

Brussels, 28 April 2011
Case No: 68962
Event No:596106
Dec. No: 96/11/COL

[Non confidential version]

EFTA SURVEILLANCE AUTHORITY DECISION
of 29 March 2011
on investment aid to Notodden airport, Tuven

(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,

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,

HAVING REGARD to the consolidated version of the Authority’s Decision No 195/04/COL of 14 July 2004 on the implementing provisions referred to under Article 27 of Part II of Protocol 3 (“the Implementing Provisions Decision”)¹,

Whereas:

I. FACTS

1. Procedure

The Norwegian authorities notified their intention of granting aid in connection with the upgrading of Notodden airport, Tuven, pursuant to Article 1(3) of Part I of Protocol 3 by letter of 22 October 2010 (Event No 574420).

By letter dated 17 December 2010 (Event No 585110), the Authority requested additional information.

By letter dated 31 January 2011 (Event No 585110), the Norwegian authorities replied to the information request.

2. Description of the proposed measures

2.1 The beneficiary

Notodden lufthavn AS is a limited company wholly owned by the Municipality of Notodden. It is located some 3 kilometres outside the centre of Notodden, a town of

¹ Available at: <http://www.eftasurv.int/media/decisions/195-04-COL.pdf>

approximately 9200 inhabitants in the County of Telemark. The distance from Notodden airport to Oslo is approximately 117 kilometres. The airport's annual passenger volume was 4,121 in 2009, 3,809 in 2008, 3,482 in 2007 and 2,490 in 2006.² The Norwegian authorities state that, due to its location and size, it falls to be classified as a small regional airport (Category D airport) as defined in paragraph 7 of the chapter on the financing of airports and start up aid to airlines departing from regional airports³ in part IV of the Authority's State Aid Guidelines.

2.2 National legal basis for the aid measure and amount of the aid

The Norwegian authorities have explained that, every four years, the Norwegian government sets out its transport policy aims and strategies for the following 10 year period in a Report to the Storting called the National Transport Plan. The National Transport Plan for 2010 – 2019 provides for investment aid of 12 MNOK to be granted to the airports of Notodden and Skien, to realise investments in airport infrastructure for which a need had been identified during the preparation of the plan. In the state budget for 2010, the Ministry of Transport allocated 12 MNOK as investment aid to the two airports, in accordance with the plan. With the addition of carry-overs from 2009, the aid amounted to 13 MNOK in total. As 3.5 MNOK of the total amount has already been granted to Skien airport Geiteryggen⁴, the aid foreseen for Notodden airport amounts to 9.485 MNOK.

2.3 The investments concerned

The Norwegian authorities have explained that the planned investments are necessary to comply with safety requirements imposed by the Norwegian Civil Aviation Authority, and that compliance with these requirements is a condition for the airport's approval and operating license.⁵

The investments concern the improvement of safety areas, the establishment of a fire and casualty practice and re-asphalting of the runway. The Norwegian authorities have provided the following table, showing the break-down of the amounts to be invested⁶:

	Notodden Lufthavn's estimate of aid amount needed	The Ministry's appreciation of aid amount needed
<i>Works carried out in 2009:</i>		
Improvement of runway and safety equipment, upgrading of signs and markings, removal of obstacles in safety area, snow clearing equipment	NOK 785,000	NOK 785,000
<i>Works to be carried out in</i>		

² Notification from Norway dated 22 October 2010 (Event No 574420).

³ Adopted by Authority's Decision No 329/05/COL of 20 December 2005.

⁴ As approved by Decision 192/09/COL of 22 April 2009.

⁵ Regulation No 1382 of 3 December 2002, Regulation No 60 of 27 April 2004, Regulation No 545 of 12 May 2006.

⁶ Notification from Norway dated 22 October 2010 (Event No 574420).

2010:		
Improvement of the safety area	NOK 65,000	0
Establishment of a fire and casualty practice area	NOK 150,000	0
Re-asphalting of the runway	NOK 11,002,500	NOK 8,700,000
Total	NOK 12,002,500	NOK 9,485,000

The Norwegian authorities have explained⁷ that the safety measures were subject to explicit deadlines laid down by the Civil Aviation Authority, all of which expired in 2009 and 2010. To date, all works have been carried out, except the establishment of a fire and casualty area, for which the Civil Aviation Authority has accepted a postponement and a temporary solution.

As the necessary budgetary and internal ministerial procedures, as well as the final notification to the Authority, could not be completed in time for the works to be carried out within the deadline, the Airport had to obtain financing on the private market.

[CONFIDENTIAL INFORMATION]

As can be seen from the table, some of the investments will not, or only in part, be covered by the grants from the Ministry. The difference will have to be financed from other sources.

II. ASSESSMENT

1. The presence of state aid

1.1 State aid within the meaning of Article 61(1) EEA

Agreement 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.”

The measure at issue will be examined in light of those requirements in the following.

1.2 Presence of state resources

The aid measure must be granted by the State or through state resources. In the case at hand, the grant is paid by the Ministry of Transport on the basis of an allocation in the State annual budget. Money from the State budget constitutes state resources, and the grant is, therefore, paid out of state resources.

⁷ Letter from Norway dated 31 January 2010, Event No 585110

1.3 Notodden airport as an undertaking within the meaning of the state aid rules

It follows from settled case law⁸ and the Authority's Airport guidelines⁹ that the provision of airport services to airlines and to the various service providers within airports is an economic activity. Airport services are provided "*in return for a fee at a rate freely fixed by the manager, and when the latter is public, [do] not fall within the exercise of its official powers as a public authority and [are] separable from its activities in the exercise of such powers*". Thus, Notodden airport is, in principle, engaged in an economic activity within the meaning of Article 61(1) of the EEA Agreement, to which the rules of state aid apply.

1.4 Favouring certain undertakings or the production of certain goods

Firstly, the aid measure must confer on Notodden Airport advantages that relieve it of charges that are normally borne from its budget.

According to paragraph 47 of the Airport Guidelines, any airport operator engaging in an economic activity should finance the costs of using or building the infrastructure it manages from its own resources. Consequently, the provision of airport infrastructure to an operator by an EFTA State (including regional or local authorities) not acting as a private investor without adequate financial consideration, or the granting of public subsidies intended to finance infrastructure to an airport operator, can give that airport operator an economic advantage over its competitors.

In the case at hand, the airport will receive a grant to cover the cost of upgrading some of the facilities at the airport in order to comply with obligations imposed by public law. In the absence of the grant, Notodden airport would, thus, have had to cover the investments at issue from its own resources. Accordingly, the grant confers an advantage on Notodden airport.

Secondly, the aid measure must be selective in that it favours "*certain undertakings or the production of certain goods*". In the case at hand, the Ministry has decided to invest in the airport run by a pre-determined airport operator, Notodden lufthavn AS. It follows that the investments will be to the advantage of a single undertaking, i.e. Notodden lufthavn AS in its capacity of the pre-determined manager of the airport. Against that background, the Authority concludes that the investments in question will provide a selective advantage to Notodden lufthavn AS.

1.5 Distortion of competition and affect on trade between Contracting Parties

The aid measure must distort competition and affect trade between the Contracting Parties to the EEA Agreement by strengthening the position of an undertaking compared with other undertakings competing within the EEA. In accordance with settled case law, for a measure to distort competition it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition. The Airport guidelines take as a starting point that there is competition between airports also at the level of the smaller European airports. Competition takes place not only between airlines but also between airports in order to attract airlines which will offer new destinations.¹⁰ Any advantage

⁸ Judgment of the Court of First Instance of 12 December 2000 in Case T-128/98 *Aéroports de Paris v Commission* [2000] ECR II-3929, paragraph 75 with further references.

⁹ Chapter on the financing of airports and start up aid to airlines departing from regional airports in part IV of the Authority's State Aid Guidelines, referred to above, paragraphs 47 – 48.

¹⁰ Airport guidelines, paragraphs 28 to 31.

granted to Notodden Airport AS through the investments will, therefore, strengthen its position vis-à-vis its competitors on the EEA-wide market of providers of airport services.

The measure is therefore likely to distort competition and affect trade between the EEA Contracting Parties.

2. Procedural requirements

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”.

By submitting a notification of the investments with a letter dated 22 October 2010 (Event No 574420), the Norwegian authorities have complied with the notification requirement.

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

Article 61(3)c provides that 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.

The Airport Guidelines provide the Authority with a number of factors which it shall take into account in determining compatibility. The Authority will in particular examine whether:

- construction and operation of the infrastructure meets a clearly defined objective of general interest (regional development, accessibility, etc.);
- the infrastructure is necessary and proportional to the objective which has been set;
- the infrastructure has satisfactory medium-term prospects for use, in particular as regards the use of existing infrastructure;
- all potential users of the infrastructure have access to it in an equal and non-discriminatory manner;
- the development of trade is not affected to an extent contrary to the functioning of the EEA Agreement.

3.1 Clearly defined objective of general interest

The Norwegian authorities have explained that the purpose of the aid is to ensure that the airport infrastructure complies with the safety requirements imposed by the Norwegian Civil Aviation Authority.¹¹ Compliance with these safety requirements is a condition for the airport approval, and, in turn, the operating licence. Non-compliance would, therefore, lead to the airport being closed down.

¹¹ Pursuant to (in particular) Regulation No 13.82 of 3 December 2002 (BSL E 3-3), Regulation No. 670 of 27 April 2004 (BSL E 4-2), Regulation No 1245 of 26 August 2004 (BSL E 4-3) and Regulation No 545 of 12 May 2006 (BSL E 4-4).

Furthermore, the Norwegian authorities have pointed out that, in general, regional airports are deemed to be very important for the development of a competitive business environment in the rural area of Norway, as explicitly recognised by the National Transport Plan 2010 – 2019. The Plan states that regional airports contribute to a well functioning labour market; possibilities for long distance commuting; new business establishment; and more jobs on a regional level. As regards Notodden airport in particular, the Norwegian authorities state that it has been shown that the airport has been of great significance to the establishment of new businesses in the Notodden area. The airport is also located in and adjacent to assisted areas, where economic growth is particularly encouraged for the purpose of regional development.

Against this background, the Authority considers that the investments proposed at Notodden airport meet clearly defined objectives of improving safe and viable transport infrastructure and of regional policy as required by the Airport Guidelines.

3.2 Necessity and proportionality to the objective that has been set

As mentioned above, the investments in question are required under the national civil aviation authority's regulations, non-compliance with which would lead to the closure of the airport. The Norwegian authorities have also explained that it follows from the National Transport Plan that the present regional airport network shall be upheld unless there is strong local support for closure.

On the basis of the explanations provided by the Norwegian authorities in reply to the Authority's request for information, the Authority also understands that the grant of the aid was necessary to finance the investments, [CONFIDENTIAL INFORMATION].

In that light, the Authority considers the investments to be necessary and proportionate to the objectives of improving safety and regional development as set out above.

3.3 Satisfactory medium-term prospects for use, in particular as regards the use of existing infrastructure

Passenger volumes at Notodden airport are rather limited; in 2009, 3,809 passengers travelled through the airport. However, passenger numbers have been increasing steadily in recent years and the Norwegian authorities state that there is nothing to indicate that this trend will be reversed. The authorities also emphasise that, being situated in assisted areas, there is potential for economic and demographic growth in the region and the airport has an important role to play in that context. The investments will enable the airport to handle both current passenger volumes and a potential increase in the future.

In that light, the Authority finds that the airport has satisfactory medium-term prospects for use.

3.4 Equal and non-discriminatory access to the infrastructure for all potential users

The Norwegian authorities have assured the Authority that all potential users have access to the improved infrastructure under the terms of Norwegian legislation and that all works will be undertaken in full compliance with the EEA public procurement rules.

3.5 The development of trade is not affected to an extent contrary to the functioning of the EEA Agreement

Notodden airport has a very modest traffic volume: Only 3,809 passengers travelled through the airport in 2009, which makes it a Category D airport as defined in paragraph 7 of the airport guidelines, and a small airport even within that category.

According to the Norwegian authorities, an overlap in catchment areas is only likely with Skien airport – Geiteryggen, and, even in that case, the overlap will only have a modest impact due to the difference in travelling time of a bit more than an hour. Moreover, Skien airport, with approximately 47 000 annual travellers in 2009, is, although still a Category D airport, significantly bigger than Notodden airport.

Should there be any overlap with the catchment area of Torp airport (Sandefjord), the Norwegian authorities consider the impact to be even more limited, as Torp is a category C airport with approximately 1.8 million passengers per year.

On the basis of this information, the Authority considers that Notodden airport only competes with surrounding airports to a very limited extent. The upgrade of the infrastructure is, therefore, unlikely to affect the development of trade to an extent contrary to the functioning of the EEA Agreement.

4. Conclusion

On the basis of the foregoing assessment, the Authority considers that the investments at Notodden airport which the Norwegian authorities are planning to implement are compatible with the functioning of the EEA Agreement within the meaning of Article 61 (3) of the EEA Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority raises no objections to the investments that the Norwegian authorities are planning to implement at Notodden Airport - Tuven as they are compatible on the basis of Article 61(3) of the Agreement read in conjunction with the Airport Guidelines.

Article 2

The implementation of the measure is authorised accordingly.

Article 3

This Decision is addressed to the Kingdom of Norway.

Article 5

Only the English language version of this decision is authentic.

Decision made in Brussels, on 29 March 2011.

For the EFTA Surveillance Authority

Per Sanderud
President

Sabine Monauni-Tömördy
College Member