to the requisite legal standard in the contested decision, it must be held that, in view of Finnair’s importance for the Finnish economy, the objective of the measure at issue satisfies the conditions laid down by Article 107(3)(b) TFEU.
- 85 As regards the question whether the arrangements for granting the measure at issue are capable of attaining that objective and do not go beyond what is necessary in order to attain it, it is apparent from the examination of the first plea that the grant of the State guarantee only to Finnair is appropriate to achieve the objective pursued by the measure at issue and to satisfy the conditions laid down in Article 107(3)(b) TFEU.
- 86 However, the applicant claims that the favourable treatment given to Finnair is neither necessary nor proportionate to the objective pursued by the Republic of Finland.
- 87 In that regard, in the first place, it should be noted that, contrary to what the applicant claims, the objective of the measure is not to ‘to preserve the domestic and international air connectivity of Finland’. In the light of the objective of the measure at issue, recalled in paragraph 83 above, and taking into account the matters set out in paragraphs 37 and 39 above, it must be held that the grant of the State guarantee only to Finnair is necessary in order to pursue that objective.
- 88 Moreover, as the Commission rightly submits in its defence, there was no obligation for the Commission to examine whether, in addition to Finnair’s continuity, the Member State concerned had to widen the circle of beneficiaries of the aid, since the contested decision establishes to the requisite legal standard the need to preserve Finnair’s contribution to the Finnish economy. The applicant’s arguments on that point must therefore be rejected.
- 89 In the second place, it should be noted that the applicant does not call into question the amount of the aid. However, it claims that the fact that Finnair receives 100% of that aid, even though its share in Finland’s connectivity is less than 100%, goes beyond what is necessary to attain the objective pursued by that measure and is therefore disproportionate. In its submission, if the aid is allocated to all the airlines that operate in Finland, based on their market share, the objective of the measure would be reached with no discrimination.
- 90 It should be recalled that the principle of proportionality, which is one of the general principles of EU law, requires that acts adopted by EU institutions do not exceed the limits of what is appropriate and necessary in order to attain the legitimate objectives pursued by the legislation in question (judgment of 17 May

1984, *Denkavit Nederland*, 15/83, EU:C:1984:183, paragraph 25); where there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (judgment of 30 April 2019, *Italy v Council (Fishing quota for Mediterranean swordfish)*, C-611/17, EU:C:2019:332, paragraph 55).

91 In the present case, the view must be taken that, in any event, having regard to the considerations set out in the context of the examination of the first limb of the first plea, in particular those set out in paragraphs 57 to 59 above, the grant of the State guarantee only to Finnair did not exceed the limits of what was appropriate and necessary to achieve the legitimate objectives pursued by the Republic of Finland and was not therefore disproportionate, contrary to what the applicant claims. In addition, granting aid to all airlines operating in Finland on the basis of their market share, as the applicant proposes, would have the effect of reducing the amount of aid granted to Finnair, with the result that its liquidity needs would not be covered, which could therefore have serious repercussions for the Finnish economy given the importance of that company for that economy. The applicant's arguments on that point must therefore be rejected.

92 In the light of all the foregoing, it must be held that the grant of the aid at issue only to Finnair did not go beyond what was necessary to attain the objective pursued by that aid. The applicant is therefore wrong to claim that, as a result of the measure at issue, Finnair receives unjustified favourable treatment.

93 The other arguments raised by the applicant as part of the second plea cannot succeed.

94 Since the measure at issue satisfies the conditions laid down in Article 107(3)(b) TFEU, it cannot be regarded as a measure of pure economic nationalism. Nor is the press release of the Finnish Government, relied on by the applicant and submitted as Annex A.3.4 to the application, capable of establishing that that measure is the simple expression of economic nationalism.

95 It is true that, according to that press release, the Republic of Finland holds a 55.8% shareholding in Finnair. However, aid which satisfies the conditions laid down in Article 107(3)(b) TFEU, as is the case here, may be granted to an undertaking that is majority-owned by the Member State concerned. Furthermore, as the Commission pointed out in the defence, that press release underlines the importance of the routes operated by Finnair for security of supply to Finland, for freight transport and for passenger transport, in addition to the influence of that undertaking on the national economy. In those circumstances, that press release does not render the assessments made by the Commission, and set out in paragraphs 39 to 53 above, implausible. On the contrary, it is consistent with those assessments.

96 The applicant also relies on the general description of the State aid rules and public service obligations applicable to the air transport sector during the COVID-19 pandemic drafted by the Commission, the Commission's alleged decision-making practice in relation to Article 107(2)(b) TFEU, the Commission's alleged practice in relation to previous measures to rescue financial institutions authorised under Article 107(3)(b) TFEU and the Communication from the Commission entitled 'The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis'.

97 However, for the reasons already set out in paragraph 62 above, the Commission's alleged practices and that communication are not relevant in the present case. Furthermore, as regards the applicant's argument that the general description of the rules on State aid and public service obligations applicable to the air transport sector during the COVID-19 pandemic highlights the principle of non-discrimination, it is appropriate to refer to the considerations set out in paragraphs 81 to 92 above.

98 Consequently, the first limb of the second plea must be rejected.

Infringement of the freedom to provide services and of the freedom of establishment

99 With regard to Article 56 TFEU, it should be pointed out that, pursuant to Article 58(1) TFEU, the freedom to provide services in the field of transport is governed by the provisions of the title relating to

transport, namely Title VI of the TFEU. The freedom to provide services in the field of transport is therefore governed, in primary law, by a special legal regime (judgment of 18 March 2014, *International Jet Management*, C-628/11, EU:C:2014:171, paragraph 36). Consequently, Article 56 TFEU does not apply as such to the air transport sector (judgment of 25 January 2011, *Neukirchinger*, C-382/08, EU:C:2011:27, paragraph 22).

100 Therefore, measures liberalising air transport services may be adopted only under Article 100(2) TFEU (judgment of 18 March 2014, *International Jet Management*, C-628/11, EU:C:2014:171, paragraph 38). As the applicant rightly states, the EU legislature adopted Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ 2008 L 293, p. 3) on the basis of that provision, and its very purpose is to define the conditions for applying in the air transport sector the principle of the freedom to provide services (see, by analogy, judgment of 6 February 2003, *Stylianakis*, C-92/01, EU:C:2003:72, paragraphs 23 and 24).

101 In the present case, while it is true that the measure at issue relates to individual aid which benefits only Finnair, the applicant has not shown how that exclusive character is such as to deter it from providing services from Finland and to Finland, or from exercising its freedom of establishment in that Member State. In particular, it fails to identify the elements of fact or law which cause the individual aid at issue to produce restrictive effects that go beyond those which trigger the prohibition in Article 107(1) TFEU, but which, as was found in paragraphs 42 to 63 above and in paragraphs 82 to 92 above, are nevertheless necessary and proportionate to remedy the serious disturbance in the Finnish economy caused by the COVID-19 pandemic, in accordance with the requirements of Article 107(3)(b) TFEU.

102 Consequently, the measure at issue does not constitute a restriction on the applicant's freedom of establishment or freedom to provide services. Furthermore, the applicant cannot criticise the Commission for not having expressly examined the compatibility of that measure with the freedom of establishment and the freedom to provide services.

103 In those circumstances, the second limb of the second plea must be rejected.

104 Consequently, the second plea must be rejected in its entirety.

Third plea in law: infringement of Article 108(2) TFEU

105 The applicant claims that the Commission disregarded the requirement under Article 107(3)(b) TFEU to weigh the beneficial effects of the aid against its adverse effects on trading conditions and the maintenance of undistorted competition and to verify whether the contested decision complied with the principles of non-discrimination, freedom to provide services and freedom of establishment. Those errors are, each taken separately, sufficient to lead to the conclusion that the aid in question is incompatible with the internal market. The contested decision would therefore have been substantially different if the Commission had recognised the doubts regarding the compatibility of the aid and initiated a formal investigation procedure. By refusing to initiate the formal investigation procedure and to call for the observations of the interested parties, in this case those of the applicant, the Commission infringed its rights under Article 108(2) TFEU and Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 TFEU (OJ 2015 L 248, p. 9) and the principle of sound administration.

106 The Commission, supported by the Kingdom of Spain, the French Republic and the Republic of Finland, disputes the applicant's arguments.

107 The third plea, relating to safeguarding the applicant's procedural rights owing to the Commission's failure to initiate a formal investigation procedure despite the alleged existence of serious doubts, is in fact subsidiary in nature, in the event that the Court did not examine the overall assessment of the aid. According to settled case-law, the aim of such a plea is to enable interested parties to be held to have standing, in that capacity, to bring an action under Article 263 TFEU, which otherwise would be

unavailable to them (see, to that effect, judgments of 24 May 2011, *Commission v Kronoply and Kronotex*, C-83/09 P, EU:C:2011:341, paragraph 48, and of 27 October 2011, *Austria v Scheucher-Fleisch and Others*, C-47/10 P, EU:C:2011:698, paragraph 44). The Court examined the first two pleas in this action, relating to the overall assessment of the aid, so that the third plea is deprived of its stated purpose.

108 Furthermore, it must be pointed out that that plea lacks any independent content. Under the third plea, the applicant may, in order to preserve the procedural rights which it enjoys under the formal investigation procedure, rely only on pleas which show that the assessment of the information and evidence which the Commission had or could have had at its disposal during the preliminary examination phase of the measure notified ought to have raised doubts as to the compatibility of that measure with the internal market (see, to that effect, judgments of 22 December 2008, *Régie Networks*, C-333/07, EU:C:2008:764, paragraph 81; of 9 July 2009, *3F v Commission*, C-319/07 P, EU:C:2009:435, paragraph 35, and of 24 May 2011, *Commission v Kronoply and Kronotex*, C-83/09 P, EU:C:2011:341, paragraph 59), such as the insufficient or incomplete nature of the examination carried out by the Commission during the preliminary examination phase or the existence of complaints submitted by third parties. In that regard, it should be noted that the third plea repeats in a more concise manner the arguments raised under the first and second pleas, without identifying specific evidence relating to potential serious difficulties.

109 For those reasons, having examined the merits of those pleas, the Court does not consider it necessary to examine the substance of this plea.

Fourth plea in law: infringement of the duty to state reasons

110 The applicant claims, in essence, that the Commission's reasoning in the contested decision is non-existent, tautological or contradictory.

111 The Commission, supported by the Kingdom of Spain, the French Republic and the Republic of Finland, disputes the applicant's arguments.

112 According to settled case-law, the statement of reasons required by Article 296 TFEU must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure, in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure at issue, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons for a measure meets the requirements of that article must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (judgments of 15 April 2008, *Nuova Agricast*, C-390/06, EU:C:2008:224, paragraph 79, and of 8 September 2011, *Commission v Netherlands*, C-279/08 P, EU:C:2011:551, paragraph 125).

113 In the first place, the applicant argues that the Commission failed to weigh the beneficial effects of the aid against its adverse effects on trading conditions and the maintenance of undistorted competition.

114 However, it follows from paragraphs 65 to 67 above that the weighing up of the beneficial effects of the aid against its adverse effects on trading conditions and the maintenance of undistorted competition is not required by Article 107(3)(b) TFEU. Therefore, the Commission did not have to provide reasons in that regard.

115 In the second place, the applicant complains that the Commission failed to assess whether or not the aid was discriminatory and whether it complied with the principles of the freedom to provide services and freedom of establishment.

- 116 However, it must be observed that the contested decision contains the matters, referred to in paragraphs 39, 44 to 53 and 56 to 59 above, which make it possible to understand the reasons why the Commission considered that the Republic of Finland could grant the aid at issue only to Finnair.
- 117 In the third place, the applicant claims that the contested decision is vitiated by inconsistency in the way in which Finnair's market shares are set out in paragraph 45 and footnote 9 of the contested decision. Finnair's 67% market share in the air transport services market in Finland, whether domestic or international, is inconsistent in the light of the data set out in footnote 9 of the contested decision. Moreover, those data and the data from the independent analysis drawn up for the applicant do not overlap. That inconsistency is all the more serious because Finnair's market share was a significant factor in the Commission's assessment of Finnair's importance for the Finnish economy.
- 118 In that regard, paragraph 45 of the contested decision states as follows:
- 'The Commission observes that Finnair operates an important domestic and international network that ensures connectivity within and outside Finland. Finnair is the principal air service carrier in Finland, with almost 15 million passengers transported in 2019 (67% of the total passengers transported within, to and from Finland in 2019) ...'
- 119 Footnote 9 of the contested decision was initially worded as follows:
- 'According to Finavia's report of 2019, Finnair had a 67% share of passengers transported on international flights and 80% transport[ed] on domestic flights. Its total market share amounts to 45% of the Finnish air services market.'
- 120 It must be stated that the inconsistencies between Finnair's market share set out in paragraph 45 and footnote 9 of the contested decision are the result of a simple clerical error, which has no influence on the Commission's assessment and which could not have misled the applicant.
- 121 Indeed, on 29 July 2020, the Commission adopted Decision C(2020) 5339 final, entitled 'Corrigendum to Commission Decision C(2020) 3387 final – State aid SA.56809 (2020/N) – Finland – COVID-19: State loan guarantee for Finnair'. The contested decision, in its corrected version, was then published on the Commission's website on 31 July 2020, as the Commission indicated at the hearing. According to that version of the contested decision, the passengers carried by Finnair represented 67% of all passengers carried within, to and from Finland in 2019. Finnair held a market share of 62% of the passengers carried on an international flight and 83% on domestic flights. Its total market share comes to 44% of the Finnish air services market. The error criticised by the applicant, which concerned only footnote 9, was thus corrected by the Commission.
- 122 It should be noted that the initial version of the contested decision showed clearly and unequivocally that Finnair was the main passenger air carrier for Finland in 2019, with a market share of 67% of passengers carried within, to and from Finland in 2019, so that it enabled the persons concerned to ascertain the reasons for that decision and the applicant to challenge its merits, as is demonstrated by the content of its application.
- 123 In those circumstances, the clerical error in footnote 9 of the contested decision is not such as to vitiate that decision with a defect in the statement of reasons capable of justifying its annulment in that regard.
- 124 As regards the argument that the independent analysis drawn up for the applicant on the basis of the data from the Official Airline Guide, produced in Annex A.3.2 to the application, gives a different overview of Finnair's market share, it must be stated that it is true that the market shares submitted by the Commission in paragraph 45 of the contested decision and by the applicant in Annex A.3.2 are not identical. However, those differences, which are still negligible, may be explained by the fact that the market shares in question came from different sources. In that regard, as the Commission correctly submits, there are no grounds for

considering that the data provided by Finavia, the main manager of Finland's airports, on which it relied in the contested decision, are less reliable than those of the Official Airline Guide.

125 It follows from the foregoing that the contested decision contains an adequate statement of reasons and that, consequently, the fourth plea must be rejected.

126 Consequently, the substance of the action must be dismissed in its entirety, while also granting the applicant the benefit of the confidential treatment which it requested, since the Kingdom of Spain, the French Republic and the Republic of Finland have raised no objection in that regard.

Costs

127 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to bear its own costs and to pay those of the Commission, in accordance with the form of order sought by the Commission, including the costs relating to the request for confidential treatment.

128 Furthermore, in accordance with Article 138(1) of the Rules of Procedure, Member States and institutions which intervene in proceedings are to bear their own costs. The Kingdom of Spain, the French Republic and the Republic of Finland must therefore bear their own costs.

On those grounds,

THE GENERAL COURT

hereby:

- 1. Dismisses the action;**
- 2. Orders Ryanair DAC to bear its own costs and to pay those of the European Commission, including the costs relating to the request for confidential treatment;**
- 3. Orders the Kingdom of Spain, the French Republic and the Republic of Finland to bear their own costs.**

Van der Woude

Kornezov

Buttigieg

Kowalik-Bańczyk

Hesse

Delivered in open court in Luxembourg on 14 April 2021.

E. Coulon

M. van der Woude

Registrar

President

* Language of the case: English.