

Case No: 62527
Event No: 467128
Dec. No: 625/08/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 1 October 2008 concerning the proposed sale of the property known as
'Hillesøyfyllinga' [property 189/196] by the Municipality of Tromsø
(Norway)

THE EFTA SURVEILLANCE AUTHORITY¹,

Having regard to the Agreement on the European Economic Area², 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 Justice³, in particular to Article 24 thereof,

Having regard to Articles 4(2), 10(1) and 13(1) of Part II of Protocol 3 to the Surveillance and Court Agreement⁴,

Whereas:

1. Procedure

By an email dated 25 June 2007, Sommarøy Rorbuutvikling AS⁵ filed a complaint against the Municipality of Tromsø concerning alleged state aid granted in connection with the proposed sale of the property known as 'Hillesøyfyllinga' [property 189/196]⁶ The letter was received and registered by the Authority on the same date (Event No 426623).

By letter dated 28 September 2007 (Event No 444168), the Authority invited the Norwegian authorities to submit their comments to the complaint.

By letter dated 12 November 2007 from the Norwegian Ministry of Government Administration and Reform, received and registered by the Authority on the same date (Event No 451524), the Norwegian authorities submitted comments to the complaint.

On 27 November 2007, the complainant sent a second letter concerning the matter, received and registered by the Authority on the same date (Event No 454146).

¹ Hereinafter referred to as "the Authority".

² Hereinafter referred to as "the EEA Agreement".

³ Hereinafter referred to as "the Surveillance and Court Agreement".

⁴ Hereinafter referred to as "Protocol 3".

⁵ Hereinafter referred to as "the complainant".

⁶ Hereinafter referred to as "the property".

On 13 March 2008, the Authority sent a letter informing the complainant that since no sale had taken place, there could be no question of state aid having been granted by the Municipality of Tromsø (Event No 465416). The complainant was notified that unless further information was submitted within 20 days, the case would be closed without further notice.

The complainant did not respond to the Authority's letter of 13 March 2008.

2. Description of the alleged state aid

The complaint concerns the planned sale of the property which is situated in the Municipality of Tromsø, and which is currently owned by the Municipality. On 4 June 2007, the Municipality's Commission of Finance and Buildings decided that Sommarøy Arctic Hotel AS would be given the option to purchase the property.

However, the complainant claims that the property should be advertised in the press and sold unconditionally by auction through a real estate agent.

By letter dated 28 September 2007, the Municipality of Tromsø informed the Authority that the property had not yet been sold. The Municipality indicated that there were plans to enter into an option agreement with Sommarøy Arctic Hotel AS regarding the property, which would give Sommarøy Arctic Hotel AS the right to purchase the land. Several conditions concerning the resolution of certain regulatory matters by the municipality should be fulfilled before the sales procedure could start.

On 10 September 2008, the Norwegian Ministry of Government Administration and Reform informed the Authority by telephone that the Municipality of Tromsø had not yet sold the property. Furthermore, the Norwegian Ministry of Government Administration and Reform informed the Authority that the Municipality intended to determine the price of the property on the basis of assessments by two independent assessors.

3. Assessment

Article 61(1) EEA 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 Authority notes that for the state aid provisions in Articles 61 to 63 of the EEA agreement to apply, a transaction must have taken place. Furthermore, it follows from Article 1 of Part I of Protocol 3 that the Authority is only competent to assess unlawful aid where such aid has already been implemented.

However, in this case, the sales procedure has not yet been concluded. Hence, no state aid has been granted to Sommarøy Arctic Hotel AS.

4. Conclusion

On the basis of the foregoing assessment, the Authority concludes that no state aid within the meaning of Article 61(1) EEA has been granted to Sommarøy Arctic Hotel AS in connection with the sale of the property.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority considers that no state aid within the meaning of Article 61 EEA has been granted with regard to the property known as 'Hillesøyfyllinga' [property 189/196] located in the Municipality of Tromsø.

Article 2

This Decision is addressed to the Kingdom of Norway.

Article 3

Only the English version is authentic.

Done at Brussels, 1 October 2008

For the EFTA Surveillance Authority,

Per Sanderud
President

Kristján Andri Stefánsson
College Member