Case No: 47659 (former SAM 020.500.051 (Legacy 23807) and SAM 020.500.052 (Legacy 23808))
Event No: 260605
Dec No: 170/05/COL

EFTA SURVEILLANCE AUTHORITY DECISION

OF 29 JUNE 2005

ON SALES OF PUBLICLY OWNED PROPERTIES -

UNIVERSITY LIBRARY BUILDING AND PART OF ADJACENT PROPERTY IN OSLO

(NORWAY)

THE EFTA SURVEILLANCE AUTHORITY,

HAVING REGARD TO the Agreement on the European Economic Area[1], 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[2], in particular to Article 24, Article 1 in Part I of Protocol 3 and Article 13(2) in Part II of Protocol 3 thereof,

HAVING REGARD TO the Authority's Guidelines[3] on the application and interpretation of Articles 61 and 62 of the EEA Agreement, and in particular Chapter 18B, State aid elements in sales of land and buildings by public authorities, thereof,

WHEREAS:

I. FACTS

1. Procedure

By letter dated 24 July 2003 from the Mission of Norway to the European Union, forwarding a letter from the Ministry of Labour and Government Administration

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[1] Hereafter referred to as the EEA Agreement.

[2] Hereafter referred to as the Surveillance and Court Agreement.

[3] Procedural and Substantive Rules in the Field of State Aid (State Aid Guidelines), adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in OJ 1994 L 231. The State Aid Guidelines are available on the Authority's website: www.eftasurv.int .

dated 22 July 2003, both received and registered by the EFTA Surveillance Authority (hereinafter "the Authority") on 29 July 2003 (Doc. No: 03-5193 A), the Norwegian authorities notified the sale of the University Library building *("Universitetsbiblioteket")* and associated land located at Drammensveien 42 in Oslo (hereinafter "*the UB-building*")[4]. The notification, without annexes, was also sent by fax from the Ministry of Trade and Industry on 22 July 2003, received and registered by the Authority on the same date (Doc. No: 03-4979 A).

The UB-building was sold from Statsbygg to Entra Eiendom AS (hereinafter *"Entra"*)[5]. The notified sales price was NOK 120 million (approximately EUR 14.6 million).

By the same letter dated 24 July 2003 from the Mission of Norway to the European Union (Doc. No: 03-5193 A), forwarding a letter from the Ministry of Education and Research dated 17 July 2003, the Norwegian authorities also notified the sale of part of a property located next to the UB-building at Observatoriegaten 1 (hereinafter *"the adjacent plot"*)[6]. The notification, without annexes, was also sent by fax from the Ministry of Trade and Industry on 22 July 2003, received and registered by the Authority on the same date (Doc. No: 03-4944 A).

The adjacent plot was sold from the University of Oslo to Entra. The notified sales price was NOK 30.75 million (approximately EUR 3.75 million).

After having assessed the notification, it transpired that the actual transaction took place before the notification was submitted. By letter dated 17 December 2003 (Doc. No: 03-8861 D), the Authority therefore informed the Norwegian authorities that it according to Article 13(2) in Part II of Protocol 3 to the Surveillance and Court Agreement is not bound by the time limit (two months) set out in Article 4(5) in the same Act. The Authority also requested additional information concerning the sale of the adjacent plot.

By letter from the Mission of Norway dated 22 January 2004, forwarding a letter from the Ministry of Education and Research dated 19 January 2004, both received and registered on 26 January 2004 (Event No: 187902), the Norwegian authorities submitted additional information. The letter from the Ministry of Education and Research was also sent by fax dated 20 January 2004, received and registered by the Authority on the same date (Event No: 186832).

By letter dated 17 February 2004, the Authority sent a second request for information to the Norwegian authorities, concerning the sale of the adjacent plot (Event No: 189763).

By fax from the Ministry of Trade and Industry dated 19 March 2004, received and registered by the Authority on the same date (Event No: 260088), the Ministry requested an extension of the time limit until 16 April 2004 for responding to the

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[4] In the public real-estate registry *("Grunnboken")*, the property is identified as "Gnr 211, Bnr 47" in the Municipality of Oslo.

[5] The vendor and buyer are both described below in section I.2.1.

[6] The plot covers an area of 4230 m2 and constitutes a part of the property registered as "Gnr 211, Bnr 196" in the public real-estate registry ("*Grunnboken*").

Authority's letter of 17 February 2004. The letter from the Ministry was also forwarded to the Authority by letter from the Mission of Norway to the European Union dated 23 March 2004, received and registered by the Authority on 24 March 2004 (Event No: 260565).

By letter dated 22 March 2004, the Authority granted the Norwegian authorities an extension of the time limit for responding until 16 April 2004 (Event No: 260162).

By letter from the Mission of Norway to the EU dated 29 April 2004, forwarding two letters from the Ministry of Trade and Industry and the Ministry of Education and Research, respectively, both dated 27 April 2004, all received and registered by the Authority on 3 May 2004 (Event No: 281814), the Norwegian authorities submitted additional information. The two letters from the Ministry of Industry and Ministry and Ministry of Education and Research were also sent by fax dated 27 April 2004 from the Ministry of Trade and Industry, received and registered by the Authority on the same date (Event No: 279498).

2. The notified sales

2.1 Background

On 7 May 2002, the Norwegian Government proposed[7] to the Parliament that Entra should buy the UB-building from Statsbygg and the adjacent plot from the University of Oslo. The National Library (*"Nasjonalbiblioteket")* occupied the UB-building on a long term lease arrangement. The Government proposed that the sales should take place at market value as set by independent appraisers. The proposal was approved by the Parliament[8].

The transactions formed part of a Framework Agreement whereby Entra undertook *i.a.* to acquire and renovate the existing UB-building for the purpose of leasing the building to the Ministry of Culture and Church Affairs (the Ministry responsible for the National Library). In order to provide the National Library with additional storage and office space, Entra would also develop the adjacent plot by building an underground archive and storage facility as well as a garage. On top of the underground facilities, an office building connected to the UB-building would also be built if the Municipality of Oslo granted the necessary permits. The projected building would comprise of 6 744 m² underground facilities and 6 860 m² above ground.

Entra is a real estate company letting general office properties. The company is organised as a limited liability company and all shares are owned by the Norwegian State. The company was established, with effect from 1 July 2002, through the transfer of property, capital and personnel from Statsbygg. The responsible Ministry

[7] See *"St.prp. nr. 63 (2001-2002) Tilleggsbevilgninger og omprioriteringer i Statsbudsjettet medregnet folketrygden 2002. Tilråding fra Finansdepartementet av 7. mai 2002, godkjent i statsråd samme dag (Kapittel 326, Språk-, litteratur, og bibliotekformål)."*

[8] See Innst. S. nr. 255 (2001-2002), p.48-50.

for Entra is the Ministry of Trade and Industry. Entra ranks among Norway's largest real estate companies[9].

Statsbygg is a public body entrusted with the ownership and operation of the government "special purpose" buildings, or buildings dedicated to specific public use. The responsible Ministry for Statsbygg is the Ministry of Modernisation[10].

The National Library is a public body entrusted with the national library services, including a collection of books and records for safekeeping and public access.

On 20 December 2002, Entra acquired the UB-building and associated land from Statsbygg. On 1 April 2003, Entra acquired the adjacent plot (4 230 m2) from the University of Oslo.

In the notification, it is stated that: *"Consequently, the sale of buildings and land takes place at a price equal to market value as defined in point 2.2 (a) of Chapter 18B of the State Aid Guidelines. The Norwegian Government has nevertheless decided to notify the transaction, since the procedure followed in this sale in some aspects differs from the procedure of 18B.2.2 of the Guidelines. However, the basic principle of the Guidelines chapter 18B.2.2 is followed, namely that the sale is conducted at market value as assessed by independent expertise. Hence, the sale does not contain any element of State aid."*[11]

2.2 The Framework Agreement

On 28 June 2002, the Norwegian State, represented by the Ministry of Culture and Church Affairs, and Entra entered into a Framework Agreement concerning *i.a.* the renovation of the UB-building and the construction of new facilities. According to the Norwegian authorities, the Framework Agreement connected the two real property transactions and certain lease arrangements. The main points of the Framework Agreement were:

- Entra shall acquire the existing UB-building and associated land from Statsbygg. The current lease contract with the National Library shall continue until the building has been renovated.

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[9] The company had an operating income of NOK 856 million (some EUR 103 million) in 2003, and a profit before tax of NOK 26 million (some EUR 3.1 million)[9]. The group's consolidated equity (book value) as of 31.12.2003 was NOK 1 207 million (some EUR 145 million). At year-end, the group's property portfolio (book value) was NOK 8 127 million (some EUR 979 million). As of 31.12.2003, Entra had 135 employees. The total property portfolio consists of some 120 properties, amounting to 880 000 m².

[10] The Ministry of Modernisation was established on 1 October 2004. Before 1 October 2004 the responsible ministry for Statsbygg was the Ministry of Labour and Government Administration.

[11] Letter dated 22 July 2003 from the Ministry of Labour and Government Administration. In this letter the Norwegian authorities also regretted that it had not been possible to observe the standstill obligation as provided for in Article 1 in Part I of Protocol 3 of the Surveillance and Court Agreement.

* […] Covered by the obligation of professional secrecy.

- Entra shall renovate the UB-building. Rent after the renovation shall be the current rent increased with an amount that shall correspond to what would yield […]* return on the projected costs of renovation.

- Entra shall acquire the land adjoining the UB-building from the University of Oslo. Entra shall apply to the relevant authorities for revised permits to build underground facilities on this property, as the permit in 2002 only covered the archives and storage facility previously planned by Statsbygg.

- Entra shall build new underground facilities. The National Library shall lease the archives and storage facility at a price [...].

- Entra shall apply to the relevant authorities for re-zoning of the acquired property, in order to allow for an office building as projected.

- Entra shall build the office building if the Ministry of Culture and Church Affairs exercises a lease option for more than one third of the building, provided that the necessary permits are granted from the Municipality of Oslo.

- The Ministry of Culture shall have first rights of refusal to lease the underground facilities and office space at a price [...].

- Entra shall lease all space not occupied by the National Library in the commercial market. Lease income above a return on costs of [...] shall be applied against the National Library's rent obligation for the archives and storage facilities, effectively reducing the rent.

- The Ministry of Culture shall have options to purchase the UB-building and the underground archive and storage facility at the end of the first lease term, and to purchase the new office building provided the Ministry leases and uses more than 50 % of the building.

In the notification, the Norwegian authorities stated that: *"(...) the Framework agreement is an expression of special obligations as defined in point 2.2 (c) of Chapter 18 B in the State aid guidelines. The obligations and limitations placed on the buyer limit the buyer's possibilities with respect to the use of the building and reduce its earning potential."*

The Norwegian authorities stated that for the UB-building this concerns *i.a.* the obligation to continue the lease on current terms until renovation has been completed, and not being able to charge market rent, as well as the obligation to renovate the building, accepting the budget risk for the completion for the project, *"which offers particular challenges and uncertainties because of the antiquarian status and physical state of the building".*

For the adjacent plot, the Norwegian authorities pointed out that the development of this part of the project also offered considerable risks and uncertainties for the total project. This concerned *i.a.* the acceptance of the budget risk for the underground storage facility, the obligation to build the office building and the acceptance of the risk that the municipal authorities will not approve the project as planned.

2.3 The valuations of the UB-building and the adjacent plot

By letter dated 10 April 2002, the firm OPAK AS (hereinafter *"OPAK"*) was engaged by Statsbygg (the seller of the UB-building) to assess the market value of the UB-building and the adjacent plot.

Two other firms, Catella Eiendomsconsult AS and Agdestein Takst og Eiendomsrådgivning AS (hereinafter *"Catella/Agdestein")* were engaged by Entra (the buyer of the UB-building and the adjacent plot) to assess - in co-operation - the market value of the UB building and the adjacent plot.

In the letter dated 22 July 2003 from the Ministry of Labour and Government Administration (Doc. No: 03-5193 A) concerning the notification of the sale of the UB-building, the Norwegian authorities stated that: *"The valuators have looked at the combined value of both the UB-building (with land) and the adjoining plot. However, it has been possible for the parties to extract from the valuation reports the valuators' opinion about the transaction at hand".*

OPAK and Catella/Agdestein are, according to the Norwegian authorities, well reputed and independent property appraisers.

- The OPAK valuation

OPAK delivered its report on 18 April 2002, followed by an explanatory note dated 5 July 2002. According to the report, the mandate was to assess the market value of the UB-building, associated land and the adjacent plot according to the principles outlined in Chapter 18B of the Authority's State Aid Guidelines.

The original report from OPAK was issued prior to the Framework Agreement (the Framework Agreement was entered into on 28 June 2002) and did not take into account the effects of the special conditions expressed by that Agreement.

The valuation made a distinction between market value with and without a renovation of the UB-building. OPAK also made a distinction between leasing out in the commercial market and leasing to the National Library on market terms for 20 years. The two alternatives without renovation foresaw an "upgrading" at a cost of NOK 25 million. OPAK concluded as follows:

Alternative	Assumptions	Sales value
A 1	Leased in the commercial market, no renovation, but "upgraded" at a cost of NOK 25 million.	NOK […] million
A 2	Leased to the National Library on a 20 year contract, no renovation, but "upgraded" at a cost of NOK 25 million.	NOK […]million
B 1	Leased in the commercial market and renovated at a cost of NOK 125 million.	NOK […] million
B 2	Leased to the National Library on a 20 year contract and renovated at a cost of	NOK […] million

	NOK 125 million[12].	

All the four alternatives include a value for the adjacent plot of NOK […] million[13].

In order to assess the value of the adjacent plot, OPAK used the method of "land costs"[14]. The basis for using this method is that the value of real property for commercial development depends on intended and permitted use in combination with the property's development and expected earnings potential.

Land costs are defined as the difference between the sales values of the fully-developed property less the total building costs including profit, but excluding costs of land, divided per square meter built-up area. Basement area is usually excluded, but if underground development constitute an important part of the development or has a high value, the underground area will be part of the calculation.

Land costs are seen as a direct expression for the property value and is connected to the demand for the type of building in question, and the level of building costs. The value, expressed as a sum per square meter of gross building area, is also market tested by comparing other properties sold in the area. The assessment takes into account the location, possible effective use, the physical potential of building, the access for utility and proximity to public communications etc. The zoning status of the property is of great importance. The appraisal from OPAK did not take into account the risk related to the possibility of re-zoning[15].

Based on principles described above, OPAK estimated the land cost to NOK […] per square meter for underground facilities and NOK […] per square meter for above-ground facilities in order to reach the exact purchase price for the land based on the actual project being planned.

The estimated value for the adjacent plot was then calculated as follows:

Possible underground development: 11 567 m2 gross area * NOK […]	= NOK […]
+ Possible development above ground: 7 870 m2 gross area * NOK […]	= NOK […]
= Estimated value (rounded)	= NOK […]

After the Framework Agreement was concluded, Statsbygg asked OPAK by e-mail on 2 July 2002 for an assessment of the effects of the Agreement. OPAK submitted an explanatory note to this effect dated 5 July 2002. On the basis of the conditions in the Framework Agreement, OPAK considered that it was alternative A 2 above, but without the value of the adjacent plot (NOK […] million) and without the cost of

[12] The difference between alternative A1/B1 and A2/B2 is *i.a* explained by less vacant area with the National Library as a tenant (1% vs 4%) and a lower discount rate with the National Library as a tenant (7% vs 10%).

[13] The term used in Norwegian for the value of the adjacent plot is: *"Samlet verdi utbyggingspotensiale".*

[14] The Norwegian term is: *"Tomtebelastning*".

[15] Zoning status relates to municipal regulations establishing *i.a* the purposes for which a building can be used.

"upgrading" (NOK 25 million), which reflected the situation described in the Framework Agreement, *i.e.* only the capitalised value of the actual rent from the UB-building. OPAK adds the calculated cost of upgrading and does not take the cost of renovation into consideration as the Framework Agreement states that this will be regulated in a separate agreement between the parties. The value of the adjacent plot is deducted because this has not yet been bought. OPAK therefore concluded that the market value, based on the conditions of the Framework Agreement, was NOK […] million […].

In the explanatory note of 5 July 2002, OPAK did not make any adjustments to the estimated value of the adjacent plot (NOK […] million).

- The Catella/Agdestein valuation

Catella/Agdestein issued their report on 21 June 2002, followed by an explanatory note dated 2 October 2002.

The mandate for Catella/Agdestein was to assess the market value of the UB-building and the adjacent plot together, taking into account that the National Library should continue as lessee, as sold in a professional way during a normal time period in the market at that time. Notice should be taken of the planned lease agreements, the purchase of the adjoining plot of land, a preliminary plan for renovation of the UB building, the approved project of the building of an underground storage facility and a more uncertain larger building project on the south side of the UB building where there were plans but no public approval.

Catella/Agdestein used four different evaluation methods, and summed them up in a final assessed value. They underlined the uncertainty of the valuations and the market by defining a margin of error up to 25% on either side. The valuation took account of the Framework Agreement[16].

The four evaluation methods were:

- Net capitalization value: Valuation based on the property's income surplus (today's rent minus owners' costs) and required rate of return. The capitalisation factor was set at 8%. The capitalisation factor was a combination of a long term interest rate estimated at 5.5% and a risk rate estimated at 2.5%. The method resulted in a net value of NOK […] million.

- Area valuation method: Valuation based on recent sales prices of comparable properties, alternatively discretionary evaluation of average value pr square meter gross floor area. The method resulted in a value of NOK […] million.

- Technical value method: Estimation of the costs of building a similar building, with deduction for wear and age, and addition for plot value. The method resulted in an estimated value of NOK […] million.

[16] The valuation from Catella/Agdestein is dated 21.06.2002, while the Framework Agreement is dated 28 June 2002. However, Catella/Agdestein refers in their report to a draft of the Framework Agreement.

- Cash flow valuation: Evaluation based on a prognosis of credit and debit cash flows over 10 years based on the current contracts until expiry, and market rent thereafter. The cash flow valuation resulted in an estimated value of NOK […] million.

Based on these four different methods, and taking into consideration the mandate, lease options and projected constructions, Catella/Agdestein concluded that the estimated market value of the land and building (including the adjacent plot) was NOK […] million, but with an uncertainty of +/- 25%.

Concerning the adjacent plot, Catella/Agdestein's valuation contained two price elements.

The first element referred to the value of the property based on the establishment of a 4-level storage facility below ground with a total floor area of 4 600 m2. According to the Norwegian authorities, the property value was set to NOK […] million.

The second element was the value of a possible development potential in addition to the already approved development. The valuators pointed to several development alternatives. Firstly, the surface might be used for parking. Secondly, it might be possible to obtain the local authority's approval for re-zoning and the building of additional underground space varying from 0 to 5 000 m2 of underground parking space. Thirdly, re-zoning may include up to an additional 10 000 m2 office space, inclusive the area of glass-covered atrium and connections between a new and the existing building. Catella/Agdestein concluded on this element that the different possibilities and the probability for a development of the adjacent plot defended a conclusion that a buyer, at the present time, would be willing to pay approximately NOK […] million for this possible additional development potential. The valuators added that the underground parking alternative seen in isolation would have a negative property value. However, as part of a larger development it would probably be necessary to include it.

Catella/Agdestein concluded that the total value of the adjacent plot was NOK […] million.

2.4 The valuation of the adjacent plot

In addition to the value assessments described above in point 2.3, the firm Willy Preintoft AS (hereinafter "*Preintoft*") was engaged by the University of Oslo (the seller of the adjacent plot) to assess the value of the adjacent plot. Preintoft issued his report in October 2002. Preintoft is, according to the Norwegian authorities, a well reputed and independent property appraiser.

In order to assess the value of the adjacent plot, Preintoft used the "land costs" method (see description above concerning the OPAK valuation for a description of the "land costs" method).

Based on this method, Preintoft estimated the land cost to NOK […] per m2 for underground facilities and NOK […] per m2 for above-ground facilities, in order to reach the purchase price for the land based on the actual project being planned.

Preintoft furthermore assumed that the underground development would be 5 000 m2 and the development above ground would be 9 800 m2. The conclusion of the Preintoft report was that the market value of the adjacent plot was NOK […] million ((NOK […]*5 000m2) + (NOK […]*9 800m2)).

However, the Norwegian authorities pointed out that the planned underground area is larger (6 744 m2) and the above ground is smaller (6 860 m2) than projected by Preintoft.
The parties (Entra and the University of Oslo) therefore agreed to the assessment of the land value used by Preintoft (NOK […] underground and NOK […] above ground), but adjusted the m2 figures to reach the value of the adjacent plot.

The estimated value was then calculated as follows:

Possible underground development: 6 744 m2 gross area * NOK […]	= NOK […]
+ Possible development above ground: 6 860 m2 gross area * NOK […]	= NOK […]
= Estimated value	= NOK […]

2.5 The correspondence with the Norwegian authorities

By letter dated 17 December 2003 (Doc. No: 03-8861 D), the Authority requested additional information concerning the adjacent plot. The Authority pointed out that OPAK had assessed the value of the adjacent plot at NOK […] million, and asked the Norwegian authorities to provide explanations on how the different valuations were taken into account when the sales price was fixed (the Catella/Agdestein valuation concluded that the market value of the adjacent plot was NOK […] million).

By letter from the Mission of Norway dated 22 January 2004, forwarding a letter from the Ministry of Education and Research dated 19 January 2004, both received and registered on 26 January 2004 (Event No: 187902), the Norwegian authorities submitted additional information. The Norwegian authorities referred to the notification dated 17 July 2003 and the background of the case. They point out that, at the time of the transaction, the building project above ground was considered very uncertain, both in regard of whether it would be permitted at all, and in regard to approval of the size of the building. Both the buyer (Entra) and the seller (The University of Oslo) of the adjacent plot therefore agreed that the above-ground cost in the OPAK evaluation was too high (NOK […] per m2). Furthermore, the Norwegian authorities pointed out that the OPAK evaluation was based upon a larger development potential than planned for in the actual project.

By letter dated 17 February 2004, the Authority pointed out that by using the new above ground development area (6 860 m2) and the OPAK m2 values (NOK […]) still gave a value that was almost […] higher than the agreed sales price[17]. The fact

[17] Using the land cost figures from the OPAK valuation (NOK […] for underground and NOK […] for above ground) and the actual m2 to be constructed (6.744 m² underground and 6.860 m² above ground) the value becomes NOK […] (([…]*6.744) + ([…]*6.860)).

that Entra considered the land cost for the above ground facilities estimated by OPAK as unacceptable, did not, in the Authority's view, constitute proof that the purchase price agreed upon was as close to a correct market price as possible. The Authority pointed out that, with the information at hand, it could not ignore the OPAK valuation and therefore asked again the Norwegian authorities to explain how the different valuations were taken into account when the sales price was fixed.

By letter dated 27 April 2004 (Event No: 281814 (letter) and Event No: 279498 (telefax)), the Ministry of Education and Research submitted further information concerning the sales procedure, the valuations and how the parties took account of the different valuations. The Ministry argued that the sales price for the adjacent plot was negotiated on an arms' length basis between the University of Oslo and Entra and that the University did not confer any advantage to Entra. Concerning the OPAK valuation, the Ministry referred to that both parties (*i.e.* Entra and the University) found this valuation to be irrelevant as a basis for fixing the sales price. The Ministry referred to that the OPAK valuation was based on assumptions that were contrary to the facts of the case. That concerned in particular the zoning risk that was not taken into account and the limitations imposed on Entra by the Framework Agreement. Concerning the Catella/Agdestein valuation, the Ministry referred to the notification and the uncertainty regarding the possibilities for a full commercial development of the adjacent plot. Concerning the Preintoft valuation, the Ministry referred to that Preintoft considered that there could be no "normal" sale or development of the property because of the, at that time, zoning for the property. The Ministry concluded that the adjacent plot was sold from the University of Oslo to Entra at fair market value.

II. APPRECIATION

1. The notifications

The Norwegian authorities have submitted two separate notifications for the sales of the UB-building (sales price NOK 120 million) and the adjacent plot (sales price NOK 30.75 million)[18]. The Authority understands that the reasons for two separate notifications were, *i.a.*, that there were two contracts and two sellers (Statsbygg for the UB-building and the University of Oslo for the adjacent plot) and that two ministries were involved (The Ministry of Labour and Government Administration, being responsible for Statsbygg, and the Ministry of Education and Research, being responsible for the University of Oslo).

However, when the Norwegian Government proposed that Entra should take over responsibility for the total project, the proposal presupposed the sale of the adjacent plot and that Entra would build new facilities at the adjacent plot.[19] In addition, the

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[18] By letter dated 24 July 2003 from the Mission of Norway to the European Union (Doc. No: 03-5193 A), forwarding a letter dated 22 July 2003 from the Ministry of Labour and Government Administration (the UB-building) and a letter dated 17 July 2003 from the Ministry of Education and Research (the adjacent plot).

[19] See *"St.prp. nr. 63 (2001-2002) Tilleggsbevilgninger og omprioriteringer i Statsbudsjettet medregnet folketrygden 2002. Tilråding fra Finansdepartementet av 7. mai 2002, godkjent i statsråd samme dag (Kapittel 326, Språk-, litteratur, og bibliotekformål)."*

Norwegian authorities stated themselves in the notification that the two sales are connected (as part of the new building on the adjacent plot will be “tailor-made” underground storage facilities for the National Library).

Furthermore, two of the three value assessments that were submitted as part of the notifications (OPAK and Catella/Agdestein) contain value assessments of the whole project (the UB-building plus the adjacent plot), and do not consider it as two separate sales, even if the Norwegian authorities argue that the assessments concerning the adjacent plot are severable from the value assessments concerning the UB-building. The third value assessment (Preintoft) only concerns the adjacent plot.

On this background, the Authority has decided to assess the two notifications together.

2. Procedural requirements

Pursuant to Article 1 (3) in Part I of Protocol 3 to the Surveillance and Court Agreement, *“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”.*

Chapter 18B of the State Aid Guidelines, entitled “State aid elements in sales of land and buildings by public Authorities”, sets out two procedures that allow EFTA States to handle sales of land and buildings in a way that automatically precludes the existence of state aid. The first method is a sale through an unconditional bidding procedure (Chapter 18B.2.1), while the other method is a sale, without an unconditional bidding procedure, by way of an independent expert evaluation (Chapter 18B.2.2.). If none of these methods are complied with, the EFTA States should notify the Authority of such transactions (Chapter 18B.2.3.).

The Norwegian authorities decided to notify the transactions as an unconditional bidding procedure was not carried out and since the procedure followed in these sales in some aspects differed, according to the Norwegian authorities, from the procedure of Chapter 18B.2.2 (independent expert evaluation) of the State Aid Guidelines. The sales were notified to the Authority by letter from the Mission of Norway to the European Union dated 24 July 2003, received and registered on 29 July 2003 (Doc. No: 03-5193 A). However, the sale of the UB-building took place on 20 December 2002, while the sale of the adjacent plot took place on 1 April 2003. The Authority therefore concludes that – if the assessment below will show that the sales entailed state aid in the meaning of Article 61(1) of the EEA Agreement - the Norwegian Government would have violated the standstill obligation pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement[20].

3. Article 61(1) of the EEA Agreement

[20] As pointed out also by the Norwegian authorities themselves in the notifications (see above in footnote 11).

Although the Norwegian authorities stated that the sales procedure to a certain extent differed from the one prescribed in Chapter 18B.2.2 of the State Aid Guidelines, they were of the view that the sales took place *"in line with the principles"* of Chapter 18B of the State aid Guidelines and that the sales did not contain any element of state aid (see point I.2.1 above).

Article 61(1) of the EEA Agreement sets out the conditions for a measure to be state aid. If not all the conditions are met, there is no state aid. The Article 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."

Thus, Article 61(1) of the EEA Agreement *i.a.* requires, in order for there to be state aid that the sales are an intervention by the State or through State resources and that the sales confer an advantage on Entra.

It is the Authority's view that the sales of publicly owned land and buildings by Statsbygg and the University of Oslo, which are both part of the Norwegian State, are transactions involving State resources. However, Entra would only receive an advantage if the sales by Statsbygg and the University of Oslo of the publicly owned land and buildings were below market value.

4. Were the properties sold at market value?

The question is therefore whether the UB-building and the adjacent plot were sold to Entra by Statsbygg and the University of Oslo, respectively, at market value. The UB-building was sold from Statsbygg to Entra for NOK 120 million (approximately EUR 14.6 million). The adjacent plot was sold from the University of Oslo to Entra for NOK 30.75 million (approximately EUR 3.75 million). The total sales price was NOK 150.75 million.

To substantiate that the two sales took place at market value, three value assessments have been submitted. OPAK and Catella/Agdestein assessed the market value of the UB-building and the adjacent plot together, while Preintoft only assessed the value of the adjacent plot. OPAK concluded in July 2002, after submitting an additional explanatory note, that the market value of the two properties was NOK […] million […]. Catella/Agdestein concluded in June 2002, followed by an explanatory note in October 2002, that the value of the two properties was NOK […] million. Preintoft concluded that the value of the adjacent plot was NOK […] million.

In the following, the Authority will assess whether the submitted value assessments are reliable sources, in order to establish the market values of the sold properties and whether the sales prices were equal to or above the actual market values. As mentioned above not all the conditions of Chapter 18B.2.2 of the State aid Guidelines were complied with such that any involvement of state aid would be automatically precluded. The value assessments were for example not carried out prior to the sales negotiations, which is one of the conditions for automatically excluding that the sales would result in grants of state aid. On the other hand, this sequence of events does not necessarily mean that state aid was involved. By itself Chapter 18B.2.2 establishes several criteria which may be used for an independent assessment of whether the sales took place at market value and hence were free of state aid. Therefore the Authority will make reference to various criteria established in Chapter 18B.2.2 of the State Aid Guidelines.

4.1 Reliability of the expert evaluations

Chapter 18B.2.2 (a) of the State Aid Guidelines stipulates that three cumulative conditions must be fulfilled in order for an “independent expert evaluation” to exist. These are that the valuers must be of good repute, independent, and that the value assessments must be carried out on the basis of generally accepted market indicators.

- **Were the valuers of good repute?**

The State Aid Guidelines define that an ‘asset valuer’ is a person of good repute who has obtained an appropriate degree at a recognized centre of learning or an equivalent academic qualification and has suitable experience and is competent in valuing land and buildings in the location and of the category of the asset.

OPAK, Catella/Agdestein and Preintoft are all of good repute, according to the notification. The Authority notes that all three companies, at the time of the sale, were members of the Norwegian Association of Valuators *(“Norges Takseringsforbund (NTF)”*) and had considerable experience concerning the valuation of properties in Oslo. The Authority has therefore no reason to believe that any of these three companies were not of good repute.

- **Were the valuers independent?**

The State Aid Guidelines state that: *“The valuer should be independent in carry out his tasks, i.e. public authorities should not be entitled to issue orders as regards the result of the valuation”.*

The letters dated 22 July 2003 from the Ministry of Labour and Government Administration and 17 July 2003 from the Ministry of Education and Research state that: *“The parties commissioned independent value assessments of the property”*.

The mandate for the OPAK valuation, initiated by Statsbygg, referred to Chapter 18B of the State Aid Guidelines and the definition of market value. The mandate for the Catella/Agdestein valuation does not have any such references, but states that the main purpose with the report is to communicate the two companies views on normal sales value (market value) of the property sold in a professional way over a normal period of time. The Preintoft valuation, initiated by the University of Oslo, simply state that it has been given the task to submit a value assessment of the adjacent plot. None of the mandates indicate that the valuers have been influenced in any direction as far as their valuation work is concerned. The Authority has also no reasons to believe that the valuers have been influenced by negotiations, which have been initiated between Entra and Statsbygg/the University of Oslo, prior to the dates when the valuations were submitted.

The Authority therefore finds that all three valuers were independent in carrying out their tasks.

- **Were the valuations carried out on the basis of generally accepted market indicators and valuation standards?**

The State Aid Guidelines state that the valuation(s) should be carried out *"on the basis of generally accepted market indicators and valuation standards"*.

The Norwegian Association of Valuators *("Norges Takseringsforbund (NTF)")* issues standards and guidance for its members regarding different valuation methods. This includes the standard *"Key to valuation of commercial property"* which *i.a.* describes the net capitalisation method, the cash flow method and the technical worth method. The net capitalisation method gives the value by capitalising the net annual rent revenues. The interest applied is compounded from the real rate of interest and a risk premium seen in relation to the actual property under valuation. The cash flow method is in essence the same as the capitalisation method, but opens up for adjusting the revenues and costs in each individual year. The technical value is normal building costs with a deduction for age and usage and with an addition for the value of the land.

The OPAK valuation used the net capitalisation method for the UB-building and the land costs method for the adjacent plot (the land cost method is described in point I 2.3 above). The land costs method is not described in the Key to valuation of commercial property from NTF.

The Authority finds that the OPAK valuation of the UB-building is based on a generally accepted valuation standard. The valuation of the adjacent plot is based on a method that is not described in the Key to valuation of commercial properties. However, the three other methods presuppose that there is an existing building on the property in question (and rent revenues when using the two capitalisation methods). The adjacent plot is a piece of land where the size of building(s) to be built was uncertain at the time of valuation. Without dispensing with this uncertainty, the Authority finds that the use of the land cost method as such is an acceptable valuation method for the adjacent plot.

The Catella/Agdestein valuation used all the three methods described in the Key to valuation of commercial property as well as the area valuation method. The area method uses an expected price per m2 gross floor area for the whole of a building multiplied with the gross area. The expected price per m2 is based on recent sales figures from comparable buildings and areas. The valuation of the adjacent plot is based on a presumption that there was a high probability that the underground facilities would be built. In addition, Catella/Agdestein assumed that a potential buyer would be willing to pay NOK […] million for a potential building project (or parking areas for cars) above ground.

The Authority finds that the Catella/Agdestein valuation of the UB-building and the adjacent plot as a whole is based on generally accepted valuation methods. For the adjacent plot viewed separately, Catella/Agdestein have not used any particular method as such to assess the possible additional development potential above ground, but have set this value rather discretionally at NOK […] million. The Authority finds that this assumption, even when taking into account the high uncertainty related to the development potential, is not in accordance with generally accepted valuation standards.

Preintoft used the land cost method to assess the value of the adjacent plot. As stated above, the Authority finds that the land cost method is an acceptable valuation method for the adjacent plot, bearing in mind the uncertainty relating to the property development.

4.2 Were the sales prices equal to or above the market values established by the value assessments?

The Norwegian authorities argue that it has been possible to extract from the valuation reports (OPAK and Catella/Agdestein) the valuators' opinion about the value of the two separate properties. However, as explained above in point II.1, the two sales are connected and can be seen as one project. The Authority has therefore first compared the total sales price of the two properties together (NOK 150.75 million) with the results of the OPAK and Catella/Agdestein assessments. Thereafter the Authority has compared the individual sales prices for the two properties (NOK 120 million and NOK 30.75 million) with the results of all the three value assessments (OPAK, Catella/Agdestein and Preintoft).

- The two notified sales assessed as one project

OPAK concluded in July 2002 that the market value of the two properties was NOK […] million […]. Catella/Agdestein concluded in June 2002, followed by an explanatory note in October 2002, that the value of the two properties was NOK […] million.

The OPAK valuation for the adjacent plot was not based on the planned m2 foreseen for construction. If the land cost figures from OPAK (NOK […]) are accepted and used with the actual m2 foreseen for construction, the value of the adjacent plot becomes NOK […], which gives an "adjusted" OPAK valuation of the total value of the two properties of NOK […], which approximately equals the total sales price of NOK 150.75 million.

The Authority therefore finds that when the two notified sales are assessed together, the sales price is in line with or above the conclusions of the two value assessments from OPAK and Catella/Agdestein, respectively.

- The two notified sales assessed individually
    - The UB-building

In their note dated 5 July 2002, concerning the effects of the Framework Agreement, OPAK concluded that the market value of the UB-building was NOK […] million (excluding the value of the adjacent plot). As the sales price was NOK 120 million, the sales price is above the value estimated by OPAK.

As mentioned above, the Norwegian authorities considered that it is possible to extract also from the Catella/Agdestein report the valuators' opinion about the value of each of the two separate properties. They considered that the Catella/Agdestein report can be interpreted so that the value of the UB-building was set to NOK […] million (NOK […] million minus NOK […] million).

The Authority finds it difficult to see that the Catella/Agdestein report can be used to establish the value for the UB-building separately. The capitalised values estimated (NOK […] million with the net capitalisation method and NOK […] million with the cash flow method) include assumed revenues both from the existing UB-building and from the new underground facilities (4 600 m2) to be built on the adjacent plot. The Authority therefore concludes that the Catella/Agdestein valuation can not be used to document the value of the UB-building only.

- The adjacent plot

Catella/Agdestein concluded that the value of the plot was NOK […] million. As the seller (the University of Oslo) did not accept the Catella/Agdestein valuation and Entra did not accept the OPAK valuation, the University commissioned a new valuation from Preintoft, which concluded that the value was NOK […] million. This figure was however based on an estimated building area that deviated from the planned one. Using the land values from Preintoft (NOK […] below ground and NOK […] above ground), and adjusting for the correct m2 figures, the parties agreed to a sales price of NOK 30.75 million.

OPAK concluded that the value of the adjacent plot was NOK […] million. Correcting OPAK's assessment for the actual building area planned, the value would be NOK […] million (see above under the point "The two notified sales assessed as one project"). However, the sales price was NOK 30.75 million. The Norwegian authorities have argued that the market conditions, the location and the special conditions regarding the permitted use and hence the limited development potential of the adjacent plot, made the above ground land cost of the OPAK valuation too high. The Norwegian authorities argued that OPAK had not taken the zoning risk into consideration, that the Framework Agreement was not taken into account and that the reduced size of the building project was not accounted for.

In the notification it is stated that: *"The Framework Agreement represents the individual expression of the general conditions set by the Government in connection with the sale of the property. (...) As such the Framework Agreement is an expression of special obligations as defined in point 2.2(c) of Chapter 18B on the State Aid Guidelines. The obligations and limitations placed on the buyer limit the buyer's possibilities with respect to the use of the building and reduce its earning potential".* (See also point I 2.2 above for a description of the Framework Agreement).

In Chapter 18B.2.2.(c) of the State Aid Guidelines, entitled "Special obligations", it is stated that: *"Special obligations that relate to the land and buildings and not to the purchaser or his economic activities may be attached to the sale in the public interest provided that every potential buyer is required, and in principle is able, to fulfil them, irrespective of whether or not he runs a business or of the nature of his business. The economic disadvantage of such obligations should be evaluated separately by independent valuers and may be set off against the purchase price. Obligations whose fulfilment would at least partly be in the buyer's own interest should be evaluated with that fact in mind: there may, for example, be an advantage in terms of advertising, sport or arts sponsorship, image, improvement of the buyer's own environment, or recreational facilities for the buyer's own staff.*

The economic burden related to obligations incumbent on all landowners under the ordinary law are not to be discounted from the purchase price (these would include, for example, care and maintenance of the land and buildings as part of the ordinary social obligations of property ownership or the payment of taxes and similar charges)."

The obligations described above are not only related to the land and buildings, but also to the economic content of the contracts between Entra and Statsbygg/the University of Oslo. Of particular importance for Entra is the obligation to continue the current lease with the National Library without being able to charge market rent.

The importance of the special obligations contained in the Framework Agreement, in relation to the State Aid Guidelines, is whether every potential buyer would be required to, and able to, fulfil them. The Authority has no reason to believe that the Norwegian State would have set stricter special conditions for other potential buyers, and thereby reduced the economic value of the contracts. The Authority also can not see that the special conditions are of such a nature that other potential buyers would not be able to fulfil them.

The Authority therefore agrees with the Norwegian authorities that the Framework Agreement imply *"special obligations"* for Entra in the meaning of Chapter 18B.2.2(c) of the State Aid Guidelines. The Authority also notes that the Framework Agreement was taken into account by the value assessors.

OPAK was asked by Statsbygg to assess the effect of the Framework Agreement and submitted a note to this effect on 5 July 2002. In this note OPAK only assessed the consequences of the Framework Agreement on the value of the UB-building and did not assess the consequences of the Framework Agreement on the value of the adjacent plot. OPAK upheld its assessment of the value of the adjacent plot of NOK […] million. The Authority concurs with the views of the Norwegian authorities that the Framework Agreement limits the scope for value appreciation of the adjacent plot for the buyer (Entra) and that OPAK's unadjusted estimate probably does not reflect a correct value. For example, according to point 10 of the Framework Agreement, the Ministry of Education and Research has an option to buy the new building on the adjacent plot at a fixed price. The Authority therefore finds that the OPAK valuation does not reflect the market value of the adjacent plot.

The Authority considers that the "method" used by Catella/Agdestein for assessing the value of the adjacent plot not to be in accordance with generally accepted valuation standards (see point 5 above). The Authority finds that it is more than uncertain whether Catella/Agdestein's assumption of NOK […] million can be said to reflect market value. This amount is anyway well below the agreed sales price of NOK 30.75 million.

The Authority therefore agrees with the Norwegian authorities that, when assessed individually, and taking into account all the three value assessments, the Preintoft valuation reflects in the best way the value of the adjacent plot. The sales price for the adjacent plot is in line with this value assessment.

5. Conclusion

The Authority concludes, based on the above considerations, that the sales of the UB-building and the adjacent plot, subject to special obligations related to the properties, took place at market value and do therefore not contain state aid.

HAS ADOPTED THIS DECISION

1. The sale from Statsbygg to Entra Eiendom AS of the University Library building and the associated land, located at Drammensveien 42 in Oslo ("Gnr 211, bnr. 47") does not contain state aid.

2. The sale from the University of Oslo to Entra Eiendom AS of part of Observatoriegaten 1 in Oslo ("part of Gnr 211, bnr. 196") does not contain state aid.

3. This Decision is addressed to the Kingdom of Norway.

4. This Decision is authentic in the English language.

Done at Brussels, 29 June 2005,

For the EFTA Surveillance Authority

Einar M. Bull Acting President	Bernd Hammermann College Member