

Case handler: Vaido Poldoja
Tel: (+32)(0)2 286 1894
vpo@eftasurv.int

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EFTA SURVEILLANCE
AUTHORITY

By email only, to: [REDACTED]

Subject: Fosen Wind Farm and green certificates to pre-existing hydro power (complaint)

- *Preliminary assessment under paragraph 48(b) of the Authority's Guidelines on Best Practice for the conduct of state aid control procedures*
- *Partially insufficient grounds for taking a view on the case in accordance with Article 20(2) of Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice*

1. General

Reference is made to your complaint dated 16 March 2016 to the Competition and State Aid Directorate of the EFTA Surveillance Authority ("the Authority") regarding alleged state aid in favour of the Fosen wind project, as well as alleged state aid in the form of the allocation of green certificates to pre-existing hydroelectric projects.

In your complaint, you refer to the following measures:

1. granting of aid to existing hydroelectric projects in breach of the incentive effect requirement, and
2. potential state aid to the Fosen project, which may consist of:
 - a. exerting political and financial pressure on Statkraft AS to invest government supplied funds to the Fosen project;
 - b. pressuring Statnett SF to construct a grid connection allowing the Fosen project to operate, and charging the project for the grid connection and usage below market rates; and
 - c. pressuring Agder Energi AS to enter into a long term power sales agreement with the Fosen project, with a back to back sales agreement with Norsk Hydro AS.

On 16 December 2016, the Authority sent you a letter informing you that there were insufficient grounds for taking a view on the case as regards measures 2.a and 2.c. Since you did not provide further relevant information to the Authority by 20 January 2017, the case was closed as regards measures 2.a and 2.c.

On 16 February 2017, the Authority sent you a letter informing you that according to the Authority's preliminary view, the hydroelectric projects built between 2004 and 2012 have not received any aid in breach of the incentive effect requirement. Since you did not provide any additional information to the Authority by 17 March 2017, the case was closed as regards measure 1.

In the letter of 16 February 2017, the Authority also informed you that it would continue to assess your correspondence with regard to the allegations concerning grid construction and tariffs applied by Statnett SF (measure 2.b)

Since receiving your complaint, the Authority has gathered information from the Norwegian authorities and conducted a preliminary examination as regards measure 2.b.

2. Statnett's grid construction

Under Article 61(1) of the EEA Agreement a measure constitutes state aid if the following conditions are cumulatively fulfilled: (i) the measure is granted by the state or through state resources; (ii) confers a selective economic advantage to the beneficiary; (iii) is liable to affect trade between Contracting Parties and to distort competition.¹

According to section 4 b) of your state aid complaint ("Complaint") and part 4 of the Addendum to the Complaint ("Addendum"), the Fosen Wind Project receives state aid from Statnett in the form of Statnett's construction of a grid connection that allows the project to operate.

However, for the reasons given below, the Authority is of the preliminary view that the measure does not constitute a selective economic advantage.

According to the Norwegian authorities the licences for Statnett's grid connection in the Trondheimsfjord area were awarded by the Norwegian Water Resources and Energy Directorate (NVE) in 2010 and 2012. After receiving several complaints, the Ministry of Petroleum and Energy reconfirmed the licenses' terms in 2013.²

The Norwegian authorities have explained that Statnett's 420 kV power lines from Namsos via Fosen to Trollheim (Surna) are planned and constructed as one coherent transmission grid, using a step-wise approach.³ According to the Norwegian authorities, Statnett's grid development in steps is a normal grid planning and construction process.⁴ The purpose of developing the power lines in question is to strengthen the north-south capacity in the transmission system.⁵ The development of the grid was planned in three steps: the northern part between Namsos and Åfjord at Fosen, the southern part between Snillfjord and

¹ See, for instance, the Authority's decision No 064/17/COL of 29.03.2017 on alleged aid involved in an exemption from air passenger tax for departures from Norwegian airports, not yet published, paragraph 59. Available on the Authority's website: <http://www.eftasurv.int/state-aid/state-aid-register/norway/>

² Decision by the Ministry of Petroleum and Energy of 26.08.2013 concerning Statnett SF – 420 kV kraftledning Namsos-Roan-Storheia-Snillfjord-Trollheim – klagesak p. 1. Available in Norwegian at: <http://statnett.no/PageFiles/1328/Dokumenter/~1-%20Vedtak%20Olje-%20og%20energidepartementet/Vedtak%20fra%20OED%20for%20420%20kV%20kraftledning%20Namsos-Roan-Storheia-Snillfjord-Trollheim.pdf>

³ Statnett's Grid Development plan p. 86-87. Available in Norwegian at: <http://www.statnett.no/Global/Dokumenter/Prosjekter/NUP2015/Nettutviklingsplan%202015%20leseversjon.pdf>

⁴ Statnett's Grid Development plan. p. 9 and 31 and Meld.St.25 (2015-2016) Kraft til endring Energipolitikken mot 2030 p. 83.

⁵ Statnett's Grid Development plan, p. 80-87.

Trollheim (Surna) and the connection of the two parts through a submarine power cable between Åfjord and Snillfjord.⁶ The Norwegian government considers that building a new transmission grid from Namsos via Fosen to Trollheim (Surna) would be economically the most viable grid development option.⁷

The Norwegian authorities have further confirmed that the 420 kV grid in question is a transmission rather than a production related power line.⁸ In particular, the Norwegian authorities refer to the main function of the power line (transmission), the voltage level, the length of the planned power line and the north-south capacity.⁹ The power line could have been dimensioned at a lower cost if the purpose were only to connect the wind power plants.¹⁰

Based on the above, it appears that Statnett has followed its normal national level grid planning and construction practices, with the aim of providing the most efficient north-south capacity development in the transmissions system. The Authority consequently considers that the grid construction is of general character, not serving or tailored to the needs of a particular user.¹¹ Therefore, the Authority is of the preliminary view that the measure does not constitute a selective economic advantage.

3. Statnett's grid tariffs

In your Complaint and the Addendum, you claim that charges for the Fosen Wind Project's grid connection and usage could be below market rates.

However, it appears that aid through low grid tariffs is currently just a possibility. Neither the Fosen Wind Project nor the Statnett 420 kV grid extensions in question are finalised and operational. Also, there is no information suggesting that the Fosen Wind Project has already been conferred the legal right for a certain level of grid tariffs.

Under Article 20(2) of Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("Protocol 3"), any interested party may inform the EFTA Surveillance Authority of any alleged unlawful aid and any alleged misuse of aid.

Unlawful aid is defined in article 1(f) in Part II of Protocol 3 as new aid put into effect in contravention of the standstill obligation enacted in Article 1(3) in Part I of Protocol 3. Pursuant to Article 1(3) of Part I of Protocol 3: "*The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision.*" Hence, Article 1(3) in Part I of Protocol 3 obliges EFTA States not to implement state aid measures without the prior approval of the Authority (standstill obligation).

Even assuming that Statnett's tariffs would include aid, the aid does not yet appear to have been granted in contravention of the standstill obligation. The Authority therefore considers

⁶ Decision by the Ministry of Petroleum and Energy of 26.08.2013 concerning Statnett SF, p. 41-42.

⁷ Decision by the Ministry of Petroleum and Energy of 26.08.2013 concerning Statnett SF, p. 6 and 38.

⁸ However, according to the Norwegian authorities, the 132 kV power lines connecting the Fosen Wind Project to Statnett's national grid are not owned nor operated by Statnett.

⁹ Decision by the Ministry of Petroleum and Energy of 26.08.2013 concerning Statnett SF, p. 42.

¹⁰ Decision by the Ministry of Petroleum and Energy of 26.08.2013 concerning Statnett SF, p. 42

¹¹ That is also the approach taken by the European Commission as regards infrastructure investments. See, for instance, State aid SA.32125 – Belgium – Financing of road infrastructure in the vicinity of a real estate project – Uplacé – C(2016) 9678 final, para. 38 - 39.

that there are insufficient grounds for taking a view on the case as regards the Statnett tariffs at this stage.

4. Conclusion

On the basis of the above, and with reference to paragraph 48(b) of the Authority's Guidelines on Best Practice for the conduct of state control procedures,¹² and based on the information available, it is the Authority's preliminary view that Statnett's grid construction does not provide a selective advantage to the Fosen Wind Project and therefore the measure does not constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

As regards Statnett's grid tariffs, on the basis of the information available to it, and in accordance with Article 20(2) of Part II of Protocol 3, the Authority considers that there are insufficient grounds for taking a view on the case.

If you have any additional information you would like to submit that might change this preliminary view, please do so **by 26 May 2017**. Otherwise the case will be closed without further notice as regards your allegations concerning Statnett's grid construction and tariffs applied (measure 2.b)

Please note that the present letter concerns measure 2.b only. It does not affect any other ongoing cases or dealings you have with the Authority.

Yours faithfully,

Gjermund Mathisen
Director
Competition and State aid

¹² Available at <http://www.eftasurv.int/media/state-aid-guidelines/Part-II---Guidelines-on-Best-Practice-for-the-conduct-of-state-aid-control-procedures-DOC.pdf>