

Commission Decision (EU) 2020/1814 of 28 June 2019 ON THE STATE AID
SA.33846 – (2015/C) (ex 2014/NN) (ex 2011/CP) implemented by Finland
for Helsingin Bussiliikenne Oy (notified under document C(2019) 3152)
(Only the Finnish and Swedish texts are authentic) (Text with EEA relevance)

- Article 1 The State aid amounting to EUR 54 231 850 unlawfully...
- Article 2 (1) Finland shall recover the aid referred to in Article...
- Article 3 (1) Recovery of the aid referred to in Article 1...
- Article 4 (1) Within two months following notification of this Decision,
Finland...
- Article 5 This Decision is addressed to the Republic of Finland. The...
Signature

ANNEX

Calculation of aid amount in Measures 1 and 2

Changes to legislation: There are currently no known outstanding effects for the Commission Decision (EU) 2020/1814. (See end of Document for details)

- (1) Commission Decision C (2015) 80 final of 16 January 2015 ([OJ C 116, 10.4.2015, p. 22](#)).
- (2) See footnote 1.
- (3) See footnote 1.
- (4) For details of the transaction see recitals (45) to (49).
- (5) Regional bus traffic was first open to competition in the Helsinki region (including Espoo and Vantaa) in 1994. The local bus transport market only includes Helsinki and not Espoo and Vantaa.
- (6) At that time HelB had already changed its name to Helsingin kaupungin Linja – autotoiminta Oy (see recital (47)).
- (7) In accordance with clause 3.4 of the 2015.09.21 deed of sale of HelB, if during the years 2016 to 2020 new HelB's EBITDA for the five comparable 12 months long accounting periods exceeds EUR 4 200 000 (per accounting period), then for those accounting periods, the buyer is obliged to pay an additional sale price. The additional sale price will equal 50 % of the amount by which the EBITDA exceeds the aforementioned EUR 4 200 000.
- (8) Except for the interest on the capital loans as, in accordance with the conditions of the capital loan agreements, no interest was due because old HelB was loss-making.
- (9) Community guidelines on State aid for rescuing and restructuring firms in difficulty ([OJ C 244, 1.10.2004, p. 2](#)).
- (10) By letter of 14 April 2010 the Commission services communicated to Finland its preliminary view concerning the case SA.30679 (E 2/2010) *Aid to municipality-owned agencies in Finland* finding that the aid in question might no longer be compatible and requesting Finland to amend the underlying legislation so that the municipality-owned agencies engaged in an economic activity should no longer benefit from such aid. Finland amended its legislation; following these amendments, by letter of 1 April 2014, the Commission closed the case.
- (11) Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ([OJ C 249, 31.7.2014, p. 1](#)).
- (12) Community guidelines on State aid for rescuing and restructuring firms in difficulty ([OJ C 288, 9.10.1999, p. 2](#)).
- (13) Judgment of the Court of Justice of 12 September 2000, *Pavlov and Others*, Joined Cases C-180/98 to C-184/98, ECLI:EU:C:2000:428, paragraph 74; Judgment of the Court of Justice of 10 January 2006, *Cassa di Risparmio di Firenze SpA and Others*, C-222/04, ECLI:EU: C:2006:8, paragraph 107.
- (14) Finland has not provided more detailed information in this respect. Profit centre is normally part of an organisation whose financial performance is measured separately from other parts. Management accounting system is set up in such a way that revenues and costs can be properly allocated to a profit centre. This does not necessarily mean that a profit centre would prepare its own statutory financial statements.
- (15) Judgment of the Court of Justice of 11 July 1996, *SFEI and Others*, C-39/94, ECLI:EU:C:1996:285, paragraphs 60 and 61.
- (16) See, for instance, Judgment of the Court of Justice of 21 March 1990, *Belgium v Commission* ('*Tubemeuse*'), C-142/87, ECLI:EU: C:1990:125, paragraph 29; Judgment of the Court of Justice of 21 March 1991, *Italy v Commission* ('*ALFA Romeo*'), C-305/89, ECLI:EU: C:1991:142, paragraphs 18 and 19; Judgment of the General Court of 30 April 1998, *Cityflyer Express v Commission*, T-16/96, ECLI:EU: T:1998:78, paragraph 51; Judgment of the General Court of 21 January 1999, *Neue Maxhütte Stahlwerke and Lech-Stahlwerke v Commission*, Joined Cases T-129/95, T-2/96 and T-97/96, ECLI:EU:T:1999:7, paragraph 104; Judgment of the General Court of 6 March 2003, *Westdeutsche Landesbank Girozentrale and Land Nordrhein-Westfalen v Commission*, Joined Cases T-228/99 and T-233/99, ECLI:EU: T:2003:57.
- (17) Judgment of the Court of Justice of 22 November 2007, *Spain v Commission*, C-525/04 P, ECLI:EU:C:2007:698; Judgment of the Court of Justice of 24 January 2013, *Frucona v Commission*, C-73/11 P, ECLI:EU:C:2013:32; Judgment of the Court of Justice of 29 June 1999, *DMTransport*, C-256/97, ECLI:EU:C:1999:332.
- (18) Judgment of the Court of Justice of 5 June 2012, *Commission v EDF*, C-124/10 P, ECLI:EU:C:2012:318, paragraphs 82 to 85 and 105.

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- (19) Judgment of the Court of Justice of 5 June 2012, *Commission v EDF*, C-124/10 P, ECLI:EU:C:2012:318, paragraphs 82 to 85. See also Judgment of the Court of Justice of 24 October 2013, *Land Burgenland v Commission*, Joined Cases C-214/12 P, C-215/12 P and C-223/12 P, ECLI:EU:C:2013:682, paragraph 61.
- (20) See e.g. Commission Decision (EU) 2016/788 of 1 October 2014 on the State aid SA.32833 (2011/C) (ex 2011/NN) implemented by Germany concerning the financing arrangements for Frankfurt Hahn airport put into place in 2009 to 2011 ([OJ L 134, 24.5.2016, p. 1](#)), recital 117.
- (21) Commission notice on the method for setting the reference and discount rates ([OJ C 273, 9.9.1997, p. 3](#)).
- (22) Proposal of the City Board 13/2004 of 1 September 2004.
- (23) Communication from the Commission on the revision of the method for setting the reference and discount rates ([OJ C 14, 19.1.2008, p. 6](#)).
- (24) More precisely, Helsingin kaupungin Linja-autotoiminta Oy, which is the current name of HelB, changed after the business of HelB was sold to Viikin Linja Oy on 15 December 2015.
- (25) Judgment of 15 June 2000, *Alzetta Mauro*, T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to 607/97, T-1/98, T-3/98 to T-6/98 and T-23/98, ECLI:EU:T:2000:151, paragraphs 141 to 147.
- (26) Judgment of the Court of 24 July 2003, *Altmark Trans and Regierungspräsidium Magdeburg*, C# 280/00, ECLI:EU:C:2003:415.
- (27) Judgment of the Court of Justice of 7 September 1980, *Philip Morris*, 730/79, ECLI:EU:C:1980:209, paragraph 11. See also judgment in *Alzetta Mauro* (footnote 25), ECLI:EU:T:2000:151, paragraph 80.
- (28) Commission Decision of 23 January 2018 in Case SA.43127 *Restructuring of the Polish Regional Railways* ([OJ C 158, 4.5.2018, p. 10](#)), recitals 65-67.
- (29) Proposal of the City Board 13/2004 of 1 September 2004.
- (30) See Judgment of the General Court of 6 March 2003, *Westdeutsche Landesbank Girozentrale and Land Nordrhein-Westfalen v Commission*, Joined Cases T-228/99 and T-233/99, ECLI:EU:T:2003:57, paragraph 251.
- (31) The interest due is calculated on the basis of outstanding principal with capitalised interest, as according to the terms of the loan the unpaid interest was to be capitalised (see recital (31)).
- (32) According to the loan agreement the interest was payable if in a given financial year the company generated sufficient profit. The financial year of HelB coincided with calendar year. Therefore, the Commission considers that if the loan had been granted on market terms (i.e. at market-conform interest rate payable regardless of the financial performance of HelB), the interest would have been due on 31 December of each year throughout the duration of the loan and on 11 December 2015, i.e. the day when the loan was converted into equity of HelB.
- (33) Commission Decision 2008/716/EC of 2 April 2008 on State aid C 38/07 (ex NN 45/07) implemented by France for *Arbel Fauvet Rail SA* ([OJ L 238, 5.9.2008, p. 27](#)) replaced by Commission Decision (EU) 2015/1321 of 23 June 2010 on State aid C 38/2007 (ex NN 45/2007) implemented by France for *Arbel Fauvet Rail SA* ([OJ L 203, 31.7.2015, p. 31](#)).
- (34) Judgement of the General Court of 3 March 2010, Joined Cases T-102/07 and T-120/07 *Freistaat Sachsen and Others v Commission*, ECLI:EU:T:2010:62, paragraph 106.
- (35) As it turned out later, HelB recorded increasing negative equity: EUR -3,3 million in 2009, EUR -6,6 million in 2010, EUR -12,7 million in 2011, EUR -14,6 million in 2012, EUR -15,9 million in 2013 and EUR -22,9 million in 2014.
- (36) See Judgment of the Court of Justice of 3 April 2014, *ING Groep NV*, C-224/12 P, ECLI:EU:C:2014:213, paragraphs 29 to 37.
- (37) Net assets of HKL Bussiliikenne decreased from EUR 9 million in 1999 to EUR 3,6 million in 2004 and net assets of HelB decreased from EUR 9,7 million in 2005 to EUR -6,6 million in 2010.
- (38) See footnote 23.
- (39) Judgment of the Court of Justice of 5 June 2012, *Commission v EDF*, C-124/10 P, ECLI:EU:C:2012:318, paragraphs 83, 84 and 85 and 105; Judgment of the Court of Justice of

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- 16 May 2002, *France v Commission (Stardust)*, C-482/99, ECLI:EU:C:2002:294, paragraphs 71 and 72; Judgment of the General Court of 30 April 1998, *Cityflyer Express v Commission*, T-16/96, ECLI:EU:T:1998:78, paragraph 76; Judgment of the General Court of 25 June 2015, *Servizi assicurativi del commercio estero SpA (SACE) and Sace BT SpA v Commission*, T-305/13, ECLI:EU:T:2015:435, paragraph 183, confirmed by the judgment of the Court of Justice of 23 November 2017, C-472/15 P, ECLI:EU:C:2017:885, paragraphs 108 and 109.
- (40) In particular, the sample includes eight BB-/Ba3 (i.e. higher) rated loans and only two CCC+/Caa1 (i.e. lower) rated loans, which decreases the median interest rate of the reference group.
- (41) Case T-423/14, *Larko Geniki Metalleftiki kai Metallourgiki AE v Commission*, ECLI:EU:T:2018:57, paragraph 193 and case-law cited.
- (42) The sum of accumulated losses and capital loans.
- (43) Net assets of HKL Bussiliikenne decreased from EUR 9 million in 1999 to EUR 3,6 million in 2004 and net assets of HelB decreased from EUR 9,7 million in 2005 to EUR -12,7 million in 2011.
- (44) See footnote 23.
- (45) Judgment of the Court of Justice of 28 April 1993, *Italy v Commission*, C-364/90, ECLI:EU:C:1993:157, paragraph 20.
- (46) Regulation (EEC) No 1191/69 of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway ([OJ L 156, 28.6.1969, p. 1](#)); Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 ([OJ L 315, 3.12.2007, p. 1](#)).
- (47) See judgment of the Court of Justice of 12 October 1978, in *Commission v Belgium*, 156/77, ECLI:EU:C:1978:180, paragraph 10.
- (48) Communication from the Commission – Temporary Framework for State aid measures to support access to finance in the current financial and economic crisis ([OJ C 16, 22.1.2009, p. 1](#)), as amended on 25 February 2009 ([OJ C 83, 7.4.2009, p. 1](#)), 28 October 2009 ([OJ C 261, 31.10.2009, p. 2](#)) and 8 December 2009 ([OJ C 303, 15.12.2009, p. 6](#)). The Temporary Framework, originally applicable until the end of 2010, was subsequently prolonged and finally expired on 31 December 2011 ([OJ C 6, 11.1.2011, p. 5](#)).
- (49) See footnote 12.
- (50) See footnote 9.
- (51) See Judgment of the Court of Justice of 12 July 1973, *Commission v Germany*, 70/72, ECLI:EU:C:1973:87, paragraph 13.
- (52) See Judgment of the Court of Justice of 17 June 1999, *Belgium v Commission*, C-75/97, ECLI:EU:C:1999:311, paragraphs 64 and 65.
- (53) Judgment of the General Court of 28 March 2012, *Ryanair v Commission*, T-123/09, ECLI:EU:T:2012:164, paragraph 155.
- (54) Judgment of the Court of Justice of 8 May 2003, *Italy and SIM 2 Multimedia v Commission*, Joined Cases C-328/99 and C-399/00, ECLI:EU:C:2003:252
- (55) Commission Decision of 17 September 2008 in cases N 321/2008, N 322/2008 and N 323/2008 implemented by Greece – *Vente de certains actifs d'Olympic Airlines/Olympic Airways Services* ([OJ C 18, 23.1.2010, p. 9](#)); Commission Decision of 12 November 2008 in Case N 510/2008 implemented by Italy – *Sale of assets of Alitalia* ([OJ C 46, 25.2.2009, p. 6](#)); Commission Decision of 4 April 2012 in SA.34547 implemented by France – *Reprise de actifs du groupe SERNAM dans le garde de son redressement judiciaire* ([OJ C 305, 10.10.2012, p. 10](#)).
- (56) This set of indicators was first confirmed by the General Court in its judgment of 28 March 2012, *Ryanair v Commission* (Judgment of the General Court of 28 March 2012, *Ryanair v Commission*, T-123/09, ECLI:EU:T:2012:164, point (155), which upheld the Alitalia decision.
- (57) Commission Decision (EU) 2015/1826 of 15 October 2014 on the State aid SA.33797 – (2013/C) (ex 2013/NN) (ex 2011/CP) implemented by Slovakia for NCHZ ([OJ L 269, 15.10.2015, p. 71](#)), paragraph 149.

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- (58) The employees were not made redundant and then rehired by the new HelB, instead their employment contracts were simply transferred to the new HelB in accordance with clause 2.6 of the sale deed.
- (59) The City exempted the old HelB from the obligation to repay the 2002 equipment loan on 13 January 2016 and the capital loans were converted into capital of the old HelB on 11 December 2015, i.e. a few days before the sale of its business.
- (60) Finland claims that the investment memorandum on HelB's business was distributed to 9 companies, including the complainants.
- (61) Project Viima, explanatory memorandum on the selling price 21.9.2015, submitted as Annex IX25 of the 23.6.2016 reply by Finland.
- (62) EUR 19,6 million if the multiples of listed companies are used.
- (63) EUR 20,6 million if the multiples of listed companies are used.
- (64) Submission by Finland of 13 January 2017.
- (65) Submission by Finland of 13 January 2017.
- (66) Commission Decision (EU) 2015/1587 of 7 May 2015 on the State aid SA.35546 (2013/C) (ex 2012/NN) implemented by Portugal for Estaleiros Navais de Viana do Castelo S.A. ([OJ L 250, 25.9.2015, p. 208](#)), paragraph 165 and Commission Decision 2011/97/EC of 14 September 2005 – State aid measure, C 11/04 (ex NN 4/03) – Olympic Airways – Restructuring and privatisation ([OJ L 45, 18.2.2011, p. 1](#)), paragraphs 178-183.
- (67) Project Viima, explanatory memorandum on the selling price 21.9.2015.
- (68) Commission Decision (EU) 2015/1826 of 15 October 2014 on the State aid SA.33797 – (2013/C) (ex 2013/NN) (ex 2011/CP) implemented by Slovakia for NCHZ ([OJ L 269, 15.10.2015, p. 71](#)), paragraph 163.
- (69) <http://svenska.yle.fi/artikel/2015/10/21/helsingforsfullmaktige-godkande-forsaljning-av-bussbolag>, last visited on 12.10.2017
- (70) Judgment of 12 July 1973, *Commission v Germany*, C-70/72, ECLI:EU:C:1973:87, paragraph 13.
- (71) Judgment of 21 March 1990, *Belgium v Commission*, C-142/87, ECLI:EU:C:1990:125, paragraph 66.
- (72) Judgment of 17 June 1999, *Belgium v Commission*, C-75/97, ECLI:EU:C:1999:311, paragraphs 64 and 65.
- (73) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union ([OJ L 248, 24.9.2015, p. 9](#)).

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