

EFTA SURVEILLANCE AUTHORITY DECISION
of 19 March 2014

not to raise objections to individual aid to the NCE Subsea innovation cluster
(Norway)

The EFTA Surveillance Authority (“the Authority”)

HAVING REGARD to the Agreement on the European Economic Area (“the EEA Agreement”), in particular to Article 61 (3) (c) 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 (“the Surveillance and Court Agreement”), in particular to Article 24,

HAVING REGARD to Protocol 3 to the Surveillance and Court Agreement (“Protocol 3”), in particular to Article 1(3) of Part I and Article 4(3) of Part II,

Whereas:

I. FACTS

1. Procedure

- (1) The Norwegian authorities notified individual aid to the NCE Subsea innovation cluster (“NCE Subsea”) pursuant to Article 1(3) of Part I of Protocol 3 by letter received and registered by the Authority on 30 January 2014 (Event No 697631).

2. Description of the proposed measure

2.1 The objective of the aid measure

- (2) The primary objective of the notified measure is to continue supporting the operation of NCE Subsea.

2.2 NCE Subsea

- (3) NCE Subsea is located in the Bergen area and comprises over 100 companies active in the maintenance, modification and operation, as well as the creation of innovative and cutting edge technical products, in relation to subsea installation for the oil and gas industry. Cluster companies include Aker Solutions, Coast Center Base, FMC Technologies, OneSubsea and DNV GL. Besides, there is a great number of highly specialised subcontractors with a unique level of expertise. Furthermore, NCE Subsea cooperates

closely with a number of public research institutions, including Bergen University College.

- (4) NCE Subsea's mission is to promote the Bergen area as the leading area on subsea maintenance, modification and operation, and to contribute to increased innovation within the cluster. In 2008, the cluster companies employed more than 4600 people and had a turnover of NOK 11.6 billion (approx. EUR 1.4 billion).
- (5) NCE Subsea currently receives operating aid for cluster animation through the innovation cluster aid scheme Norwegian Centres of Expertise ("NCE"). The aid scheme was approved by the Authority in its Decision No. 09/11/COL of 26 January 2011 on the Innovation Cluster scheme, which also contains further information on the functioning of the scheme.¹ The aid scheme is implemented by Innovation Norway.²
- (6) Under the scheme, the activities eligible for financial support are process management, establishment of networks and meeting points, analysis and strategy processes, communication and marketing of the cluster's open access facilities, organisation of training programmes, workshops and conferences to support knowledge sharing between the members of the clusters as well as facilitating the development of project ideas and proposals in their early stages.

2.3 Budget and duration

- (7) In 2006, NCE Subsea applied for and was granted aid for cluster animation from NCE. As foreseen under the aid scheme approved by the Authority, the maximum total period of aid is ten years, ending in July 2016 at the latest.
- (8) The annual aid amount, representing a maximum of 50% of all eligible costs, is on average NOK 5 million (approx. EUR 625 000). Given a maximum aid period of ten years, the total aid to NCE Subsea is estimated to reach NOK 50 million (approx. EUR 6.25 million).³
- (9) The Norwegian authorities indicate that assuming a positive decision from the Authority, the cumulative aid amount granted to NCE Subsea will in the course of 2014 exceed the threshold of EUR 5 million contained in paragraph 130 of the Authority's Guidelines⁴ on Aid for Research and Development and Innovation ("the R&D&I Guidelines") and Decision No. 09/11/COL.

3. Comments by the Norwegian authorities

- (10) According to the Norwegian authorities, NCE Subsea requires support beyond the EUR 5 million threshold due to its success in attracting a large number of companies from different sectors, its strong cooperation with knowledge partners and the nature of the cluster's activities, which are characterised by very fast technological development. Furthermore, the cluster combines both very large companies and small, highly specialised

¹ The full text of the decision is available at <http://www.eftasurv.int/media/decisions/9-11-COL.pdf>.

² Innovation Norway is an entity wholly owned by the Norwegian State. Its objective is to promote innovation and business development in Norway.

³ These figures are confirmed by NCE Subsea's "Plan for 3. kontraktsperiode i NCE programmet".

⁴ Procedural and Substantive Rules in the Field of State Aid (State Aid Guidelines), adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in OJ 1994 L 231, as amended by Decision 313/06/COL. The State Aid Guidelines are available on the Authority's website: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>.

niche players, most of which are partners, competitors, suppliers and customers to each other. As a result, there is a particularly high need for communication and cooperation.

- (11) The Norwegian authorities do not dispute that the intended measure classifies as state aid that requires an individual notification to the Authority. However, they argue that the aid should be declared compatible under Article 61(3)(c) of the EEA Agreement in combination with the R&D&I Guidelines.
- (12) The Norwegian authorities note that the measure addresses a well-identified market failure in the form of positive externalities and imperfect information that hinder the development of innovation clusters. They argue that state aid is an appropriate instrument to address this market failure, as has already been concluded by the Authority in Decision No. 09/11/COL. Furthermore, they have submitted an evaluation study⁵ conducted by the independent business consultancy Menon in 2012, which shows that the aid has contributed to new networks and increased collaboration between undertakings, the development of research and education as well as of international cooperation. According to the Norwegian authorities, the aid is also proportionate and limited to the minimum necessary, which is ensured in particular by the rigorous selection and evaluation mechanisms contained in the NCE scheme.
- (13) Regarding the effect of the intended measure on trade and competition, the Norwegian authorities highlight that there is a large number of undertakings involved in the cluster, limiting the economic effect of the aid for the individual participant. The activities supported by aid are pre-competitive and do not have a direct impact on the market structure or commercial transactions. All activities and information sharing are conducted on an open-access basis. The aid to NCE Subsea is granted on the basis of detailed analysis and the effects are monitored through a thorough evaluation system. The evaluations demonstrate that the aid results in increased information sharing, collaboration, R&D&I activity and value creation and thus contributes positively to the sector both regionally and internationally.

II. ASSESSMENT

1. Existence of state aid within the meaning of Article 61(1) of the EEA Agreement

- (14) 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.”

⁵ Jakobsen et al; Samhandling i og mellom klynger - evaluering av seks NCE-prosjekter, Menon rapport nr. 40/2012, available at <http://menon.no/upload/2013/02/13/evaluering-av-seks-nce-prosjekter-hovedrapport.pdf>. For example, the evaluation study highlights the establishment of programmes to facilitate start-ups and international cooperation, e.g. through the creation of a centre of innovation and business development in Brazil. The cluster was also instrumental in bringing together academic institutions and the industry to create specialised degrees, including the first Norwegian Bachelor programme in underwater technology and a Master in subsea technology at Bergen University College.

1.1 Presence of state resources

- (15) The support provided to NCE Subsea by Innovation Norway is directly financed through the annual state budget. The Authority therefore considers that the first condition regarding the use of state resources is met.

1.2 Favouring certain undertakings or the production of certain goods

- (16) The support provided to NCE Subsea takes the form of a non-repayable direct grant, which relieves the cluster and its members of charges that are normally borne from their budgets.
- (17) Furthermore, the support constitutes a selective measure as it is only addressed to those undertakings that take part in NCE Subsea.

1.3 Distortion of competition and effect on trade between Contracting Parties

- (18) The undertakings participating in NCE Subsea carry out their economic activities in competition with other companies from other countries of the EEA and the support afforded to the cluster strengthens their position. The support is therefore liable to affect trade between the Contracting Parties and to distort competition.

1.4 Conclusion

- (19) Based on the above findings, the Authority comes to the conclusion that the notified measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

2. Procedural requirements

- (20) 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”.
- (21) The Authority notes that the Norwegian authorities have not yet implemented the individual aid measure in favour of NCE Subsea. Furthermore, by submitting the notification received and registered by the Authority on 30 January 2014, the Norwegian authorities complied with the notification requirement.

- (22) The Authority can therefore conclude that the Norwegian authorities have respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.

3. Compatibility of the aid

- (23) Under Article 61(3)(c) of the EEA Agreement, aid to facilitate the development of certain economic activities or of certain economic areas may be considered compatible with the functioning of the EEA Agreement where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (24) The primary objective of the notified measure is to support the operation of an innovation cluster. Aid to innovation clusters falls within the scope of the R&D&I Guidelines. The Authority will thus carry out its assessment of the aid measure with reference to Article 61(3)(c) of the EEA Agreement in combination the R&D&I Guidelines.

- (25) Sections 5 to 7 of the R&D&I Guidelines set out a detailed framework for the Authority's assessment.

3.1 Aid intensity and duration of the measure

- (26) The notified measure concerns operating aid for cluster animation. Section 5.8, paragraph 117 of the R&D&I Guidelines provides that "operating aid for cluster animation may be granted to the legal entity operating the innovation cluster."

- (27) Section 5.8 further sets out the compatibility conditions concerning eligible costs and aid intensity.

3.1.1 Eligible costs

- (28) Paragraph 119 of the R&D&I Guidelines provides that "the eligible costs shall be the personnel and administrative costs relating to the following activities:

- marketing of the cluster to recruit new companies to take part in the cluster,
- management of the cluster's open-access facilities,
- organisation of training programmes, workshops and conferences to support knowledge sharing and networking between the members of the cluster."

- (29) The Authority finds that the eligible costs that are taken into account by the Norwegian authorities are in line with the requirements of the R&D&I Guidelines.⁶

3.1.2 Aid intensity

- (30) Paragraph 118 of the R&D&I Guidelines provides that generally "in the case of non-degressive aid, its duration is limited to five years and its intensity must not exceed 50% of the eligible costs". However, the R&D&I Guidelines also foresee that "in duly justified cases, and on the basis of convincing evidence provided by the notifying EFTA State, aid for cluster animation may be granted for a longer period of time, not exceeding ten years".

- (31) As the Authority found in its Decision No. 09/11/COL authorising the NCE innovation cluster scheme, the Norwegian authorities provided sufficient evidence that aid for cluster animation should be allowed for a period up to ten years. In particular, the Authority noted that the aid was subject to regular evaluation and would only be continued if certain conditions linked to performance were met.

- (32) The Norwegian authorities have confirmed that this procedure is respected in the case of NCE Subsea. They have also confirmed that the maximum aid intensity of 50% of eligible costs is complied with.

- (33) On this basis, the Authority finds that the conditions in Section 5.8 of the R&D&I Guidelines regarding the aid intensity and the duration of the support are fulfilled.

3.2 Detailed assessment of the measure

- (34) In assessing whether an aid measure can be deemed compatible with the EEA Agreement, the Authority balances the positive impact of the aid measure in reaching an objective of common interest against its potentially negative side effects by distortion of trade and

⁶ See the list of eligible cost in paragraph (6) above.

competition. As set out in paragraph 14 of the R&D&I Guidelines, the assessment is based on the following steps:

1. Is the aid measure aimed at a well-defined objective of common interest (e.g. growth, employment, cohesion, environment)?
2. Is the aid well designed to deliver the objectives of common interest, i.e. does the proposed aid address the market failure or other objective?
 - Is state aid an appropriate instrument?
 - Is there an incentive effect, i.e. does the aid change the behaviour of the firms?
 - Is the aid measure proportional, i.e. could the same change in behaviour be obtained with less aid?
3. Are the distortions of competition and effect on trade limited, so that the overall balance is positive?

- (35) Section 7 of the R&D&I Guidelines states that the Authority will carry out a more detailed assessment where the aid amount for innovation clusters exceeds EUR 5 million per cluster. The Norwegian authorities estimate that the notified measure will result in total aid to NCE Subsea reaching up to NOK 50 million (approx. EUR 6.25 million), thus exceeding the threshold for a more detailed assessment.
- (36) Following paragraph 135 of the R&D&I Guidelines, the level of the Authority's scrutiny in the framework of the more detailed assessment is proportional to the risk of distortion of competition. This means that the scope of the analysis depends on the nature of the case. State aid for activities that are far away from the market is therefore less likely to give rise to very extensive scrutiny.
- (37) The notified measure concerns operating aid to an innovation cluster. This type of aid supports the management and marketing of the cluster, as well as the organisation of training programs, workshops and conferences to support knowledge-sharing and networking between the members of the cluster. These activities are generally pre-competitive and distant from commercial market transactions.
- (38) The Authority therefore considers that the notified measure carries a lesser risk of distortion of competition. As a result, the aid does not warrant extensive scrutiny and the more detailed assessment set out below will be limited to a lesser level of scrutiny.

3.2.1 Positive effects of the aid

3.2.1.1 Objective of common interest

- (39) The promotion of research, development and innovation is a well-defined objective of common interest.⁷
- (40) Innovation clusters such as NCE Subsea play an important role in fostering innovation, growth and competitiveness, as well as collaboration between companies and research institutions. As set out in Decision No. 09/11/COL, state aid to innovation clusters aims at

⁷ See paragraph 1 of the R&D&I Guidelines.

mobilising actors to collaborate in fields that can strengthen the clusters' dynamics and companies' abilities to innovate.

- (41) The aid measure is therefore aimed at a well-defined objective of common interest.

3.2.1.2 Appropriate instrument to address market failure

- (42) The Authority notes that there are market failures with regards to the creation of innovation clusters. An innovation cluster can be considered as a common good that all participating undertakings benefit from, but where no single participant alone has incentives to invest in developing the cluster. There are positive externalities from the individual undertakings' activities in the form of knowledge spill-over to other participants. Further, a cluster creates a basis for beneficial collaboration between companies and between companies and R&D&I institutions, but imperfect information and uncertainty could hamper necessary collaboration.
- (43) In the case of NCE Subsea, the diversity of the participants in the cluster (both regarding their respective size and position in the value chain), the high level of specialisation and technical innovation, as well as the strong focus on establishing education programmes make effective coordination particularly difficult. At the same time, the size and nature of the cluster presents increased opportunities for knowledge spill-over and other positive externalities of collaboration to occur.
- (44) In its Decision No. 09/11/COL, the Authority concluded that state aid is an appropriate instrument to address the market failures hindering the creation of innovation clusters. According to the Norwegian authorities, NCE Subsea was evaluated in light of the specifications set in the aid scheme and compared to other applicants at the time the aid was first granted. The evaluation study submitted by the Norwegian authorities shows an increase in knowledge spill-over, collaboration and R&D&I activity in the cluster. The Authority considers that this confirms that the aid for cluster animation granted to NCE Subsea is an appropriate instrument to address the identified market failures.

3.2.1.3 Incentive effect

- (45) Paragraph 126 of the R&D&I Guidelines sets out that EFTA States may refer in particular to an increase in project size, in scope, in speed or in the total amount spent on R&D&I to show the incentive effect of the aid. In addition, paragraph 127 of the R&D&I Guidelines underlines that if the Authority undertakes a more detailed assessment of an individual measure, these indicators may not be considered sufficient demonstration of an incentive effect, and the Authority may need to be provided with complementary evidence.
- (46) The Authority found in its Decision No. 09/11/COL that the NCE innovation cluster scheme fulfilled the conditions of the R&D&I Guidelines regarding the incentive effect. The Authority based its finding in particular on the selection and evaluation mechanisms contained in the scheme, which require projects to continuously demonstrate change in behaviour within the cluster.
- (47) In addition, the Norwegian authorities have provided the Authority with a study⁸ conducted by the independent business consultancy Menon, which evaluates the development of NCE Subsea. The study shows in particular the increase of the cluster's

⁸ See footnote 5 above. The study highlights the creation of new networks and increased collaboration between undertakings, the development of industry-orientated education programmes, an increase in R&D&I activity among the cluster participants, as well as increased international visibility and global cooperation.

size, scope and R&D&I activities, and documents the contribution of NCE Subsea to information sharing, collaboration, R&D&I activity and value creation within the cluster. It further contains a counterfactual study that comes to the conclusion that without the aid, these positive effects would not have been realised to the same degree.⁹

- (48) On this basis, the Authority finds that the notified measure fulfils the conditions of the R&D&I Guidelines regarding the incentive effect.

3.2.1.4 Proportionality

- (49) The Authority notes that the innovation cluster scheme in which NCE Subsea participates specifies the intended changes and contains a continuous evaluation mechanism that links the aid amount to the activity level of the cluster, in particular with regards to additional innovation-orientated activity. This mechanism not only contributes to the incentive effect of the measure, but also ensures that the aid is proportionate to the activities of the cluster and limited to the minimum necessary to achieve the desired effects.
- (50) Furthermore, the notified measure respects the maximum aid intensity foreseen in the R&D&I Guidelines.

- (51) The Authority therefore considers that the notified measure is proportionate.

3.2.2 *Actual distortion of competition and trade*

- (52) When assessing the distortions of competition and trade from the notified measure under the R&D&I Guidelines, the Authority needs to look at whether the aid will lead to the distortions of dynamic incentives, to the creation of market power or the maintaining of inefficient market structures.

3.2.2.1 Limited potential for distortions of dynamic incentives

- (53) Firstly, the Authority notes that the notified aid for cluster animation relates to pre-competitive activities that are distant from commercial market transactions.
- (54) Secondly, the total aid amount of a maximum of NOK 50 million (approximately EUR 6.25 million), disbursed over a period of ten years, has to be considered in relation to the total size of the cluster as well as of the sectors involved. According to the Norwegian authorities, the undertakings participating in the cluster had an aggregate turnover of about NOK 11.6 billion (approx. EUR 1.4 billion) in 2008. Furthermore, the subsea technology sector is global and very large.¹⁰ The Authority therefore considers that the comparatively low aid amount is unlikely to have any major impact on competition within the sector.
- (55) Thirdly, the initial decision to grant aid to NCE Subsea was taken on the basis of an open, competitive selection process. This reduces distortions of competition as any innovation cluster project fulfilling the conditions published by NCE was able to apply for support.
- (56) Fourthly, the subsea industry is technologically advanced and highly competitive. Undertakings depend on continuous innovation and development to maintain their

⁹ See footnote 5 above. According to the study, a group of enterprises that do not collaborate over time shows a flat development trajectory in value creation. With optimal collaboration, however, the enterprises can realise external economies of scale within a large number of areas, such as joint infrastructure, knowledge development, knowledge dissemination and recruitment. As a consequence, they can manage to achieve a bigger value creation trajectory.

¹⁰ For example, Statistics Norway estimates total investments in Norway for oil and gas field development and fields on stream in 2013 at NOK 169 billion (about EUR 23 billion).

position in the market. The products developed are technologically advanced and capital intensive, and innovation processes require long-term commitment from those conducting the development. This presents significant exit barriers from the innovation process. It is therefore unlikely that the notified measure will negatively affect research investment plans of competitors.

- (57) Fifthly, NCE Subsea invites broad participation to its innovation processes and works to attract more undertakings to participate in its activities and to use the core competence in the cluster. The aid thus is not aimed at granting any single undertaking an advantage, but rather at encouraging market entry and expansion.
- (58) Finally, NCE Subsea combines both very large companies and small, highly specialised niche players, most of which are partners, competitors, suppliers and customers of each other. The cluster companies compete with others on an international level in very large markets with strong competition and a high degree of differentiation. This further reduces the risk that the measure will actually cause any significant distortions of competition.

3.2.2.2 No creation of market power

- (59) The undertakings in NCE Subsea compete in a range of markets as suppliers of components and solutions to the oil and gas industry. The oil and gas industry is global and highly competitive with a considerable number of players in all parts of the value chain. There are no companies that control particularly high shares of these markets. Furthermore, the number of buyers within the cluster and in the sector concerned prevent any one buyer from holding a dominant position in the global market or to develop significant buyer power.
- (60) There is open access to the cluster's activities and there is a goal to attract new companies, to stimulate start-ups and to recruit new competence to the cluster. The aid therefore does not raise entry barriers to the sector, but rather stimulates the development of new undertakings.
- (61) As described above, the aid was granted after an open selection process. The Norwegian authorities have confirmed that particular attention was paid to the independence of all parties participating in the selection process in order to ensure that no undertaking could influence the selection process.

3.2.2.3 No risk of maintaining inefficient market structures

- (62) The aid was granted to the cluster through a selection process where, among other factors, innovation dynamic and development potential in the cluster were considered. These factors are also evaluated annually and the presence of technological development, innovation and market dynamics is a prerequisite for continuing the aid.
- (63) The aid in favour of NCE Subsea focuses on the development of new technologies in existing companies, as well as on the establishment of new companies. For instance, NCE Subsea has created business development programmes to facilitate start-ups in the subsea industry, in close cooperation with knowledge partners such as Bergen University College. The notified measure is therefore unlikely to have the effect of maintaining inefficient market structures, but will rather contribute to increasing competition within the sector.

3.2.3 Balancing and conclusion

- (64) Based on the above, the Authority has undertaken a balancing of the positive and negative elements of the notified aid. The Authority concludes that the distortions resulting from

the notified measure do not adversely affect trading conditions to an extent contrary to the common interest.

3.3 Cumulation

- (65) The Norwegian authorities have undertaken that they will ensure adequate information from the beneficiary about aid from other public sources to the cluster. Based on this information, they will adjust the amount of aid granted in order to comply with the maximum aid intensity for operating aid for clusters. Furthermore, the notified aid will not be cumulated with *de minimis* support in respect of the same eligible costs.

3.4 Monitoring and reporting

- (66) The Norwegian authorities will submit annual reports on the implementation of the notified aid and maintain detailed records regarding the granting of aid in line with the requirements in the R&D&I Guidelines.

4. Conclusion

- (67) On the basis of the foregoing assessment, the Authority considers the notified aid to NCE Subsea to be compatible with the functioning of the EEA Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The individual aid to NCE Subsea notified by the Norwegian authorities on 30 January 2014 is compatible with the functioning of the EEA Agreement.

Article 2

The implementation of the measure is authorised accordingly.

Article 3

This Decision is addressed to the Kingdom of Norway.

Article 4

Only the English language version of this decision is authentic.

Done at Brussels, 19 March 2014.

For the EFTA Surveillance Authority

Oda Helen Sletnes
President

Frank Büchel
College member