

Case No: 76459
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Decision No: 238/15/COL

[Non-confidential version]

[The information in square brackets is covered by the obligation of professional secrecy]

EFTA SURVEILLANCE AUTHORITY DECISION
of 17 June 2015

to close the formal investigation procedure regarding the 2014 Power Contract and the
Transmission Agreement for the PCC Silicon Metal Plant at Bakki

(Iceland)

The EFTA Surveillance Authority (“the Authority”),

HAVING REGARD to:

Protocol 3 to the Agreement between the EFTA States on the Establishment of a
Surveillance Authority and a Court of Justice (“Protocol 3”), in particular to Article 8(2) of
Part II,

Whereas:

I. FACTS

1. Procedure

- (1) On 17 April 2014, the Icelandic authorities submitted, pursuant to Article 1(3) of Part I of Protocol 3, a state aid notification regarding the Power Contract signed on 17 March 2014 between Landsvirkjun hf. (“Landsvirkjun”) and PCC Bakki Silicon hf. (“PCC”), (“the 2014 Power Contract”).
- (2) After a preliminary investigation, on 10 December 2014, by means of Decision No 543/14/COL, the Authority opened the formal investigation pursuant to Article 4(4) of Part II of Protocol 3, with regard to the 2014 Power Contract.
- (3) The Authority, by means of the same decision, opened *ex officio* the formal investigation with regard to a Transmission Agreement entered into by Landsnet hf. (“Landsnet”) and PCC on 7 February 2014 (“the 2014 Transmission Agreement”).
- (4) Decision No 543/14/COL was published in the Official Journal No C 92 of 19 March 2015 and in the EEA Supplement to the Official Journal No 15 of the same day. Only Landsvirkjun and Landsnet, through the Icelandic authorities, submitted comments on it.

- (5) By letter of 9 March 2015, pursuant to Article 8(1) of Part II of Protocol 3, the Icelandic authorities withdrew the state aid notification regarding the 2014 Power Contract.¹ By letter dated 31 March 2015,² the Icelandic authorities informed the Authority that the 2014 Power Contract had been terminated by a Mutual Termination Agreement signed by Landsvirkjun and PCC on 25 February 2015.³ The 2014 Power Contract was replaced by another contract signed on 27 March 2015.
- (6) The 2014 Transmission Agreement had been concluded subject to certain conditions that have not been fulfilled, according to information provided by the Icelandic authorities.⁴ By letter dated 25 March 2015, registered by the Authority on 31 March 2015⁵, the Icelandic authorities informed the Authority that the 2014 Transmission Agreement had been replaced by a new agreement which was signed on 19 March 2015. The 2014 Transmission Agreement has therefore been terminated and is without legal binding effects, as foreseen in Article 28 of the new Transmission Agreement.

2. Description of the measures

- (7) The measures covered by the opening decision were (i) the 2014 Power Contract and (ii) the 2014 Transmission Agreement.
- (8) According to the 2014 Power Contract, Landsvirkjun would have provided electricity (52-58 MW power) for PCC's new silicon plant to be constructed at Bakki. The 2014 Power Contract had a duration of [...] years.
- (9) The 2014 Transmission Agreement concerned the connection of the new PCC plant to the transmission system, the transmission of the power purchased by PCC from Landsvirkjun and the transformation of the purchased power from the transmission voltage to 33 and 11 KV, in order to enable the in-feed of 52-58 MW power.

3. Assessment

- (10) In view of the withdrawal of the notification, the fact that the 2014 Power Contract never entered into force, was terminated by the parties to it and has been replaced by another contract signed on 27 March 2015, the formal investigation procedure initiated in its respect has become devoid of purpose.
- (11) Similarly, the formal investigation procedure with regard to the 2014 Transmission Agreement has become devoid of purpose since the conditions for its entry into force have not been fulfilled, was terminated by the parties to it and it has been replaced by a new Transmission Agreement entered into by Landsnet and PCC on 19 March 2015.

4. Conclusion

- (12) The procedure laid down in Article 4(4) of Part II of Protocol 3 initiated with regard to the Power Contract and the Transmission Agreement has become devoid of purpose

¹ Doc No 749634.

² Doc No 752851.

³ Doc No 753788.

⁴ Doc No 726154, page 4.

⁵ Docs No 752791-752793.

and shall be closed due to (i) the withdrawal by the Icelandic authorities of the state aid notification regarding the Power Contract and (ii) the fact that the Power Contract and the Transmission Agreement have been terminated by their parties before their entry into force.

HAS ADOPTED THIS DECISION:

Article 1

The formal investigation procedure under Article 4(4) of Part II of Protocol 3 initiated on 10 December 2014, by means of EFTA Surveillance Authority Decision No 543/14/COL, with regard to the Power Contract of 17 March 2014 and the Transmission Agreement of 7 February 2014 has become devoid of purpose and is hereby closed.

Article 2

This Decision is addressed to Iceland.

Article 3

Only the English language version of this decision is authentic.

Done in Brussels, on 17 June 2015

For the EFTA Surveillance Authority

Oda Helen Sletnes
President
Member

Frank Büchel
College