

Chapter 3

State aid

Introduction

State aid is assistance provided by public bodies to entities engaged in economic activities. The most obvious form of State aid is, for example, governments giving grants to businesses to facilitate capital investment, or providing aid to rescue and restructure ailing companies. State aid can, however, consist of public support measures in numerous forms, such as tax exemptions, loans on preferential terms, state guarantees and investments in share capital made by public authorities on terms that would not be acceptable to a private investor. State aid is present when assistance is provided:

- by an EFTA State or through state resources;
- that confers an advantage to a recipient(s);
- that favours certain economic undertakings or the production of certain goods;
- that distorts or has the potential to distort competition; and
- that affects trade across the EEA.

The EEA Agreement contains a general prohibition on state aid in order to prevent distortions of competition and negative effects on intra-EEA trade. The rules seek to ensure a level playing field for companies across Europe, and to prevent government assistance being used as a form of protectionism in the absence of trade barriers. The prohibition is, however, subject to exceptions, recognising that government intervention can be necessary to correct market failure and for other purposes.



The role of the Authority

The prohibition on state aid that applies in Iceland, Liechtenstein and Norway is enforced by the Authority. It is also the Authority's role to decide how the exceptions to the prohibition are to apply. In its enforcement of the rules, the Authority has equivalent powers and similar functions to those of the Commission. The Authority is, like the Commission, independent from the states over which it has jurisdiction.

Plans to grant state aid must be notified to the Authority prior to implementation. The Authority must then assess whether such a plan constitutes state aid and, if it does, examine whether it is eligible for exemption.

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HIGHLIGHTS OF 2009

The state aid rules became more prominent than ever before during 2009 due to the financial crisis. The EFTA Surveillance Authority has had major cases resulting from the crisis, in particular a scheme for the recapitalisation of Norwegian banks, with work ongoing on emergency measures undertaken in Iceland. Other prominent developments over the year have included a number of environmental aid cases, mainly in Norway, and various transport cases in both Iceland and Norway.

Overview

State aid activities in 2009

In 2009, the Authority adopted 52 State aid decisions, the highest number in the Authority's history. Over the same period, for the second year running the Authority also closed more cases than before, 72 in total. The Authority put considerable emphasis in 2009 on completing the assessment of the oldest state aid complaints, closing 21 pending cases.

Fifty new state aid cases were opened by the Authority, of which 33 concerned the implementation of individual state aid grants or aid schemes. The Authority opened 11 new cases based on complaints (four concerning Icelandic cases and seven relating to Norway). Iceland notified six new state aid measures during the year, while 13 new notifications were registered from Norway. Two new cases were launched on the own initiative of the Authority, one of which led to the opening of the formal investigation procedure. A new recovery case was also commenced and the Authority opened the formal investigation procedure in four cases. Of the 65 cases pending at the end of 2009, 34 are based on complaints, there are only nine cases which follow from notifications by the EFTA States.

As was the case in 2008, a large proportion of the Authority's state aid cases in 2009 concerned environmental and energy related issues. A considerable amount of the Authority's time was also devoted to the adoption of guidelines for the assessment of state aid relating to the financial crisis and to the review of various measures envisaged or put in place by Iceland and Norway as a result of the crisis.

The revision of the state aid Guidelines

The Authority adopts guidelines to explain how it interprets and applies the state aid rules. They are consolidated into a document on Procedural and Substantive Guidelines in the field of state aid. These State Aid Guidelines are regularly amended and supplemented. In 2009, the Authority prolonged the Rescue and Restructuring Aid Guidelines until 30 November 2012 and adopted a new chapter on ship management companies. In addition, new rules setting the conditions for approving state aid for training and employment requiring individual notification were also adopted.

The application of the state aid rules in the context of the financial crisis

The financial crisis and the break-down of the inter-lending banking market required the Authority to adopt measures setting out guidelines on aid to the banking sector. Based on Article 61(3)(b) of the EEA Agreement (aid allowed in order to remedy a serious disturbance in the economy), the Authority has adopted four sets of guidelines (which correspond to those issued by the European Commission) to facilitate state action to restore financial stability and ensure continued lending to the real economy.

Measures to assist financial institutions

On 29 January 2009, the Authority adopted guidelines on the application of the state aid rules to measures taken in relation to the **financial institutions** (commonly referred to as "the Banking Guidelines"). The guidelines provide for expedited approval of schemes which are well-targeted and proportionate to the stabilisation of financial markets and which include safeguards against unnecessary negative effects on competition.

On the same date, the Authority adopted Guidelines on the **recapitalisation of financial institutions** affected by the financial crisis. Recapitalisations of banks by national authorities involve state aid when no private market investor would have undertaken similar transactions. The guidelines require that in the case of recapitalisations of fundamentally sound banks the state must receive adequate "market" remuneration (based on the capital instrument, interest rate and the risk profile of the bank), while the state remuneration from distressed banks must be higher and require the submission of a restructuring plan within six months of recapitalisation.

On 22 April 2009, the Authority adopted guidelines on the treatment of impaired assets in the banking sector. **Impaired assets** are assets on which banks are likely to incur losses. Where impaired assets are purchased or insured by the state at a value above the market price, or where the price of a state guarantee does not fully compensate the state for its liability, the measure involves state aid. The guidelines set out methodologies on the valuation of the impaired assets.

On 25 November 2009, the Authority adopted new guidelines on **return to viability** under the framework of the Banking Guidelines which provides further explanation on when a bank needs to submit a restructuring plan and explain the approach and criteria relevant for the purposes of assessing it.

Measures for the real economy

On 29 January 2009, the Authority adopted guidelines on aid for assisting the real economy. Due to the drying up of the lending market, even otherwise sound companies have been unable to obtain financing. Based on Article 61(3)(b) of the EEA Agreement, the framework enables national authorities to provide grants of up to EUR 500 000 as compatible state aid for companies affected by the crisis.

New guidelines for the handing of state aid cases

The Authority has adopted new guidelines on a simplified notification procedure for the treatment of certain types of state aid; and a Best Practices Code. Both have the purpose of improving the effectiveness of procedures thereby enhancing cooperation with national authorities.

These guidelines are effective from 1 January 2010.

Recovery on unlawful State aid

The Authority has included a new Chapter on recovery of unlawful and incompatible state aid in its State Aid Guidelines, which sets out detailed rules applicable to recovery cases. Recovery of unlawful and incompatible state aid is usually a lengthy process in the EFTA States, and generally the cases are not completed within the time-limits set out in the relevant legislation and the recovery decisions. The Authority's oldest unresolved recovery

case dates back to February 2004 and concerns an Icelandic scheme in favour of International Trading Companies. There are two recovery cases pending in Norway concerning an energy savings fund "Enova" case from 2006, and the "Wood scheme" from 2008. In 2009, the Authority closed two recovery cases. One was closed because recovery had been completed by the national authorities. The other was closed because the beneficiary company (the Norwegian Aviation School) was declared bankrupt and had insufficient assets to cover its debts.

Environmental aid

Carbon capture and storage – Kårstø project

In January 2009 the Authority authorised state funding to a carbon capture and storage facility (a "CCS") at Kårstø, Norway (collectively the "Kårstø project"). The CCS is intended to capture and store CO₂ emitted by a power plant owned by Naturkraft. The CCS will be owned and managed by the 100% state owned company, Gassnova SF.

The aim of the Kårstø project is to prevent approximately 1 million tonnes of CO₂ from being released to the atmosphere, which represents approximately 85% of the emissions of the power plant. It therefore could facilitate a reduction of 2% in Norway's total CO₂ emissions.

The intention is to test full-scale carbon capture using current technology (i.e. amine based post-combustion solution), and further develop the technology with the aim of reducing its costs and encouraging its global deployment at affordable prices. The state funding will cover 100% of the investment cost and operating costs of the CCS for a period of 10 years.

The Authority approved the state aid to the project under its environmental aid guidelines as it is aimed at the protection of the environment through capturing and storing carbon, a long established objective of common interest. The Kårstø project is also well designed – it is generally acknowledged that cost reductions are necessary in order to enable CO₂ capture and storage to move forward and contribute to combating climate change. An essential step for cutting operating costs of CCS is to test the technology and learn from the experience gained. The investment undertaken by the Norwegian state and the lessons

to be learned from the Kårstø project will contribute to showing how and to what extent the CCS technology can be made less costly for investors. The state investment can thereby pave the way for making CCS accessible at lower cost and facilitate more private sector investment in CCS.

The aid is limited to 10 years, which should allow enough time and opportunity to meet the objectives of the aid, while limiting the potential that the state funding could affect private market investor initiatives in the long term. Distortion of competition and effects on trade should also be limited given that the state owned company will share know-how acquired via the Kårstø project at conferences and workshops as well as within the framework of early CCS movers established by the European Commission.



Norwegian Bioenergy Scheme

In February 2009, the Authority approved a Bioenergy Scheme notified by the Norwegian authorities based on its Guidelines on state aid for environmental protection.

The objective of the scheme is to promote and increase the production and use of renewable energy for heating, and thereby to reduce the emission of CO₂ and other greenhouse gases. The scheme is aimed primarily at generating bioenergy activities within the agricultural and forestry sector, but all sectors are eligible for funding under the scheme. State support is available for farm heating, greenhouse heating, sale of heating, production of biofuel used for transportation, for cogeneration units producing both electricity and heat and for environmental studies.

The scheme is administrated by Innovation Norway. The Norwegian authorities plan to allocate NOK 35 million (approximately EUR 4 million) per year under the scheme until January 2014.

In July 2009, the Authority closed a formal investigation into a Norwegian scheme on support for alternative, renewable heating and electricity savings in private households. The scheme supports consumer investment in certain environmentally friendly heating technologies in order to reduce the use of electric heating in private households. The technologies covered by the scheme are pellet stoves and boilers, heat pumps and solar heating collectors connected to waterborne heating systems, and control systems for reducing consumption of electricity. Although grants under the scheme are paid directly to consumers, the Authority took the view that the scheme indirectly subsidises certain undertakings active in the sector of the technologies covered by the scheme and therefore involved state aid within the meaning of Article 61 of the EEA Agreement.

The Authority assessed the scheme after receiving a complaint which contested the compatibility of the scheme with the EEA Agreement in light of the fact that wood-burning stoves are not covered by the scheme. The Authority accepted the Norwegian authorities reasoning for not including wood-burning stoves under the scheme, which was that they are not as suited to reducing electrical heating in a normal household as the technologies covered by the scheme.

On the basis of its environmentally friendly objectives, therefore, the Authority found the scheme to be compatible with Article 61(3)(c) of the EEA Agreement.

Norwegian CO₂ tax on gas and LPG on the use of gas for purposes other than the heating of buildings

Norway's planned exemption from its CO₂ tax for the use of natural gas and LPG was disallowed by the Authority in July 2009.

The Norwegian state imposes a tax, levied on the use of certain mineral products, on CO₂ emissions. The tax has historically only been levied on the use of mineral oil and petrol and it was proposed that it be extended to the use of natural gas and LPG, but only when used for the purposes of heating buildings.

The Authority concluded, however, after a formal investigation, that taxation in such a form would constitute state aid to those who benefit from the exemption, and that such aid could not be justified under the EEA Agreement as it would not be compatible with the Authority's Environmental Aid Guidelines. The Authority took the view that compatibility with the guidelines would require that the minimum level of taxation specified in the European Community's Energy Taxation Directive (or equivalent measures) be imposed upon the consumption of natural gas and LPG.

Although the *Energy Taxation Directive* has not been incorporated into the EEA Agreement, for the purposes of assessing the compatibility of state aid, the Authority applied the same points of reference as those contained in the Community guidelines. This was done in order to ensure uniform application of state aid rules and equal conditions of competition throughout the EEA.

Aid in the transport sector

Maritime transport

NORWEGIAN SPECIAL TAX SYSTEM FOR SHIPPING

In December 2008, the Authority approved a new special tax system under which income generated from eligible maritime activities is exempt, with ship owners instead of being taxed directly on the tonnage of shipping that it transports irrespective of actual profits or losses. Transitional measures dealing with the exit from the former system were also approved.

In February 2009, the Norwegian authorities notified a change to the functioning of environmental funds established by deferred taxes (the abolition of the need to invest in environmental measures within 15 years) and an extension of the guarantees for loans to companies outside the special tax system. The Authority took the view that both changes were compatible with the functioning of the EEA Agreement.

TONNAGE TAX AND SEAFARERS REFUND SCHEME IN ICELAND

In July 2009, the Authority found a tonnage tax scheme (similar to that operated in Norway) and a refund scheme for the employment of seafarers incompatible with the EEA Agreement. No recovery provisions were, however, necessary as no payments had been made to ship owners under either scheme.

The schemes were incompatible mainly because of the obligation for the ship owner to register ships in the Icelandic International Ship Register. Moreover, the tonnage tax scheme was based on tonnage tax rates which were lower than in other EEA States, and the duty to remain within the scheme for a shorter duration than in other EEA States.

The refund scheme for the employment of seafarers, was considered incompatible because it was not clear that the condition that aid be only given in relation to the employment of EEA seafarers for scheduled passenger services between ports of the EEA would be met.

ICELANDIC HARBOURS ACT

In July 2009, the Authority concluded that certain amendments to the Icelandic Harbour Act passed in 2003 and in 2007 enabled payment of unlawful state aid and therefore breached the EEA Agreement. Funding for quay installations, and damage compensation for those installations, as well as for ship lifts and hoists, were considered to constitute state aid. Such funding could not be justified as the Harbours Act limits funding to harbours owned by municipalities and excludes private sector harbour operators.

The Authority, however, also concluded that other funding provisions – for pilot vessels – did not constitute state aid, concurring with the Icelandic authorities that such vessels perform an essential safety function necessary in the public interest and which is not economic in nature.



PORT OF REYKJAVIK

On 30 October 2009, the EFTA Surveillance Authority opened a formal investigation procedure in order to examine measures by the Port of Reykjavik alleged to constitute unlawful state aid.

The case was brought to the attention of the Authority following a complaint concerning several transactions involving the Port of Reykjavik and its subsidiaries. In opening the investigation, the Authority expressed doubts regarding the compatibility of two transactions whereby the Port of Reykjavik bought shares in the two Icelandic companies Dráttarbrautir Reykjavíkur and Stálsmiðjan-Slippstöðin (later Hafnarhús ehf). In particular, the Authority expressed doubt as to whether the price paid by the Port reflected the market price of those companies.

In the same decision, the Authority concluded that several other measures by the Port of Reykjavik and its subsidiaries did not amount to state aid within the meaning of the EEA Agreement.

Airports

ROUTE DEVELOPMENT FUND FOR BODØ

In March 2009, the Authority considered the Route Development Fund for Bodø in Norway compatible with the EEA Agreement on the basis of the Guidelines on start-up aid to airlines departing from regional airports. This Fund makes financial support available for airlines launching new international air routes from the regional airport in Bodø. Funding may cover a maximum of 40% of the start-up costs for up to three years. Aid is available to all airline operators on the condition that a business plan for the creation of genuinely new international routes is approved.

INVESTMENTS IN INFRASTRUCTURE

AT SKIEN-GEITERYGGEN AIRPORT

In April 2009, the Authority approved several investments in infrastructure at Skien-Geiteryggen Airport in Norway under the State Aid Guidelines on financing of airports and start-up aid to airlines operating flights departing from regional airports. The Authority considered that the investments were necessary and proportionate to the objective of the continuing operation of the airport. The Authority also concluded that trade would not

be affected to an extent contrary to the functioning of the EEA Agreement given the low volume of traffic at Skien-Geiteryggen airport.

NEW ROUTES FROM NORWEGIAN AIRPORTS

In a decision adopted in May 2009, the Authority concluded that a newly notified incentive scheme for the establishment of new routes from Norwegian airports did not constitute state aid as the airport manager, Avinor, was acting as a market economy investor by seeking to maximise its income and revenues. Avinor may grant reductions to take-off charges if the reduction will entail an increase in its income and a better use of aircrafts and airport facilities. Any air carrier may obtain reductions if it shows that the new route will be profitable in the long run and that it will be profitable for Avinor to provide an incentive in the form of a start-up rebate. Avinor may also provide assistance to route development funds, provided that the same principles of ensuring profitability are complied with.

LISTA AIRBASE

On 27 July 2009, the Authority closed its investigation into the sale of Lista airbase and concluded that the price paid did not contain any element of state aid.

An independent expert appointed by the Authority concluded that the airbase had been sold at a fair price, reflecting the remoteness of the property, the considerable need of repair and maintenance of the buildings and the downturn in the property market at the time. Having investigated the case, in light of the conclusions of the independent expert and the fact that the property was burdened with pre-emption rights, the Authority came to the conclusion that the sale of Lista airbase did not constitute state aid.

CASE E-6/09 MAGASIN- OG UKEPRESSEFORENINGEN V ESA: ESA'S ALLEGED FAILURE TO ACT

In May 2009, a Norwegian association of undertakings, Magasin- og Ukepresseforeningen, brought an action against the Authority before the EFTA Court in Case E-6/09 seeking a declaration that the Authority failed to act on its complaint concerning alleged state aid to newspapers with regard to the VAT exemption of newspapers and periodicals in Norway.

In July 2009, the Authority submitted to the EFTA Court that the action, based on Article 37 of the Surveillance and Court Agreement, was inadmissible because there was no challengeable obligation to act in cases relating to aid existing before the entry into force of the EEA Agreement, and because Magasin- og Ukepresseforeningen lacked standing as it was not individually concerned by the alleged failure to act.

As to the merits of the complaint, the Authority is still in discussions with the Norwegian government and has not yet taken a final view on whether to issue a recommendation to Norway for appropriate measures or to close the case without further action.

Energy sector

Landsvirkjun and Orkuveita Reykjavíkur

In July 2009, the Authority asked Iceland to abolish unlimited state guarantees to the National Power Company (Landsvirkjun) and Reykjavík Energy (Orkuveita Reykjavíkur).

Following receipt of a complaint, the Authority has investigated a series of measures directed at publicly owned electricity undertakings active in Iceland finding that all utilities benefited from tax exemptions and state guarantees. Since then, all tax exemptions have been abolished and most of the utilities have become limited liability companies, meaning that they are no longer able to benefit from unlimited state guarantees.

However, Landsvirkjun and Orkuveita Reykjavíkur benefited from an unlimited state guarantee which was not compatible with the state aid rules of the EEA Agreement. In its decision in July, the Authority decided to propose to Iceland that it should take appropriate measures to eliminate state aid resulting from the unlimited state guarantees enjoyed by two electricity utilities. The decision concludes that, as from 1 January 2010, the utilities can only benefit from state guarantees that are limited in duration and upon which a premium is payable. The Icelandic authorities fully accepted the proposed appropriate measures.

Becromal

In July 2009, the Authority decided to close the formal investigation procedure opened in December 2007 into the sale of electric power by the Municipality of Notodden to the aluminium foil producer Becromal Norway AS. The contract in question was found not to entail aid in favour of Becromal.

The Authority became aware of Notodden municipality's sale of electric power to the company Becromal Norway AS through press reports in July 2007. Power sales by municipalities to private undertakings may constitute state aid if the price paid is below market prices.

Parts of the power volumes sold to Becromal were bought by the municipality under special contractual arrangements, as well as under certain provisions of Norwegian law which allow municipalities in which power plants are located to buy power at cost (referred to as "concession power"). In the majority of cases, the price of the concession power that the municipalities are entitled to buy is significantly lower than the market price. As a result, in December 2007, having had doubts that the

contract prices reflected market prices, the Authority decided to open the formal investigation procedure in respect of power sales between 2001 and 2007.

However, having examined Norway's comments to the decision to open the formal investigation as well as publicly available price statistics for the period in question, the Authority, in its final decision, found that the price in this particular contract did not seem to differ sufficiently from the likely market price for state aid to be present.

Aid for cultural, sports and educational purposes

NORWEGIAN AID SCHEMES FOR AUDIOVISUAL PRODUCTION AND DEVELOPMENT OF SCREENPLAYS

In April 2009, the EFTA Surveillance Authority approved a scheme for audiovisual productions and a scheme for the development of screenplays and educational measures on the basis of Article 61(3)(c) of the EEA Agreement and the Authority's Guidelines relating to state aid to cinematographic and audiovisual works

The audiovisual productions scheme entails 13 different types of support measures such as support for the production of cinema films, short films, documentaries, television series and support for the promotion and distribution of cinema films. Most of the measures corresponded to previously applicable measures.

The scheme for the development of screenplays and educational measures is aimed at individual workers at the early stages of a film project development and education of film workers.

Icelandic film support schemes

In June 2009, the Authority approved an increase in the proportion of reimbursable production costs from 14 to 20% in the Icelandic support scheme for temporary reimbursement of certain film making costs. The scheme provides a mechanism for support of film production in Iceland under which a share of production costs may be reimbursed to the producer.

The Authority concluded that the amendment is compatible with the functioning of the EEA Agreement as it complies with the conditions set out in its Guidelines on state aid to cinematographic and other audiovisual works.



NORSK FILM GROUP

On 2 December 2009, the Authority decided to open a formal investigation procedure into alleged State aid granted to companies previously belonging to the Norsk Film group. The case was brought to the attention of the Authority by a complaint filed by nine Norwegian film companies.

In its decision, the Authority expressed doubts as to the compatibility of the aid in respect of two measures. The first measure concerned the payment of an ad hoc aid of NOK 36 million to Norsk Film AS in 1998 and 1999 for the upgrading of production facilities called Filmparken. The second measure concerned the application of a preferential tax regime to companies previously belonging to the Norsk Film group over the period 1995–2001. The two measures were not notified to the Authority before the aid was granted and the Authority only became aware of the grants after receiving the complaint.

The Authority recognises the importance of cinema as a cornerstone of cultural expression and has over the years approved many aid schemes for cinema production and audiovisual works in Norway. In this case, however, the Authority has doubts with regard to the compatibility of the two measures under investigation.

Support of sport activities and infrastructure

In the course of the year, the Authority has investigated several cases concerning the granting of state support to sporting activities and to sport infrastructure in Norway. The main question raised in these cases was to what extent sport should be considered as an economic activity or can it (in certain circumstances) constitute a service of general economic interest and in consequence can benefit from compensation from the state for operational and to a certain extent investment costs.

STUDENT WELFARE ASSOCIATION OF BERGEN

The Student Welfare Association of Bergen (SiB) runs several fitness centres in the Bergen area. Costs of the running of a fitness centre with a view of satisfying students' welfare needs can be paid for by the state as compensation for services of general economic interest. However, since some of the fitness centres concerned were open to both students and the general public, the Authority requested that certain amendments be made to the system of financing of SiB's fitness facilities.

Following the changes, most notably the establishment of separate accounting procedures for revenue received from non-students, a dual system for the admission fee for students and non-students and an appropriate monitoring of the new system, the Authority concluded that appropriate safeguards mechanisms had been put in place to avoid cross-subsidisation of the commercial activities of SiB from state resources.

KIPPERMOEN LEISURE CENTRE

In December 2009, the Authority opened a formal investigation following a complaint concerning the financing of Kippermoen Leisure Centre. The centre is owned by the municipality of Vefsn. Its costs have been covered by the municipal budget and user fees since it was established in the early 1970s. The Authority has expressed doubts as to whether the financing can be accepted as compensation for the costs of a service of general economic interest. In the course of the formal investigation the Authority will also examine whether aid can be justified on the basis of cultural or regional considerations.

TIME

Based on a complaint received in 2007, the Authority has investigated whether certain property sales in the municipality of Time in western Norway, including the transfer of the ground for football stadium to the local football club, entailed state aid in violation of the EEA state aid rules. The land for the stadium was transferred to Bryne fotballklubb in 2003 without remuneration. As any transfer of a property to an undertaking below market price may entail state aid, the Authority, in December 2007, decided to open the formal investigation procedure.

The Authority concluded in July 2009 that the transaction did not entail state aid since the advantage was granted to the club in its capacity as a non-economic entity providing recreational football activities in the local community, primarily to children and young people. The professional part of the club, which (at the time of the transfer) played in the Norwegian premier league, did not benefit from this advantage as it was paying market-based (arms-length) rent for the use of the stadium. At the time of transfer, financial and organisational separation ensured that there was no spillover benefit from the advantage given to the non-economic activities to the commercial activities carried out by the professional football club.

Norwegian Aviation School

In July 2009, the Authority found that the direct grant of NOK 4.5 million from the Norwegian State budget and a loan guarantee by Troms County, both in favour of Norwegian Aviation College (NAC) in Bardufoss, Norway, constituted unlawful state aid.

During the course of the same investigation, project funding and loans granted in favour of Norsk Luftfartshøgskole (a foundation whose aim is to promote the operation of airline pilot education in the north of Norway) by Troms County and Målselv Municipality were found not to amount to state aid, as it was considered not an undertaking engaged in economic activity.

Aid granted to major undertakings in the EFTA States

Helguvík aluminium plant

In July, the Authority approved State aid in the form of tax and fee concessions for a new aluminium smelter at Helguvík, Iceland.

Norðurál Helguvík ehf., a subsidiary of the American company Century Aluminium, plans to construct and operate an aluminium smelter. The annual production capacity of the plant will be 360 000 tonnes of aluminium when the smelter reaches full output and approximately 540 persons will be directly employed. The estimated total investment cost is 1,836 million USD.

The Icelandic Government notified the Authority of its intention to enter into an investment agreement with the company, consisting of tax and fee concessions to Norðurál Helguvík ehf.

The Authority deemed the state aid, granted via the proposed tax and fee concessions, to be investment aid, which could be approved as regional aid in accordance with the Authority's guidelines. The amount of aid granted will be within the maximum aid ceiling for large investment projects according to the guidelines, approximately EUR 70 million. The Authority considered the aid to be necessary for the project to be realised and recognised the positive effects of the investment for the region.

The electricity for the aluminium smelter will be supplied by geothermal power from plants to be constructed by two power companies; the publicly owned Orkuveita Reykjavíkur and the privately owned HS Orka hf. The Authority took the view that the power contracts did not involve state aid.

Mesta AS – reorganisation of road construction and maintenance activities

In October 2009, the Authority concluded a formal investigation procedure in which it considered whether Mesta AS, a fully state-owned Norwegian road construction company, received state aid by means of: (i) public funding for restructuring costs; (ii) a below market value assessment of assets; (iii) overpriced transitional contracts; and finally (iv) by means of an exemption from paying document and registration duties in relation to the transfer of ownership of real estate.

The Authority ordered the Norwegian authorities to recover incompatible state aid for (certain) restructuring costs, over-compensation to Mesta AS for operation and maintenance contracts, and aid granted via an exemption from paying document duty and registration fee.

As regards the restructuring costs, the Authority found that the Norwegian State granted aid worth NOK 993.6 million for costs consisting of early retirement pension packages and other employment benefits. In addition to this, the Authority found that state aid worth NOK 150 million had been granted to Mesta AS in the form of equity as a means to finance the costs of offering compensation for curtailed or lost salary.

With the exception of state funding for certain specific costs (relating to moving, commuting and transfer of archives), the Authority concluded that aid granted for restructuring purposes was compatible with the EEA Agreement since the measures paved the way for opening up the national road services market to competition.

The transitional contracts transferred to Mesta AS included both construction contracts and operation and maintenance contracts for carrying out work on behalf of the Public Road Administration. The Authority found that the construction contracts were transferred to Mesta AS at market value and therefore did not involve state aid. As to the operation and maintenance contracts, the Authority found that Mesta AS had been entrusted with a public service obligation within the meaning of Article 59(2) of the EEA Agreement. Following a verification of the level of the compensation to Mesta AS for the services provided, the Authority concluded, however, that Mesta AS was overcompensated by NOK 66.4 million.

Finally, the Authority found that the exemption granted to Mesta AS from paying document duty and registration fees in respect of the transfer of ownership of real estate involved state aid which could not benefit from any of the exemptions in the EEA Agreement.

Real estate

The grant of aid in the context of real estate transactions, in particular by local authorities, continues to generate a considerable number of state aid cases either on the basis of complaints or investigations carried out at the Authority's own instigation.

In December 2009, the Authority opened a formal investigation procedure into the sale of a plot of land by the Norwegian municipality of Asker to Asker Brygge AS. The Authority has doubts as to whether the sales transaction was carried out according to the market investor principle. In particular, the Authority has doubts whether the price agreed upon in the option agreement corresponded to the market price.

The Authority also closed the assessment of four additional cases concerning the grant of state aid in the context of real estate transaction.



Tax measures

Cooperatives

In July 2009, the Authority closed its investigation into a Norwegian proposal to introduce a special tax deduction for certain cooperatives.

Under the scheme, certain consumer cooperatives and co-operative building societies, as well as cooperatives within the agriculture, forestry and fisheries sectors, would be entitled to deduct allocations of equity capital from their income, thereby reducing the basis for their income tax. The Norwegian authorities argued that the scheme would compensate the cooperatives for difficulties in gaining access to equity capital.

The Authority considered that the scheme constituted state aid as the scheme would confer an advantage on the cooperatives. Moreover, the correlation between the alleged difficulties for co-operatives in gaining access to capital and the tax benefit was not been made sufficiently clear by the Norwegian authorities. The Authority eventually concluded that the scheme was not compatible with the EEA Agreement. No recovery provisions were, however, necessary as the Norwegian authorities had not implemented the scheme.

Taxation of investment undertakings under the Liechtenstein Tax Act

In March 2009, the Authority opened a formal investigation into Liechtenstein's taxation of investment companies. After a preliminary assessment, the Authority concluded that certain tax reliefs constituted state aid and questioned their compatibility with the EEA Agreement.

Under Liechtenstein law investment undertakings invest capital raised from the public following public advertising for the purpose of a collective investment, and are usually invested and managed for the collective account of the unit-holders according to the principle of risk-spreading. The management of these assets can be undertaken by investment funds or investment companies.

Between 1996 and 2005, no income tax was levied on the management activities of investment companies. The capital tax was fixed at 1% instead of the generally applicable 2% and was reduced further for any capital exceeding CHF 2 million. Moreover, no coupon tax was levied on the coupons of securities (or documents equal to securities) issued by investment companies. The coupon tax applies to companies whose capital is divided into shares, as for example companies limited by shares and companies with limited liability. The decision only related to the own assets of the investment companies and not to the assets managed by them.

The financial crisis

Agreement between the Norwegian State and Eksportfinans ASA concerning state funding of Eksportfinans

In January 2009, the Authority concluded that Norwegian State funding offered to Eksportfinans ASA was made on market conditions and did not constitute State aid within the meaning of the EEA Agreement.

Eksportfinans provides financial services to Norwegian businesses involved in the export of goods and services. The company is also the operator of government-supported export financing to the Norwegian export industry. As a result of the financial crisis, Eksportfinans experienced increased difficulty in obtaining long-term financing. In order to remedy this, the Norwegian State entered into a loan agreement with Eksportfinans under which the State provides loans over a two-year period with a total budget of NOK 30 billion. The loans are to be used to finance new export credits.

The Authority based its assessment on its Guidelines on a temporary framework for state aid measures to support access to finance in the current financial and economic crisis and its Guidelines on reference and discount rates. Section 4.4.1 of the temporary framework guidelines declares that interest rates which are calculated according to the method set out in the reference and discount rate guidelines do not contain state aid. The Norwegian authorities have confirmed that the interest rate to be applied to any loan given under the loan agreement will be equal to or higher than the rate set out in these guidelines. The Authority therefore considered that all funding offered to Eksportfinans will be on market terms.

Norwegian scheme for recapitalisation of sound banks

In May 2009, the Authority approved a scheme for temporary recapitalisation of fundamentally sound banks in Norway. Following pre-notification contacts between the Norwegian authorities and the Authority, the formal notification of the scheme was received on 28 April 2009 and the decision adopted by the Authority on 8 May 2009.

The objective of the recapitalisation scheme was to restore financial stability and facilitate lending to the real economy. Fundamentally sound banks could, within a six-month window, apply for a state capital injection from the Statens finansfond, the body that administers the recapitalisation scheme on behalf of the Norwegian State.

The recapitalisation scheme is non-discriminatory and is limited in time and scope. Consistent with the Authority's Recapitalisation guidelines, it provides for an appropriate level of remuneration, which takes the market situation of each beneficiary into account, and has adequate safeguards to minimise potential distortions of competition. The Authority has, on that basis, concluded that the scheme was an appropriate means to remedy a serious disturbance in the Norwegian economy and therefore compatible with Article 61(3)(b) of the EEA Agreement.

Temporary aid scheme to grant compatible aid of up to EUR 500 000 to businesses

On 20 May 2009, the Authority authorised, under Article 61(3)(b) of the EEA Agreement, a Norwegian measure to help businesses deal with the financial crisis.

Aid of up to EUR 500 000 per firm may be granted until 31 December 2010 to businesses facing funding problems because of the current difficulties in obtaining credit. The aid can take the form of direct grants, reimbursable grants, interest rate subsidies and subsidised public loans and public guarantees. This measure is meant to contribute to remedying the disturbance in the Norwegian economy provoked by the financial crisis.

The scheme meets the conditions laid down in the Temporary Framework for state aid measures to support access to finance during the financial. In particular, the scheme is limited in time and scope and concerns only companies that were not in difficulty on 1 July 2008, that is before the unfolding of the crisis. Interventions of the Icelandic Housing Financing Fund in financial markets.

In view of the shortage of liquidity in the Icelandic banking sector as a result of the global financial crisis and the particular difficulties faced by Iceland, the Icelandic authorities decided to intervene in the financial markets inter alia through the national housing agency, the Housing Financing Fund (HFF). Two separate types of asset swap measures were designed and implemented during the course of 2008 and 2009, one of a temporary and one of a permanent nature, both mainly intended to assist the activities of Icelandic savings banks.

The swap arrangements involved HFF bonds on the one side and mortgage loans or bonds secured with mortgage loans entered into with the beneficiary banks on the other. It enabled the banks to exchange the HFF bonds for liquidity in transactions subsequently entered into with the Central Bank. For that reason, the Authority assessed the measure as having the effect of a guarantee which provided the banks with collateral. Based on its guidelines on state aid to financial institutions granted in the context of the current global financial crisis, the Authority found that the aid had a non-discriminatory character and was appropriate in terms of being well targeted. The Authority noted in particular the limitations of the HFF's intervention in time and scope.

The second, permanent, asset swap measure was notified in mid 2009 and was still subject to preliminary investigation by the Authority at the end of the year.

