


EFTA SURVEILLANCE AUTHORITY

Doc. No. 94-15540-I
Dec. No. 151/94/COL
Ref. No. SAM030.94.025

EFTA SURVEILLANCE AUTHORITY DECISION

OF 9 NOVEMBER 1994

ON THE STATE GUARANTEES FOR DOMESTIC AND INTERNATIONAL LOANS OF
OY SISU-AUTO AB (FINLAND)

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area¹, in particular to Articles 61 to 63,

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice², in particular Article 1 of Protocol 3 thereof,

WHEREAS:

I. FACTS

1. The notification

By letter dated 28 June 1994, received by the EFTA Surveillance Authority on 30 June (ref. 94-9805A), the Finnish Government notified, in accordance with Article 1(3) of Protocol 3 to the Surveillance and Court Agreement, a proposal on the State guarantees for domestic and international loans of Oy Sisu-Auto Ab. The EFTA Surveillance Authority, by letter dated 27 July 1994 (ref. 94-11152D), requested additional information from the Finnish Government. The requested information was submitted to the Authority by letter dated 17 August 1994 (ref. 94-12167A). Discussions were held between officials of the Authority and the Finnish authorities on the case on 2 September and 31 October 1994. Further additional information was sent to the Authority by letters dated 29 September 1994 (ref. 94-14704A) and 2 November 1994 (ref. 94-16177A).

¹ Hereinafter referred to as the EEA Agreement.

² Hereinafter referred to as the Surveillance and Court Agreement.

2. The aim and contents of the proposed measure

The Finnish authorities have proposed to the Parliament to empower the Council of State to grant guarantees for domestic and international loans of Oy Sisu-Auto Ab not exceeding FIM 800 million during 1994 and 1995.

Oy Sisu-Auto Ab is a majority State-owned company which acquired the Transmec, Tractor and Logging -divisions from Valmet Oy, which is a limited liability company listed in the Helsinki stock exchange where the State Government is the majority owner. The merger is part of the restructuring and future privatisation plans of the State-owned companies in Finland. Before the acquisition, which took place on 29 April 1994, the main production activities of Oy Sisu-Auto Ab related to the manufacturing of military vehicles, terminal tractors, special purpose motor vehicles and components of such vehicles. After the acquisition the production of the company now includes also the manufacturing of agricultural tractors, logging machinery, factory automation and diesel engines.

As a result of the merger, in particular due to the financing of the acquisition and the transfer of the loan stock of the acquired divisions of Valmet, the financing structure of Oy Sisu-Auto Ab changed substantially. The sales and production volume of the company quadrupled. The merger weakened temporarily the financial solidity of the company as the loan stock of the acquired divisions were transferred to Oy Sisu-Auto Ab while their securities remained with Valmet Oy. Following the merger, Oy Sisu-Auto Ab, thus, is in need of additional loans in order to correct the financing structure of the company. The guarantees will cover the loans to be taken by Oy Sisu-Auto Ab in connection and due to the financing of the merger.

Individual guarantees are to be authorised by the Council of State once the proposal now under discussion in the Parliament is adopted in the form of a Decree. The company can then apply for the State guarantees for its individual loans which it intends to do in several parts. The guarantees are to cover loans of the company up to FIM 800 million taken until the end of 1995. The cost of the guarantees for the company in the case of a domestic loan consists of a 0,6 % front end fee and a yearly fee of 0,6 % on the amount outstanding. The cost of the guarantees for the international loans of the company is a 0,4 % front end fee and an annual amount of 0,4 % on the amount outstanding.³ The cost of corresponding guarantees, according to offers from representative market guarantors, range between 0,2 - 0,5 % per annum without front end fees.

In April this year, after the merger, Oy Sisu-Auto Ab employed altogether 5,670 employees of which 3,080 were employed in Finland and 350 in Sweden. Following the merger, the State now owns 75 % of the company while Valmet Oy is the other major shareholder (24 %). The market breakdown of the sales of the company, after the merger, can be divided as follows: domestic 40 %, other EEA 15 % and non-EEA 45 %.

³ *Asetus valtiontakauksista perittävistä maksuista annetun asetuksen 2 §:n muuttamisesta*, No 898/84.

The main financial indicators of the company for 1992-1993 are given in the table below. It is estimated that the turnover of the company will amount to FIM 4,800 million in 1994. By the end of August 1994 it had amounted to FIM 2,300 million.

Financial results	Turnover	Net result
1992	FIM 719 million	FIM 6 million
1993	FIM 798 million	FIM 61 million

II. APPRECIATION

All guarantees given by the State directly or by way of delegation through financial institutions are, in principle, regarded as falling within the scope of Article 61(1) of the EEA Agreement.⁴ The fact that an enterprise receives a guarantee even if it is never called in may enable it to continue trading, perhaps forcing competitors who do not enjoy such facilities to go out of business. Public enterprises are not exempted from the application of Article 61 and 62 of the EEA Agreement, unless the derogation of Article 59(2) of the EEA Agreement is applicable.⁵

The EFTA Surveillance Authority applies the market economy investor principle in order to make an assessment whether State aid is involved or not in the financial flows between EFTA States and their public enterprises. According to this principle State aid is not involved where fresh capital is contributed in circumstances that would be acceptable to a private investor operating under normal market economy conditions. As regards State guarantees, all the distortions or potential distortions of competition can be detected only if guarantees are assessed at the granting stage. An assessment of the aid element of guarantees involves an analysis of the borrower's financial situation. The aid element of these guarantees would be the difference between the rate which the borrower would pay in a free market and that actually obtained with the benefit of the guarantee, net of any premium paid for the guarantee.

The analysis of the financial position of Oy Sisu-Auto Ab shows that the company's equity ratio has decreased from 33 % to 21,3 % as a result of the acquisition of the divisions of Valmet Oy. Although the financial solidity of Oy Sisu-Auto Ab has, thus, deteriorated somewhat following the merger, the company has not reached a critical point.

The proposed State guarantees are to be granted unconditionally but with a reservation that the Council of State can later order the company to provide a collateral to the State or otherwise safeguard its position as a guarantor. The cost of the State guarantees for Oy Sisu-Auto Ab include front end fees (0,4 % on an international loan and 0,6 % on a domestic one) and annual amounts on the amounts outstanding (0,4 % on an international loan and 0,6 % on a loan taken up in Finland).

⁴ See chapter 17 of the Procedural and Substantive Rules in the Field of State Aid, adopted by the EFTA Surveillance Authority on 19 January 1994, hereinafter referred to as the State Aid Guidelines.

⁵ See chapter 20 of the State Aid Guidelines.

An offer acquired by Oy Sisu-Auto Ab from Postipankki Ltd. states that the bank is in principle ready to provide such guarantees to Oy Sisu-Auto Ab with a minimum guarantee fee of 0,5 % per annum. The percentage of the guarantee fee is said to depend on the offered counter guarantee and the financial standing of the company. A similar offer with an annual guarantee fee of 0,5 % has been offered to Oy Sisu-Auto Ab by the Insurance Company of Finland Ltd.

Two offers acquired by the Ministry of Finance lay down similar premiums. An offer from Postipankki Ltd. lays down a guarantee fee at the level of 0,5 % per annum covering short-term and even long-term guarantees of Finnish major corporations which are in good financial standing. Another corresponding offer made by Union Bank of Finland indicates that the level of annual guarantee fees for Finnish corporate customers during 1994 has been from 0,45 % upwards.

As regards offers acquired by the Finnish authorities from international banks, Midland Bank issues guarantees for account of Finnish and other Scandinavian corporates. The pricing of such guarantees may range considerably depending upon the credit standing of the client and type of guarantee to be issued. The prime rate for first class corporates is 0,2 % per annum. An offer made by Banque Indosuez indicates that the annual price of guarantees, determined by similar criteria, for prime Finnish corporate customers during 1994 has been from 0,4 % upwards.

The Finnish authorities claim that the proposed State guarantees do not constitute aid in the meaning of Article 61 of the EEA Agreement as the six above-mentioned indicative offers from the market are cheaper or have equal annual fees as those offered by the State. In addition, the State guarantees involve a front end fee of 0,6 % or 0,4 %.

As the cost of the guarantees granted by the State for domestic and international loans are not lower than the prevailing market prices, the State can be considered acting in this case as a private investor operating under normal market economy conditions. The cost of the guarantees granted by the State are in fact more expensive than the ones offered by private operators due to the front end fees charged by the State. It is, therefore, deemed that Oy Sisu-Auto Ab does not obtain a financial benefit with the guarantees offered by the State.

Furthermore, prior to delivering the decision of the Council of State to grant the guarantees, Oy Sisu-Auto Ab is to sign an agreement to accept a reservation according to which the Council of State can later order the company to provide a collateral for the State should the profitability, financial solidity or the economic situation of the company in general change in such a way that the risk of the State as a guarantor increases compared to the situation at the time of the granting of the guarantee. If that were to be the case, Oy Sisu-Auto Ab would be in a position to provide a chattel mortgage as a collateral. Thus, the risks for the State are deemed not to exceed the risks the private guarantors would be prepared to take in issuing a corresponding guarantee.

It should also be noted that Oy Sisu-Auto Ab operates like any limited company and its legal status, therefore, does not prevent it from going bankrupt. The company, albeit a State controlled one, is, thus, not in receipt of any permanent aid on all its borrowings equivalent to a guarantee as would be the case if bankruptcy was not allowed.⁶

On the basis of the above considerations, it is concluded that the State guarantees for domestic and international loans of Oy Sisu-Auto Ab do not constitute aid in the meaning of Article 61(1) of the EEA Agreement.

HAS ADOPTED THIS DECISION:

1. The EFTA Surveillance Authority has decided to close the case concerning the State guarantees for domestic and international loans of Oy Sisu-Auto Ab due to the inapplicability of Article 61(1) of the EEA Agreement, as notified by letters dated 28 June, 17 August, 29 September and 2 November 1994.

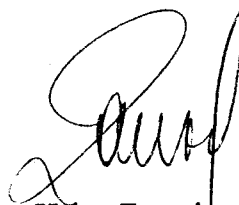
Done at Brussels, 9 November 1994

For the EFTA Surveillance Authority



Knut Almestad

President of the EFTA Surveillance Authority



Heinz Zourek

College Member

⁶ See paragraph (2) of section 20.7.2. of the State Aid Guidelines.