

Case No: 65827  
Event No: 510942  
Dec. No: 179/09/COL

**EFTA SURVEILLANCE AUTHORITY DECISION**  
of 31 March 2009  
on the Route Development Fund Bodø

(Norway)

**THE EFTA SURVEILLANCE AUTHORITY<sup>1</sup>**

Having regard to the Agreement on the European Economic Area<sup>2</sup>, in particular to Articles 61 to 63 and Protocol 26 thereof,

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice<sup>3</sup>, in particular to Article 24 thereof,

Having regard to Article 1(3) of Part I and Article 4(3) of Part II of Protocol 3 to the Surveillance and Court Agreement<sup>4</sup>,

Having regard to the Authority's Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement<sup>5</sup>, and in particular the Chapter thereof relating to financing of airports and start-up aid to airlines departing from regional airports,

Whereas:

## **I. FACTS**

### **1 Procedure**

By letter of 10 November 2008 (Event No 498134), the Norwegian authorities notified, pursuant to Article 1(3) of Part I of Protocol 3, an aid scheme called Route Development Fund Bodø (hereinafter referred to as the RDF) for start-up aid to airlines departing from the airport at the city of Bodø, Norway.

By letter dated 9 January 2009 (Event No 503636), the Authority requested additional information.

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<sup>1</sup> Hereinafter referred to as the Authority.

<sup>2</sup> Hereinafter referred to as the EEA Agreement.

<sup>3</sup> Hereinafter referred to as the Surveillance and Court Agreement.

<sup>4</sup> Hereinafter referred to as Protocol 3.

<sup>5</sup> Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the Authority on 19 January 1994, published in the Official Journal of the European Union (hereinafter referred to as OJ) L 231 of 03.09.1994 p. 1 and EEA Supplement No 32 of 03.09.1994 p. 1. Hereinafter referred to as the State Aid Guidelines. The updated version of the State Aid Guidelines is published on the Authority's website: <http://www.eftasurv.int/fieldsOfWork/fieldstateaid/guidelines/>

By letter dated 9 February 2009 (Event No 508195), the Norwegian authorities replied to the information request.

## **2 Description of the proposed measures**

### **2.1 The objective of the aid measure**

The RDF scheme will support the creation of new international air routes to Bodø airport. Bodø airport is a regional civilian airport located in Bodø, Nordland county, Norway.

Bodø has a relatively low population density and it is situated in a region which qualifies as a NUTS III level in the context of Regional aid.

The airport of Bodø is one of the largest airports in Norway with an approximately 1,4 million passengers in 2007. It is an important junction for the surrounding regions and the part of the county as a whole.

The Norwegian authorities seek to promote a better use of the airport with regard to international air routes. The RDF scheme shall be an incentive to the creation of one direct international air route by 2008/2009, and of three additional direct international air routes by 2009/2010. International air routes are defined as routes from/to Bodø Airport from/to airports outside Norway but within the territory covered by the EEA Agreement. Only new international air routes will be eligible for funding under the RDF scheme. Any relocation of existing air routes from other Norwegian airports to Bodø will not qualify for support.

Despite being a relatively large regional airport, the Norwegian authorities consider that Bodø Airport is underperforming in terms of passengers arriving on international scheduled flights, compared with other similar airports. In 2007, no passengers arrived in Bodø Airport on international scheduled flights.

When establishing the RDF scheme, the Norwegian authorities declare that they have been inspired by the reasoning set forth in the EC Commission's decision relating to the setting up of a route development fund in the United Kingdom.<sup>6</sup> The Norwegian authorities have also declared that all the conditions and criteria set out in point 70 (letters a – l) of the Authority's guidelines on financing of airports and start-up aid to airlines departing from regional airports (hereinafter referred to as the Airport Guidelines)<sup>7</sup> will be respected and fully complied with for the implementation and operation of the RDF scheme.

### **2.2 National basis for the aid measure**

The notified aid scheme is based on the Report to the Norwegian Parliament no 15 (2006-2007) of 15 December 2006.

### **2.3 Recipients**

The recipients of any aid must be air carriers with a valid licence issued by a Contracting Party to the EEA Agreement pursuant to Council Regulation (EEC) No 2407/92 on licensing of air carriers.

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<sup>6</sup> Case no N 303/2005 – United Kingdom.

<sup>7</sup> OJ L 62, 6.3.2008, p. 30 EEA Supplement No 12.

## 2.4 Possible effect of the aid

According to the Norwegian authorities, travel in connection with short-holidays is a growing market, which to a large extent depends upon the availability of direct air routes. They hope that new international air routes to Bodø airport will increase the possibilities for the domestic tourism industry to provide its services throughout the year – especially in the winter season.

The Norwegian authorities consider the RDF scheme as an investment to meet the demands on the short-holiday market and to be an important infrastructure measure for the tourism industry in Bodø, the Nordland county and beyond. Any aid granted under the scheme will contribute to reducing the possible risks airlines incur when establishing a new international air route. The scheme will thus be a valuable tool for developing the tourism industry in the region.

## 2.5 Aid intensity, eligible costs, overlap with other schemes

Aid under the RDF is limited to airlines' start-up costs for launching new international routes. In this respect, three support forms are available, for which aid cannot exceed 50% of total eligible costs for a given year and total aid may not exceed an average of 40% of eligible costs. Moreover, aid will be granted on an *ex post facto* basis. Airlines will only be compensated when the new international route is operational and the airline actually carries out flights.

The scheme will not finance standard operating costs such as hire or depreciation of aircrafts, fuel, crew salaries, airport charges or catering costs.

Finally, the Norwegian authorities have also declared that aid granted will be degressive.

### 2.5.1 *Route specific marketing support*

The marketing of new international air routes to Bodø will be eligible for support under the RDF scheme. Marketing aid will only be given based on individual marketing plans for each route. Each airline is responsible for the development of its marketing plans. These must furthermore specify the costs that are directly related to the marketing of any new international air route.

### 2.5.2 *Development projects*

The RDF will be available for the airlines' costs for the development of "new competences" or new business concepts and for the airlines' initial costs for development of business plans for each individual new international air route.

The Norwegian authorities have explained that "new competences" refer to efforts undertaken by an airline company to gain knowledge about the destination in both ends of a possible new route. Such efforts may for example consist in analysing market potentials, travelling patterns, potential new group of travellers, and local and regional business and tourism offerings. It is expected that such activities can be carried out in preparation for developing a business plan, or as a deepening and detailing activity for elements already included in a business plan prior to the implementation and start-up.

The notion "new business concepts" refers to activities carried out by the airlines in order to enter into cooperation or commercial agreements with local or regional parties at the air route destinations. Such cooperation or agreements may for example relate to ground service, accommodation and transport services at the airport, or the development of other

tourism products. It is specified in the notification that aid will only be granted to cover the development as such of any cooperation and/or agreements and not the costs for paying for any services from any such parties.

In the opinion of the Norwegian authorities, the development of the new knowledge described above is expected to increase the chances for a new air route to be profitable over time, so that it can turn into a permanent route when the aid will no longer be granted.

### 2.5.3 *Discount support for airport charges*

Service charges imposed by Bodø Airport on new international air routes can be subsidised under the RDF scheme. The aid is related to the number of transported passengers and it is based upon maximum 75% of the load capacity for the specific aircraft. If the airline has a load factor in excess of 75%, it will not receive aid for these additional passengers.

### 2.5.4 *No cumulation*

The Norwegian authorities have declared that aid granted from the RDF scheme cannot be cumulated with any other aid.

## 2.6 **Budget, duration and decision-making process**

Aid under the RDF scheme can be granted for a maximum period of three years.

The total budget of the RDF scheme is 12 million NOK (approximately 1.2 million EUR). The funds will be transferred from the Norwegian Ministry of Local Government and Regional Development, via DA-developmental program Bodø, who is the responsible legal body for administration and operation of state aid related to the Norwegian national Budget chapter 551.61 – regional development in the Bodø Municipality.

The funds under the RDF scheme are foreseen to be available for a maximum period of five years. However, any individual aid to a new international route will only be granted for a period of three years.

Concerning the decision-making process under the RDF scheme, Bodø Municipality is responsible for the project. Team Bodø, a business developmental company 100% owned by the municipality, will be the operating company of the RDF scheme on behalf of the municipality. Team Bodø will be the entity that receives aid applications and will allocate aid based on the eligibility criteria.

## II. ASSESSMENT

### 1. **The presence of state aid**

State aid within the meaning of Article 61(1) EEA Agreement

Article 61(1) of the EEA Agreement reads as follows:

*“Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States 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 Contracting Parties, be incompatible with the functioning of this Agreement.”*

### **1.1. Presence of state resources**

The aid measure must be granted by the State or through state resources.

The RDF scheme is financed by resources from the Norwegian Ministry of Local Government and Regional Development. The Authority therefore considers that support under the RDF scheme is granted by the State and through state resources.

### **1.2. Favouring certain undertakings or the production of certain goods**

The proposed aid scheme makes available direct grants to airline companies which receive commercial advantages that relieve them of charges which are normally borne from their budgets. The aid thus gives undertakings eligible under the RDF scheme a financial benefit that they would not have enjoyed in their normal course of business.

### **1.3. Distortion of competition and effect on trade between Contracting Parties**

Aid is regarded as distorting competition if it is granted to an undertaking which carries out activities in competition with others. The aid beneficiaries of the RDF scheme are airlines. Airlines are active in a sector characterised by strong competition. Therefore, any aid granted under the RDF scheme is regarded as distorting competition.

Furthermore, state aid to specific undertakings is regarded as affecting trade between the Contracting Parties if the recipient firm carries on an economic activity involving trade between the Contracting Parties. The state funding affects trade between Contracting Parties as the funding will be granted to operators of international air routes, which by definition is a cross-border activity.

Accordingly, the Authority considers that the notified scheme constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

## **2. Procedural requirements**

Pursuant to Article 1(3) of Part I of Protocol 3, *“the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid (...). The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision”*.

The Norwegian authorities submitted a notification of the proposed RDF scheme. The measure was not put into effect.

The Authority concludes that the Norwegian authorities have respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.

## **3. Compatibility of the aid**

Having reached the conclusion that the funding to be granted under the RDF amounts to state aid, the Authority has examined whether the measure can be justified having regard to Article 61(3)(c) of the EEA Agreement which provides for exemptions to the general rule of incompatibility set out in Article 61(1) of the EEA Agreement.

The Authority considers its Airport Guidelines, in particular paragraphs 61 - 72 thereof, to be relevant for the assessment of the case at hand.

Paragraph 70 of the Airport Guidelines set out a number of conditions to be complied with in order for start-up aid to be compatible with the functioning of the EEA Agreement.

### **Conditions for determining compatibility**

Paragraph 70, letter (a) of the Airport Guidelines reads: *"Recipients: the aid is paid to air carriers with a valid operating licence issued by a Contracting Party to the EEA Agreement pursuant to Council Regulation (EEC) No 2407/92 on licensing of air carriers"*<sup>8</sup>

The Norwegian authorities have indicated that the beneficiary airlines will be air carriers as defined in Regulation 2407/92. Therefore this condition is complied with.

Paragraph 70, letter (b) of the Airport Guidelines reads: *"the aid is paid for routes linking a regional airport in category C or D to another airport within the area covered by the EEA Agreement."*

Bodø Airport is, for the purpose of the Airport Guidelines, a category C airport ("large regional airport), with an annual passenger volume of between 1 and 5 million. Therefore this condition is complied with.

Paragraph 70, letter (c) of the Airport Guidelines reads: *"aid will apply only to the opening of new routes or new schedules, (as defined in the guidelines), which will lead to an increase in the net volume of passengers. This aid must not encourage traffic simply to be transferred from one airline or company to another. In particular, it must not lead to a relocation of traffic which is unjustified with regard to the frequency and viability of existing services leaving from another airport in the same city, the same conurbation<sup>9</sup> or the same airport system<sup>10</sup>, which serve the same or a similar destination under the same criteria"*

In the notified measure, start-up aid is to be granted to encourage airlines to launch new international air routes. What constitutes a "new route" is defined in advance. The scheme requires the establishments of new international air routes. Any relocation of existing air routes from other Norwegian airports to Bodø airport will not be supported under the notified aid scheme. This condition is therefore complied with.

Paragraph 70, letter (d) of the Airport Guidelines reads: *"the route receiving the aid must ultimately prove profitable, i.e. it must at least cover its costs, without public funding. For this reason start-up aid must be degressive and of limited duration"*.

<sup>8</sup> Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers (OJ L 240, 24.8.1992), as incorporated into point 66b of Annex XIII to the EEA Agreement by Joint Committee Decision No. 7/94 of 21 March 1994 (OJ L 160, 28.6.1994, p.1 and the EEA Supplement No. 17, 28.6.1994).

<sup>9</sup> Council Regulation (EEC) No 2408/92 on access for Community air carriers to intra-Community air routes (OJ L 240, 24.8.1992, p.8), incorporated into point 64a of Annex XIII to the EEA Agreement by Joint Committee Decision No. 7/94 of 21 March 1994 (OJ L 160, 28.6.1994, p.1 and the EEA Supplement No. 17, 28.6.1994).

<sup>10</sup> As defined under Article 2(m) of Council Regulation (EEC) No 2408/92 on access for Community air carriers to intra-Community air routes (OJ L 240, 24.8.1992, p.8). ), incorporated into point 64a of Annex XIII to the EEA Agreement by Joint Committee Decision No. 7/94 of 21 March 1994 (OJ L 160, 28.6.1994, p.1 and the EEA Supplement No. 17, 28.6.1994).



In the present case, the Norwegian authorities have stated that aid granted to airline companies is degressive. Moreover, the aid is time limited. It is foreseen that the funds in the RDF scheme could be made available during a maximum period of five years, but as indicated above, aid as such will only be granted for three years. Moreover, any submitted business plan must set out how the new route will endure over time and show the viability of the route after the aid has expired.

In addition, consistent with the EC Commission's case practice<sup>11</sup>, the Authority notes that payment of any aid under the notified RDF scheme will only be made on an *ex post facto* basis, meaning that airlines will only be compensated when they actually carry out flights on the new international air routes.

The Authority therefore considers that this condition is met.

Paragraph 70, letter (e) of the Airport Guidelines reads: "*the amount of aid must be strictly linked to the additional start-up costs incurred in launching the new route or frequency and which the air operator will not have to bear once it is up and running*".

The notification provides that aid will only be granted in respect of specific start-up costs and/or specific marketing activities. The scheme will not finance standard operating costs such as hire or depreciation of aircrafts, fuel, crew salaries, airport charges or catering costs.

The RDF scheme requires marketing contributions to be substantiated by an individual marketing plan for each route concerned. The marketing plan must specify the costs related directly to marketing and promotion of the new air route.

Aid for development projects is start-up related, targeting the development of specific knowledge related to both destinations of a new route as well as the necessary agreements with local or regional parties. The development of such competence is aimed at increasing the possibility for a new route to be profitable over time, turning it into a permanent route once the aid period has expired.

The Authority, thus, concludes that this condition is complied with.

Paragraph 70, letter (f) of the Airport Guidelines reads: "*degressive aid may be granted for a maximum period of three years. The amount of aid in any one year may not exceed 50% of total eligible costs for that year and total aid may not exceed an average of 30% of eligible costs. For routes from disadvantaged regions, i.e. the regions referred to in Article 61(3)(a), and sparsely populated regions, degressive aid may be granted for a maximum period of five years. The amount of aid in any one year may not exceed 50% of total eligible costs for that year and total aid may not exceed an average of 40% of eligible costs. If the aid is granted for five years, it may be maintained at 50% of total eligible costs for the initial three years*".

The Norwegian authorities have indicated that these conditions will be respected.

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<sup>11</sup> State aid Case no N 52/2008 – Cyprus; Case no N 640/2006 – Malta; and Case no N 303/2005 – United Kingdom.

The reference to sparsely populated regions has to be understood as low population density areas within the meaning of the Authority's Guidelines for Regional Aid<sup>12</sup>. In accordance with the Authority's Decision 226/06/COL on of 19 July 2006 on the map of assisted areas and levels of aid in Norway, Bodø is situated in a region which qualifies as a NUTS III level in the context of Regional aid as it falls within the definition of a "low population density region".<sup>13</sup> It follows that, for the purpose of the Airport Guidelines, Bodø is situated in a sparsely populated region.

The Airport Guidelines foresee that for disadvantaged regions and sparsely populated regions, degressive aid may be granted for a maximum period of five years and the total aid may not exceed an average of 40% of eligible costs. The Norwegian authorities have explained that under the RDF scheme, aid will only be granted for maximum three years and granted in respect of each route for a maximum of 40% of total eligible costs. This condition is therefore complied with.

Paragraph 70, letter (f) of the Airport Guidelines further reads that: *"In any event, the period during which start-up aid is granted to an airline must be substantially less than the period during which the airline undertakes to operate from the airport in question."*

This condition has already been addressed under letter (d) above and the Authority can therefore conclude that this condition is complied with.

Paragraph 70, letter (g) of the Airport Guidelines reads: *"aid payments must be linked to the net development of the number of passengers transported"*.

The RDF scheme provides that the aid is to be paid on the basis of the number of passengers transported. The Norwegian authorities have explained that the aid is related to the number of transported passengers and the aid is based upon maximum 75% of the load capacity for the specific aircraft. If the airline has a load factor in excess of 75%, it will not receive aid for these additional passengers. This condition is, thus, met.

Paragraph 70, letter (h) of the Airport Guidelines reads: *"any public body which plans to grant start-up aid to an airline for a new route, whether or not via an airport, must make its plans public in good time and with adequate publicity to enable all interested airlines to offer their services. The notification must in particular include the description of the route as well as the objective criteria in terms of the amount and the duration of the aid."*

The Norwegian authorities have committed to ensure that this criterion is respected and it can therefore be concluded that this condition is complied with.

Paragraph 70, letter (i) of the Airport Guidelines reads: *"when submitting its application, any airline which proposes a service to a public body offering to grant start-up aid must provide a business plan showing, over a substantial period, the viability of the route after the aid has expired. The public body should also carry out an analysis of the impact of the new route on competing routes prior to granting start-up aid."*

Concerning the envisaged aid support forms, the Authority considers that aid will only be granted in respect of additional start-up costs (corresponding to development project aid

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<sup>12</sup> Authority's Guidelines for National Regional Aid 2007-2013 (published in the OJ L 54, 28.2.2008, p. 1, EEA Supplement No 11) paragraphs 22 and 65 ff.

<sup>13</sup> Authority Decision No 226/06/COL of 19 July 2006, point 2.1.



and discount support for airport charges) and costs for specific route marketing costs incurred in launching the new route, as described in individual marketing plans prepared by the applicant airlines. Moreover, and in accordance with the Airport Guidelines, a business plan will be provided, showing the viability of the route after the aid has expired. The Authority concludes that this condition is complied with.

Paragraph 70, letter (j) of the Airport Guidelines reads: *"States must ensure that the list of routes receiving aid is published annually for each airport, in each instance indicating the source of public funding, the recipient company, the amount of aid paid and the number of passengers concerned."*

The Norwegian authorities have undertaken to annually publish the list with the required data for any new routes departing from Bodø Airport. The Authority therefore concludes that this condition is complied with.

Paragraph 70, letter (k) of the Airport Guidelines reads: *"where applicable, appeal procedures must be provided for at Member State level to ensure that there is no discrimination in the granting of aid."*

The Norwegian authorities have undertaken to ensure that appropriate appeal procedures are available to ensure that no discrimination occurs. The Authority can thus conclude that this condition is complied with.

Paragraph 70, letter (l) of the Airport Guidelines reads: *"penalty mechanisms must be implemented in the event that a carrier fails to keep to the undertakings that it gave in relation to an airport when the aid was paid."*

The RDF scheme provides that aid will only be paid on an *ex post facto* basis, meaning that air carriers will only be compensated with respect to flights actually carried out. This means that no aid should need to be recovered on the ground set out in paragraph 70, letter (l). The Norwegian authorities have nevertheless undertaken to ensure that the required mechanisms are in place. This condition is therefore complied with.

Finally, the cumulation rule in paragraph 71 of the Airport Guidelines foresees, inter alia, that start-up aid cannot be combined with other types of aid granted for the operation of a route or covering the same costs, including aid paid in another state.

The Norwegian authorities have undertaken in relation to this condition that the aid granted under the notified RDF scheme cannot be cumulated with any other governmental aid.

Accordingly, the Authority considers that the conditions for compatibility as set out in the Airport Guidelines are satisfied in the present case.

### **3 Conclusion**

The Authority considers that the notified Route Development Fund for Bodø Airport is compatible with the functioning of the EEA Agreement according to Article 61(3)(c) of the EEA Agreement interpreted with the Airport Guidelines.

The Norwegian authorities are reminded to provide annual reports on the implementation of the scheme according to Article 21 of Part II of Protocol 3 and Article 6 of Decision 195/04/COL.

All plans to modify this scheme must be notified to the Authority.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority has decided not to raise objections to the notified Route Development Fund Bodø.

The scheme is compatible with Article 61(3)(c) of the EEA Agreement read in light of the Guidelines on Financing of airports and start-up aid to airlines departing from regional airports.

Article 2

This Decision is addressed to the Kingdom of Norway.

Article 3

Only the English version is authentic.

Done at Brussels, 31 March 2009

For the EFTA Surveillance Authority,

Per Sanderud  
President

Kurt Jaeger  
College Member