

EFTA SURVEILLANCE AUTHORITY DECISION
of 9 May 2012

on the aid to Akershus Energi Varme AS for the construction and expansion of district heating and cooling infrastructure in Lillestrøm, Strømmen and Nitteberg

(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) On 17 February 2011, following pre-notification contacts, the Norwegian authorities notified state aid to Akershus Energi Varme AS (“AEV”), pursuant to Article 1(3) of Part I of Protocol 3.
- (2) The Authority asked for further information by letter of 18 April 2011 and of 15 July 2011. By letter dated 16 May 2011 and 31 August 2011, the Norwegian authorities replied to the information requests.

2. The project

2.1 Introduction

- (3) The notification concerns a direct grant of NOK 73.1 million to AEV under the Norwegian Energy Fund aid scheme (“the Energy Fund scheme”) for upgrading an existing district heating and cooling plant and its infrastructure as well as establishing two new plants with infrastructure in the proximity of its existing facilities in Lillestrøm, which is a densely populated city in proximity of Oslo, in the county of Akershus.

- (4) AEV is a subsidiary of Akershus Energi AS. AEV is one of that company's two main subsidiaries.¹ The other is Akershus Energi Vannkraft AS.²

2.2 Background

- (5) In 2006, AEV³ had constructed Energy Central South with a distribution infrastructure, located in Lillestrøm.
- (6) The same year AEV was granted aid by Enova to expand Energy Central South with corresponding infrastructure and to build the new heat central (Heat Central North) with corresponding infrastructure.⁴
- (7) In 2008, after the expansion, Energy Central South had an installed capacity of 7 MW and was delivering heat and cooling corresponding to 12.8 GWh to 15 customers in 2008. At this point Heat Central North had not been built.
- (8) In 2008, AEV obtained concessions covering adjacent areas in Akershus county. They allowed AEV to construct and operate district heating and cooling facilities in the northern and southern parts of the city of Lillestrøm, the city of Strømmen and in Nitteberg.

2.3 The notified project

- (9) Following the award of the new concessions in 2008, AEV made plans to rehabilitate and expand the existing heat and cooling central (Energy Central South), finish the construction of Heat Central North and establish a new cooling central (Kjeller Cooling Central). In addition, AEV made plans to build a new (or extend an existing) district heating and district cooling distribution infrastructure. These are the plans that are the subject of the notification in the case at hand.
- (10) The total cost of the notified project is NOK 467.4 million of which NOK 222.2 million are infrastructure costs and NOK 245.2 million are production costs.
- (11) On the basis of the aid application, Enova decided to grant NOK 73.1 million to AEV for the notified project. In assessing the application Enova took into account the fact that AEV had already been granted aid for the initial part of the project as described above⁵
- (12) Energy Central South produces renewable heating and cooling from sewage (66 % of the energy produced in the plant comes from the sewage (renewable resource), while 34 %

¹ Akershus Energi AS also owns the district heating company Bio Varme AS and 15.2% of the shares in Hybrid Energy AS.

² Akershus Energi Vannkraft AS is in charge of the power trading and provides risk management for Akershus Energi AS. Furthermore, as parent company, Akershus Energi Vannkraft AS provides service functions for the hydropower production companies Glomma kraftproduksjon AS, Skien kraftproduksjon AS, Halden kraftproduksjon AS, Lågen og Glomma kraftproduksjon AS and Øvre Hallingdal kraftproduksjon AS. In addition Akershus Energi Vannkraft AS owns 21.1% in the hydropower company Norsk Grønnkraft AS and 18.1% in the turbine developer Small Turbine Partner AS.

³ Before Akershus Energi acquired full ownership in the AEV, it was called Nedre Romerike Fjernvarme AS.

⁴ The initial aided project included energy production of 45.6 GWh renewable energy and included 14 km of district heating infrastructure. The initial project cost was NOK 140 million, of which district heating infrastructure cost accounted for NOK 53.6 million and customer centrals accounted for 12 MNOK. The initial aid grant was NOK 18.4 million.

⁵ See annex 1, the letter granting the aid ("Tilskuddsbrev"), to the Norwegian authorities letter dated 16.5.2011 (Event No 598199). In May 2008, the total costs of the initial project amounted to NOK 19 million, and Enova had at that time paid out NOK 2.5 million. See annex 2, AEV's application for aid, to the Norwegian authorities letter dated 16.5.2011 (Event No 598199).

comes from electrically operated heat pumps). Oil boiler, which are capable of burning bio oil, are used in peak periods. As a result of an expansion of the district heating and cooling infrastructure, two of the oil burners in Energy Central South, as well as some other equipment will have to be upgraded.

- (13) The new Heating Central North will produce heating mainly from bio energy (wood chip and bio gas).
- (14) The new Kjeller Cooling Central will supply Kjeller and some parts of the street “Storgata” with cooling, and will be based on river water or air reservoir. The installed effect is intended to be 6 MW.
- (15) The project includes a total of 41 km of district heating and cooling infrastructure.⁶ The main components are: pipes, a leakage alarm system, and the customer centrals (including control systems) which supply the individual customer with heat or cooling from the pipes. The infrastructure is expected to be in place by 2012.
- (16) The plants are to be fully established and in full scale operation by 2016. The three centrals with infrastructure will serve a total of 167 buildings. Combined, for heating, they will have an installed capacity of 67.7 MW and produce 136.2 GWh annually of which 128 GWh will be renewable. Combined, for cooling, they will have an installed capacity of 14.3 MW and produce 16.3 GWh annually of which 9.8 GWh will be renewable.

3. Norwegian regulatory framework for district heating

- (17) In Norway, a concession is required in order to build and operate district heating plants with a capacity above 10 MW.⁷
- (18) The Norwegian Water Resources and Energy Directorate (“NVE”) is the public body authorised to grant district heating concessions. Only one concession is granted per area,⁸ thus, each concessionaire holds a monopoly on district heating/cooling in its designated area.
- (19) Norwegian municipalities have the competence to make the connection to the district heating system compulsory for new buildings in the area covered by the concession.⁹ The rationale is that district heating is seen as an important tool to reduce the use of electricity and oil for heating purposes. The obligation to connect does not entail a duty to use, thus each household is free to heat by alternative means. In addition, the Norwegian municipalities can grant exemptions from the duty to connect if the owner invests in solutions that give a greater environmental benefit. Furthermore, the supplier of district heating cannot charge a price which will exceed the price of electric heating in the relevant area.¹⁰

4. The Energy Fund scheme

- (20) The notified aid to AEV is granted on the basis of the Energy Fund scheme which was initially approved by the Authority’s Decision No 125/06/COL of 3 May 2006 on the

⁶ The existing and planned infrastructure has been mapped out in annex 1 to AEV’s application for aid.

⁷ The Norwegian Energy Act, Article 5-1.

⁸ In accordance with NVE’s guidelines on concession for district heating plants.

⁹ The Norwegian Planning and Building Act, Article 27-5.

¹⁰ The Norwegian Energy Act, Article 5-5.

basis of Article 61(3)(c) of the EEA Agreement.¹¹ That approval expired at the end of 2011. The Authority approved the continuation of the Energy Fund scheme with Decision No 248/11/COL of 18 July 2011.

- (21) The Energy Fund scheme is a financing mechanism with the objective of encouraging energy saving measures and the production of environmentally sound energy. The fund is managed by Enova SF (“Enova”), a state owned administrative body.

5. Competition for aid under the programme for District Heating – New establishment

- (22) Grants under the Energy Fund scheme are disbursed under programmes. The funding in the present case is granted on the basis of the programme for District Heating – New Establishment. Enova grants support to market players who establish new district heating and cooling production capacity and infrastructure.¹²
- (23) In order to attract aid applications, Enova makes calls for project proposals which are announced in major national and regional newspapers in Norway. Interested parties are welcomed to apply for aid four times a year; by 15 January, 15 April, 15 July and 15 October. AEV applied for aid on 7 July 2008.¹³ Enova assesses the technical potential for energy production and the relevant costs and benefits described in the application.
- (24) To ensure the proportionality of the aid, the technically feasible projects are subject to a detailed financial assessment. In this assessment the projects’ net present value (“NPV”) is calculated in order to pinpoint the amount of aid necessary to trigger them. The projects are then ranked on the efficiency ratio of KWh energy generated per NOK of aid granted. In 2008, 33 applicants were awarded aid. Enova has granted support to projects with an efficiency ratio spanning from 5.34 to 1.31 on the KWh per NOK scale. The notified project has an efficiency ratio of 1.89 KWh per NOK.

6. Eligible costs

- (25) According to the information provided by the Norwegian authorities, no aid can be granted for production.¹⁴ Therefore, the aid granted by Enova does not cover the costs related to the upgrading and expansion of Energy Central South, and the costs related to the establishment of Heating Central North and Kjeller Cooling Central.

6.1 Eligible costs for infrastructure

- (26) The eligible costs related to infrastructure, have not been calculated on the basis of a counterfactual reference investment.¹⁵ The Norwegian authorities, have itemised the infrastructure costs as follows.

District heating and district cooling net	NOK 140 332 547
Customer centrals	NOK 44 470 056

¹¹ As amended by the Authority’s Decision No 486/10/COL of 15.12.2010 on the prolongation of the scheme.

¹² The District Heating – New Establishment - is described on Enova’s website: <http://naring.enova.no/sitepageview.aspx?articleID=332>.

¹³ In 2008, Enova handled 55 applications under the programme for District Heating – New establishment.

¹⁴ See letter dated 25.11.2011 (Event No 626575) and letter dated 15.12.2012 (Event No 618853).

¹⁵ See Chapter II.3.2.3.3 of this Decision.

Projecting and administrative tasks	NOK 25 734 671
Miscellaneous costs	NOK 11 697 578
INFRASTRUCTURE	NOK 222 234 851

- (27) Under the Energy Fund, the maximum aid intensity for district heating and cooling infrastructure is 50 %.¹⁶ This gives the following maximum aid intensity.

Eligible costs for infrastructure	AEV	Counterfactual
Investment costs	222 234 851	0
Operating costs the first 5 years	27 240 000	0
Operating benefits the first 5 years	0	0
Eligible costs	249 474 851	
Max aid intensity	50 %	
Max aid	124 737 425	

6.2 Net present value calculation

- (28) The Norwegian authorities have used an NPV calculation to examine whether the aid is proportional, *i.e.* whether the same change in behaviour could be obtained with less aid.
- (29) The Norwegian Authorities have calculated the NPV of the project as such using a discount rate¹⁷ which provides a fair return on capital and the relevant power market price.¹⁸ The lifetime of the project is 20 years.
- (30) The data submitted by the Norwegian authorities indicate that without the aid, the project (production and infrastructure) will have a negative NPV of NOK 64.9 million and an IRR of 4.1 %. With the aid (of NOK 73.1 million) the project will have a negative NPV of NOK 1.1 million and an IRR of 6.4 %.¹⁹

II. ASSESSMENT

¹⁶ Decision No 248/11/COL at paragraph 149.

¹⁷ In order to ensure that the return on capital is fair, the discount rate is established by external, independent experts, the Professors Gjølborg and Johnsen. The report (updated in 2009) is based on the Capital Asset Pricing Model and best practice financial methodologies. The report establishes that a fair rate of return for renewable energy investments is 8 %. The report further concludes that district heating projects in general require a lower rate of return in comparison to investments in energy production from other renewable sources.

¹⁸ The price of district heating price is regulated by the Energy Act, Section 5-5 and based on the principles of alternative energy cost for the customer (minimum).

¹⁹ The original NPV, submitted by AEV used a lifetime of 24 years (a district heating plant normally has a lifetime of 20 to 30 years). On this basis, the NPV would be a negative NOK 57.2. With aid the NPV would be a negative NOK 5 thousand. The combined Internal Rate of Return (IRR) would, without aid, be 5.9 %. With aid the IRR would be 8 %.

1. The presence of state aid

- (31) 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.”
- (32) In the decisions approving the Energy Fund scheme, the Authority concluded that disbursements to undertakings under the Fund constitute state aid within the meaning of Article 61(1) of the EEA Agreement. There is nothing in the current notification to alter that conclusion.
- (33) It is recalled that AEV has received aid under the programme for District Heating of the Energy Fund. Firstly, the funding under the programme comes from various sources controlled by the State and therefore constitutes state resources. Secondly, financial grants are awarded to undertakings which thus receive an economic advantage they would not have received in their normal course of business. Thirdly, under the District Heating Programme grants are awarded to undertakings in the district heating and cooling sector and favour therefore only undertakings within this sector to the exclusion of other sectors. They are hence selective.²⁰ Finally, the grant of financial support to undertakings under this programme distorts competition and affects trade; district heating and cooling in most cases replace the use of electricity: the Norwegian energy producers sell electricity (i) at Nord Pool - which implies that some of the energy is exported to other EEA countries; and (ii) through bilateral contracts to customers in Norway and other EEA countries, such as Sweden or Finland.²¹ The aid therefore affects trade between the Contracting Parties to the EEA Agreement and distorts competition in the EEA because the beneficiary is active in a sector where trade between Contracting Parties takes place.
- (34) For these reasons, the funding to AEV constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

2. Procedural requirements

- (35) 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”.
- (36) From 16 July 2008,²² when the Authority adopted its currently applicable Guidelines on state aid for environmental protection (the EAG), awards of aid exceeding EUR 7.5

²⁰ The Energy Fund Scheme also funds other renewable energy production and energy saving measures. The EFTA Court has held that a measure may be selective even if it covers (undertakings in) an entire sector: Joined Cases E-5/04, E-6/04 and E-7/04 *Fesil and Finnjord* [2005] EFTA Court Report p. 117, point 77. This judgment confirms the case law of the European Court of Justice as laid down in Case C-75/97 *Belgium v Commission* [1999] ECR I-3671, point 33. See also Case C-66/02 *Italy v Commission* [2005] ECR I-10901, point 95.

²¹ See in this respect Case 730/79 *Philip Morris v Commission* [1989] ECR p. 2671, point 11, where it is stated that “When State financial aid strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade the latter must be regarded as affected by that aid.”

²² See Section 7.5 of the EAG.

million have to be individually notified to the Authority, and are subject to a detailed assessment.²³

- (37) The Norwegian authorities put the aid to AEV into effect on 9 September 2008. The Authority therefore concludes that the Norwegian authorities have not respected their obligations to notify the aid to the Authority. To date NOK 30 671 956 has been disbursed to AEV.
- (38) The Norwegian authorities submitted a notification of the grant to AEV with a letter dated 17 February 2011 (Event No 587627). The Norwegian authorities have informed the Authority that the remaining part of the aid will be held back until the Authority has taken a final decision.

3. Compatibility of the aid

3.1 Legal framework

- (39) Enova concluded its assessment to grant aid to AEV in accordance with the procedures approved by the Authority (in Decision No 125/06/COL) on the basis of the then applicable Guidelines on aid for environmental protection.²⁴ In that Decision the Authority allowed for aid to district heating in the chapter on energy production. The Authority allowed for investment and operating aid to be granted using the so-called NPV method.
- (40) On this basis, Enova assessed the eligible costs of the project by examining all aspects of the district heating and cooling installations (*i.e.* the upgrading of Energy Central South and its infrastructure,²⁵ and the construction of Heating Central North and Kjeller Cooling Central as well as the connected infrastructure). The amount of aid was determined on the basis of an NPV calculation of the entire project as such.
- (41) The EAG introduced a new chapter on aid to energy-efficient district heating.²⁶ Under the new guidelines, operating aid to district heating plants is not allowed for. Aid to production is covered by section 3.1.8 of the EAG.²⁷
- (42) The Norwegian authorities have submitted new information allowing the Authority to assess the compatibility of the project. As noted above, the information provided demonstrates that there is no scope for granting aid to the production part of the project (*i.e.* the upgrading of Energy Central South and the construction of Heating Central North and Kjeller Cooling Central). However, there is scope for granting aid to the infrastructure. In the following the Authority assesses the compatibility of the measure as aid to infrastructure.
- (43) As the EAG does not cover aid for district heating (or cooling) infrastructure, the compatibility of such aid must be assessed directly on the basis of Article 61(3)(c) of the EEA Agreement.²⁸

²³ See Section 5.1 of the EAG.

²⁴ OJ L 21 4.1.2002 p. 32.

²⁵ Taking due account of the fact that AEV had received aid for the establishment of the plant in 2006.

²⁶ Chapter 3.1.8 of the EAG. The EAG does not cover aid for district cooling. The Authority has concluded that aid to district cooling can be assessed in analogy to the Chapter on district heating, see Decision No 248/11/COL at paragraph 72.

²⁷ The EAG do not cover aid for infrastructure.

²⁸ See EAG point 67 and EAG footnote 52.

3.2 Assessment under Article 61(3)(c) of the EEA Agreement

3.2.1 Introduction

- (44) In the following, the Authority assesses the compatibility of the aid with the EEA Agreement on the basis of its Article 61(3)(c).
- (45) According to Article 61(3)(c) the following may be considered with the functioning of the EEA Agreement: "aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest".
- (46) In order to be compatible under Article 61(3)(c) of the EEA Agreement, the aid must pursue an objective of common interest in a necessary and proportionate way. In this regard, the Authority considers it appropriate to assess the following questions:²⁹
- a. Is the aid measure aimed at a well-defined objective of common interest (i.e. does the proposed aid address a market failure or another objective of common interest)?
 - b. Is the aid well designed to deliver the objective of common interest? In particular:
 - i. Is the aid measure an appropriate instrument, i.e. are there other, better-placed instruments?
 - ii. Is there an incentive effect, i.e. does the aid change the behaviour of firms?
 - iii. Is the aid measure proportional, i.e. could the same change in behaviour be obtained with less aid?
 - c. Are the distortions of competition and the effect on trade limited, so that the overall balance is positive?

3.2.2 Objective of common interest

- (47) An objective of common interest is an objective which has been recognised as being in the common interest of the EEA States. The EU institutions have recognised that the protection of the environment and the reduction of CO₂ emissions are in the common interest of the Member States. Both the EU Member States as well as the EFTA States have made a commitment to achieve at least a 20 % reduction in greenhouse gas emissions compared to 1990 and at least a 20 % savings in energy consumption compared to the projections for 2020.³⁰
- (48) The AEV project will lead to primary energy savings. The district heating and cooling plants will produce heating and cooling and the infrastructure will enable the transportation of that energy to the 167 connected buildings. The connected buildings will be less reliant on electricity for heating and cooling purposes. The Norwegian authorities have provided calculations demonstrating that the heating plants reduce the primary energy use by 35 % for the 167 end users.³¹ The cooling leads to a reduction of 10.7 %. The primary energy savings should in turn, reduce CO₂ emissions, thus contributing to environmental protection.

²⁹ See the Authority's Decision No 248/11/COL at paragraphs 86-87.

³⁰ See <http://www.efta.int/eea/eea-news/2011-12-20-jc-renewable-energy.aspx> on the incorporation of the Directive on the promotion of renewable energy into the EEA Agreement.

³¹ Compared to the use of electricity produced in a gas-fired power plant.

- (49) On this basis it can be concluded that the notified aid aims at a well-defined objective of common interest.

3.2.3 *Aid designed to deliver the objective of common interest*

3.2.3.1 Appropriate Instrument

- (50) An instrument is appropriate if there are no other less distortive instruments to achieve the same results. The Norwegian authorities have explained that there are currently no better placed instruments to achieve the objective and that the market does not provide sufficient incentives for companies to invest in district heating and cooling infrastructure. Restrictive regulatory requirements or standards, will likely not be effective for purposes of furthering the investment in district heating and cooling infrastructure.
- (51) On this basis, the Authority has concluded that it seems that there are no less distortive instruments to achieve these goals. Accordingly, the envisaged aid constitutes an appropriate instrument to achieve the construction of district heating and cooling infrastructure and to obtain the desired effects in terms of primary energy savings, incentives to renewable sources and emission reductions.

3.2.3.2 Incentive Effect

- (52) State aid provides an incentive effect if the aid changes the recipients' behaviour towards reaching the objective of common interest.
- (53) According to the Norwegian authorities, the market does not provide adequate returns to companies investing in district heating facilities, because of the high costs for the connection of the final consumers to the central installations. In the AEV project, the total investment cost in district heating and cooling infrastructure is stated to be NOK 222.2 million. The Norwegian authorities consider that those investments have no economic viability per se, as they do not generate any direct revenue, and cannot be recouped by the revenues accruing from the sale of heating and cooling.
- (54) The Norwegian authorities have submitted an NPV analysis which demonstrate that the an IRR of 6.4 % over a lifetime of 20 years, and an IRR of 8 % over 24 years. The Norwegian authorities have submitted a report, that demonstrates that a IRR of 8 % is necessary to trigger a district heating project.
- (55) On this basis, the Authority considers that the aid granted to AEV provides the necessary incentive effect.

3.2.3.3 Proportionality

- (56) A state aid measure is proportional if the measure is designed in a way that the aid as such is kept to the minimum and if the beneficiaries are selected in a non-discriminatory, transparent and open process.
- (57) The Norwegian authorities recall that the same aid intensity threshold foreseen for investments in district heating installations is being applied to investments in infrastructure, so as to avoid any undue transfer of costs between the two components of the project. The European Commission has in its recent practice, concluded that there is no

relevant counterfactual reference investment for investments in district heating infrastructure.³² The Authority has come to the same conclusion.

- (58) The eligible costs and aid intensity of the energy production part are reposted below:

District heating and district cooling net	NOK 140 332 547
Customer centrals	NOK 44 470 056
Projecting and administrative tasks	NOK 25 734 671
Miscellaneous costs	NOK 11 697 578
INFRASTRUCTURE	NOK 222 234 851

Eligible costs for infrastructure	AEV	Counterfactual
Investment costs	222 234 851	0
Operating costs the first 5 years	27 240 000	0
Operating benefits the first 5 years	0	0
Eligible costs	249 474 851	
Max aid intensity	50%	
Max aid	124 737 425	

- (59) The table above demonstrates that the aid given to AEV, , is well within the aid intensity threshold (foreseen for investments in district heating installations in the EAG) as the aid intensity (29%) is well below the maximum aid intensity laid down in the EAG.
- (60) In addition, the NPV calculation for the district heating installations and infrastructure combined, serves to demonstrate that the amount of aid to be granted to this project shows that aid given to AEV is proportionate.³³
- (61) Finally, the selection process applied by Enova ensures that aid is only awarded to the beneficiaries that can address the environmental objective using the least amount of aid or in the most cost-effective way. The selection processes of the eligible projects, as described above, are conducted in a non-discriminatory, transparent and open manner, without excluding any undertakings that may compete with projects to address the same environmental objective falling within the ambit of the respective aid program.
- (62) In light of the above it can be concluded that the state aid granted to AEV is proportionate.

³² See State aid No. N 494/2010 – Italy – Aid scheme for district heating production installations and networks in Veneto.

³³ The data submitted by the Norwegian authorities indicate that without the aid, the project (production and infrastructure) will have a negative NPV of NOK 64.9 million and an IRR of 4.1 %. With the aid (of NOK 73.1 million) the project will have a negative NPV of NOK 1.1 million and an IRR of 6.4 %.

3.2.4 *Distortion of Competition and effects on intra-EEA trade*

- (63) The possible distortions of competition and trade resulting from the state aid for the envisaged measures are limited, so that the overall balance with regard to the objective of common interest is positive.
- (64) The aid for district heating and cooling infrastructure is unlikely to distort competition in the market for the transport of heating or cooling. It should be noted that the market for the transport of heating or cooling is by definition bound to the location of the pipelines and therefore local by nature.³⁴ Therefore the effect on trade between the EEA States is a priori limited.
- (65) Furthermore, the Norwegian authorities confirmed that aid given to AEV will only be covering district heating infrastructure that connects end consumers with an 'unconventional' and environmentally friendly heating installation. Consequently the aid will not be used to finance 'conventional' district heating infrastructure.
- (66) Finally, the notification ensures that the aid is proportionate and the aid amount is limited to the minimum necessary. In particular the aid will be calculated net of operating benefits during the first five years. It can therefore be concluded that any possible distortion of competition or affect on trade will be limited. At the same time, the notification has demonstrated the positive environmental effects of the aid. As described above, AEV will mainly distribute environmentally friendly forms of heat generation through the infrastructure. Furthermore the Norwegian authorities have demonstrated that the project results in a reduction of primary energy savings on the part of the end consumers. It can therefore be concluded that the aid granted to AEV will ensure positive environmental effects which outweigh the (limited) distortions of competition.

4. Conclusion

- (67) On the basis of the foregoing assessment, the Authority considers that the state aid to Akershus Energi Varmer AS for the construction and expansion of the district heating and cooling infrastructure in Lillestrøm, Strømmen and Nitteberg is compatible with the functioning of the EEA Agreement within the meaning of Article 61 of the EEA Agreement.
- (68) The Authority regrets, however, that the Norwegian authorities did not respect their obligations pursuant to Article 1(3) of Part I of Protocol 3.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority raises no objections to the aid to Akershus Energi Varmer AS amounting to NOK 73.1 million.

Article 2

The implementation of the measure is authorised accordingly.

³⁴ This effect is enhanced by the NVE concession system as described in chapter I.3 of this Decision.

Article 3

This Decision is addressed to the Kingdom of Norway.

Article 4

Only the English language version of this decision is authentic.

Decision made in Brussels, on 9 May 2012.

For the EFTA Surveillance Authority

Oda Helen Sletnes
President

Sabine Monauni-Tömördy
College Member