

Case No: 61700  
Event No: 544331  
Dec. No: 127/10/COL

EFTA SURVEILLANCE AUTHORITY DECISION  
of 30 March 2010  
on the sale of land to Risa AS

(Norway)

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

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

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

HAVING REGARD to Article 4(2) and Article 13(1) of Part II of Protocol 3 to the Surveillance and Court Agreement<sup>4</sup>,

HAVING REGARD to the Authority's Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement<sup>5</sup>,

Whereas:

## I. FACTS

### 1. Procedure

By letter dated 20 February 2007, received and registered with the Authority on 23 February 2007 (Event No 411181), Mr Magnus Øgreid, represented by the lawyer Hogne Skjerpe at Sekse & Co law firm, filed a complaint against the sale of a piece of land by the Municipality of Hå to the company Risa AS. The complainant argues that this sale involved the grant of state aid.

By letter dated 25 May 2007 (Event No 422293), the Authority informed the Norwegian authorities about the complaint and requested the Norwegian authorities to provide all information necessary to carry out an assessment under Article 61 of the EEA Agreement.

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

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

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

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

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

The Norwegian authorities replied to this information request by letter dated 20 November 2007 (Event No 452850).

The Authority has also received information from other third parties.

## **2. Background**

The company Risa AS entered into discussions with the Municipality of Hå regarding a possible expansion of Risa AS's business activities in the Municipality of Hå. In order to accommodate Risa AS's request, the Municipality of Hå entered into discussions and negotiations with the various owners of the land concerned and it acquired several land parcels during 2004. When the discussions started the land in question was regulated for residential, school or industrial use, but local regulations were modified over time and the land became regulated for industrial use only.

Thus, in July 2006 the Municipality of Hå sold an area regulated for industry located at Bjorlandsmarka in the Municipality of Hå to Risa AS. The land was approximately 70 decares and the price was NOK 100 per m<sup>2</sup>, plus charges. In addition, the agreement stipulated that Risa AS should pay to the municipality a contribution of NOK 50 per m<sup>2</sup> land for the municipality's cost of building a new main road and make improvements to the sewage system. In the view of the Municipality of Hå, the work on the sewage system represents a cost of approximately NOK 3,5 million for Risa AS. In addition, Risa AS undertook to construct a specific part of a new main road and be reimbursed for actual costs up to certain limits. Also this represents according to the municipality an additional cost for Risa AS of approximately NOK 3,5 million. The complainant argues that the price that the Municipality of Hå sold the land for was below the market price and that state aid was granted to Risa AS.

Risa AS negotiated also directly with another land owner and acquired thereby a part of the land in question itself.

The complainant, Mr Magnus Øgreid, refused to sell his property of approximately 11,5 decares (11 500 m<sup>2</sup>) to the Municipality of Hå as there was a disagreement over the price to be paid.

The municipality decided thereafter, on 1 November 2006, to expropriate the land, located at area nr 3 at Bjorlandsmarka in the Municipality of Hå. The expropriation process was protracted and was brought before national courts. The parties were however interested in finding a prompt and acceptable solution and an out of court settlement arrangement was reached which led to the ongoing expropriation process and court procedures being terminated.

According to this settlement, taking the form of an agreement signed on 28 December 2007 by Mr Øgreid and on 7 January 2008 by the Municipality of Hå, the parties agreed that the price to be paid for the 11,5 decares should be decided by two asset valuers, each of the party appointing its own valuer. The two asset valuers, Mr Stangeland and Mr Thoen, presented their findings in a report, dated 7 April 2008 (the Valuation Report), in which they concluded that the estimated value of the land is 350 NOK/m<sup>2</sup>.

### 3. Comments by the Norwegian authorities

The Norwegian authorities considers that no public subsidy or state aid was involved in the case at hand. The price Risa AS paid for the property corresponds to the price that the Municipality of Hå paid when acquiring the land from the previous owners on the basis of negotiations with the land owners. According to the Norwegian authorities, the cost for the Municipality of Hå of acquiring the land is an indicator for the market value of that land unless a significant period of time has elapsed between the purchase and the sale of the same land. The authorities refers to part V of the Authority's Guidelines dealing with sale of land by public authorities.

## II. ASSESSMENT

### 1. The presence of state aid

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

*“Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.”*

#### 1.1. Presence of state resources

To qualify as state aid within the meaning of Article 61(1) of the EEA Agreement, the measure must first be granted by the State or through state resources.

In the present case, it is clear that any support from the Municipality of Hå in the form of foregoing revenues by asking a lower price than market price for the land would fall within the notion of “state resources” within the meaning of Article 61(1) of the EEA Agreement.

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

First, the measure must confer on Risa AS advantages that relieve it of charges that are normally incurred by the transaction in question.

Second, the measure must be selective in that it favours “*certain undertakings or the production of certain goods*”. In the present case, the potential measure would favour one undertaking, Risa AS, and is therefore selective.

As regards the question of advantage for the Risa AS, the Authority notes that an advantage would only be present to the extent the land was sold to the company for a price below market value.

The Authority recalls that in order to accommodate Risa AS's need for more land to expand its business activities, the municipality acquired various parts of the land in question from different private owners on the basis of negotiations. The Norwegian authorities have explained that the land in turn was resold to Risa AS for the same price in addition to an amount corresponding to the municipality's administrative costs.

It follows from the Authority's state aid guidelines referred to above that the presence of state aid can be excluded when the sale takes place on the basis of an unconditional bidding procedure or an independent expert valuation. Such procedures were not followed in the present case. However, section 2.2. d of the guidelines stipulates that the primary cost to the public authorities of acquiring land and buildings is an indicator for the market value unless a significant period of time has elapsed since the municipality's purchase. In principle the market value should not be set below primary costs during at least three years after acquisition. The Authority notes that the transactions under assessment in the present case took place approximately 2 years after acquisition.

In the present case, the Norwegian authorities have confirmed that the land in question was resold to Risa AS for a price corresponding to the municipality's primary cost. Indeed, the municipality added a sum corresponding to its administrative costs to the price vis-à-vis Risa AS.

The Authority has no indications that the price paid by the municipality did not represent the applicable market price at the time. To the contrary, the Norwegian authorities have explained that the negotiations were conducted freely between the municipality and individual land owners. This supports the argument put forward that the municipality indeed paid a market value.

As mentioned above, the subsequent valuation report for another part of the land in question which was subject to an expropriation procedure and later a settlement, concluded with a significantly higher value for that part of the land. The question is whether this indicates that the other parts of the land were sold below market price.

The Authority takes note of the fact that the valuation report was made in 2008, which is about 3,5 years after the municipality reached agreements with other private owners of the land in question. The report in the Authority's possession is very short (3 pages including a front page and 1 page that lists other formalities). The actual assessment part contains only a very brief description of the property and no comparison with other parts of the land that were acquired voluntarily by the municipality. The basis for the valuation in the report is very brief and merely states that it is based on known judgments ("skjønn") and inputs received from the respective attorneys of the parties. It contains no closer assessment or documentation of the value.

In the Authority's view the brief reasoning and the conclusion in this valuation report do not alter the assessment of market value provided above. Moreover, the report was made several years after the Municipality of Hå purchased the land in question. In the years from 2004 and 2008 property prices in Norway increased significantly. During the same time period, the regulated use of the land was modified. Finally, the Authority notes that although the gap between the price for the expropriated part of the land and the parts that were sold voluntarily is considerable, the Norwegian authorities have explained that Risa AS paid an additional remuneration for the property of NOK 7 million through contributions to roads and installations as described above.

In light of the above and based on the available information, the Authority considers that it cannot be established in this case that the sale of land to Risa AS conferred any advantage to this company within the meaning of Article 61(1) of the EEA Agreement.

## 2. Conclusion

On the basis of the foregoing assessment, the Authority considers that Risa AS did not receive state aid within the meaning of Article 61(1) of the EEA Agreement in connection with the above-mentioned transaction.

HAS ADOPTED THIS DECISION:

*Article 1*

The EFTA Surveillance Authority considers that the sale of land to Risa AS does not constitute state aid within the meaning of Article 61 of the EEA Agreement.

*Article 2*

This Decision is addressed to the Kingdom of Norway.

*Article 3*

Only the English version is authentic.

Done at Brussels, 30 March 2010.

*For the EFTA Surveillance Authority*

Per Sanderud  
*President*

Kurt Jaeger  
*College Member*