

Case No: 67278
Event No: 559755
Dec. No: 378/10/COL

EFTA SURVEILLANCE AUTHORITY DECISION
of 29 September 2010
on the alleged state aid granted by the Port of Reykjavík to Stáltak hf.

(Iceland)

The EFTA SURVEILLANCE AUTHORITY (“the Authority”)

HAVING REGARD to the Agreement on the European Economic Area (“the EEA Agreement”), in particular to Article 61 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 Articles 4(4) and 7(2) of Part II of Protocol 3 to the Surveillance and Court Agreement (“Protocol 3”),

Having called on interested parties to submit their comments pursuant to those provisions¹,

Whereas:

I. FACTS

1. Procedure

By letter dated 30 April 2004, the Municipality of Hafnarfjörður filed a complaint against alleged state aid granted by the Port of Reykjavík to the company Stáltak hf., later Stálsmiðjan ehf. The letter was received and registered by the Authority on 7 May 2004 (Event No 280698).

After an exchange of correspondence and discussions with the Icelandic authorities, by Decision No 435/09/COL of 30 October 2009, the Authority decided to initiate the formal investigation procedure. The Authority called on interested parties to submit their comments. The Authority received no comments from interested parties. By letter dated 12 February 2010 (Event No 546413), the Icelandic authorities submitted their comments to the opening decision.

¹ Decision No 435/09/COL of 30 October 2009, published in OJ C 54 of 4.3.2010 p. 2 and EEA Supplement No 10 of 4.3.2010 p. 3.

2. The complaint

The complainant alleges that several transactions between the Port of Reykjavík,² Dráttarbrautir Reykjavíkur ehf. and Stáltak hf.³ (later Stálsmiðjan ehf.) involve state aid to Stáltak. The complainant considers that since the founding of the limited liability company, Dráttarbrautir Reykjavíkur, in December 1999, established by the Port and Stáltak, the Port has directly and indirectly supported the operations of Stáltak and unduly saved the company from financial difficulties or imminent bankruptcy. The complainant believes the aid granted amounted to several million ISK. In this manner, the complainant considers that the Port has disrupted the competitive position of enterprises that operate in the area, in particular ports that offer slipway services, dry-docking and ship repairs.

The complainant has explained that only three companies, which are situated in the three largest harbours in Iceland, can offer dry-docking and ship repair slipway services. These companies are Stáltak, which operated in the Reykjavík Harbour, and two companies operating from the Hafnarfjörður Harbour and Akureyri Harbour respectively. The complainant has pointed out that, through the Port of Reykjavík's financial support, Stáltak has been able to offer the slipway services in question at a lower price than its competitors.

3. Scope of this decision

By Decision No 435/09/COL, the Authority decided to open the formal investigation procedure with regard to the Port of Reykjavík's purchase of Stáltak's shares in Dráttarbrautir Reykjavíkur ehf. and the Port's purchase of Stáltak's shares in Stáltak's subsidiary Stálsmiðjan-Slippstöðin ehf. With regard to the other transactions complained about, the Authority concluded that these did not involve state aid within the meaning of Article 61(1) EEA. Hence, this decision only deals with the purchase of shares referred to above.

4. Factual background

4.1. The foundation and operation of Dráttarbrautir Reykjavíkur

Dráttarbrautir Reykjavíkur⁴ was founded in Reykjavík on 6 December 1999. The founders were Stáltak, the Port of Reykjavík and Gjörvi ehf.⁵ According to Article 2 of its founding agreement,⁶ DR had the objective to own and operate slipways for shipbuilding and repairing of ships and engage in related activities such as housing management and loan operations. DR's foundation capital amounted to ISK 97.7 million (approximately EUR 1.3 million).⁷ Stáltak subscribed for ISK 51.2 million, the Port of Reykjavík for ISK 46 million and Gjörvi for ISK 500 000.

The majority shareholder Stáltak designated two of the three members of DR's board. A director in Stáltak was appointed as manager of DR, and it was agreed in Article 9 of DR's founding agreement that Stáltak would take care of DR's daily operations.

In 2002, DR made an operating loss of over ISK 9.8 million and its return on equity was minus 11.97%. The company's loss in 2001 was approximately ISK 18.7 million, and in

² Also referred to as "the Port".

³ Referred to as "Stáltak".

⁴ Reykjavík slipways, referred to as "DR".

⁵ Referred to as "Gjörvi". Gjörvi ehf. is a machinery workshop providing various services.

⁶ "Stofnsamningur", Event No 292795, attachment 10.

⁷ The applicable conversion rate between ISK and EUR in 2000, the year when the majority of the transactions took place, was 73.51. There is no official conversion rate for 1999.

2000 its loss amounted to more than ISK 8.4 million. In total the losses over these three first years of the company's operations amounted to approximately ISK 37 million.

4.2. The Port of Reykjavík's purchase of Stáltak's shares in DR

On 29 October 2000, the Port of Reykjavík bought Stáltak's shares in DR. The price was ISK 51.2 million, i.e. equal to the nominal value of the shares. According to the share purchase agreement, the purchase price was to be paid in the form of ISK 30 million in cash on signature of the contract, and the remains were to be paid after Stáltak's customer account with the Port had been balanced and taken into account, no later than 5 November 2000.⁸

4.3. Stáltak's transfer of properties in Mýrargata to its subsidiary Stálsmiðjan-Slippstöðin ehf. and subsequent lease agreement

4.3.1. The property transfer agreement

On 27 October 2000, Stáltak entered into an agreement⁹ with its subsidiary, the private limited liability company Stálsmiðjan-Slippstöðin ehf.¹⁰, under which Stáltak transferred four properties in Mýrargata in Reykjavík to Stálsmiðjan-Slippstöðin. Under the agreement, Stáltak sold the buildings on the sites to Stálsmiðjan-Slippstöðin and transferred to it its rights to the lots according to lot lease agreements concluded with the Port of Reykjavík in 1991 and 1992.¹¹ This transaction was approved by the Port.

In return for the transfer of assets, Stálsmiðjan-Slippstöðin took over mortgage debts on the properties amounting to approximately ISK 174 million and undertook to pay outstanding instalments on a debt on another property amounting to nearly ISK 608 000. According to the contract, the price was decided with due account to the fact that the properties would not yield any rent for the buyer during the first two years, cf. Section I-2.6.2 below.

4.3.2. The lease agreement concerning the properties in Mýrargata

In direct continuation of the property transfer agreement described above, Stáltak and Stálsmiðjan-Slippstöðin entered into a lease agreement¹² on 27 October 2000 under which Stáltak leased from Stálsmiðjan-Slippstöðin the properties in Mýrargata, which were transferred to it by the property transfer agreement. The lease was made for a term of two years, extended automatically by one year unless it was terminated six months before the expiry of the term. The amount of the rent was not mentioned in the agreement, but was paid in full for the next two years at the time of the signature.

4.4. The Port's purchase of Stáltak's subsidiary Stálsmiðjan-Slippstöðin ehf.

On 29 October 2000, Stáltak and the Port entered into a purchase contract¹³ whereby Stáltak sold its shares in the subsidiary Stálsmiðjan-Slippstöðin to the Port. The purchase price was ISK 323 million. The sole assets of the subsidiary were the properties in Mýrargata transferred to it by Stáltak on 27 October 2000.

The purchase price was paid by assuming the mortgage debts on the properties, amounting to circa ISK 175 million. The remainder of the purchase price was to be paid in cash. The contract states that the purchaser is aware of the property transfer agreement and the lease

⁸ See share purchase agreement (“*Kaupsamningur - afsal*”), Event No 280698, attachment 6.

⁹ Document entitled “*Yfirlýsing*”, Event No 292795, attachment 7.

¹⁰ Referred to as “Stálsmiðjan-Slippstöðin”.

¹¹ Lot lease agreements of 16 October 1991 and 30 September 1992.

¹² Document entitled “*Leigusamningur*”, Event No 292795, attachment 8.

¹³ Event No 292795, attachment 15.

agreement of 27 October 2000, concerning the properties in Mýrargata. The two documents were annexed to the purchase agreement. As has been confirmed by the Icelandic authorities, the Port was aware that it would not receive any rental income from the properties during the first two years after the purchase, as the two years' rent had already been paid in full.¹⁴

5. Grounds for initiating the procedure

By Decision No 435/09/COL, the Authority decided to open the formal investigation procedure with regard to the Port's purchase of Stáltak's shares in DR and Stálsmiðjan-Slippstöðin.

In the opening decision, the Authority stated that, based on the information submitted by the Icelandic authorities and by the complainant, the Authority could not exclude the possibility that the Port of Reykjavík's purchase of shares in DR and Stálsmiðjan-Slippstöðin from Stáltak constituted state aid within the meaning of Article 61(1) EEA.

Moreover, the Authority had doubts that these measures could be regarded as complying with Articles 61(2) or 61(3)(a)-(c) EEA. The Authority thus had doubts that the above measures would be compatible with the functioning of the EEA Agreement.

With regard to the other measures complained about, the Authority reached the conclusion that these measures did not involve state aid within the meaning of Article 61(1) EEA.

6. Comments from the complainant

As mentioned above, the complainant is of the opinion that the Port of Reykjavík has disrupted the competitive position of ports offering slipway services (dry-docking and ship repairs) in the area near Reykjavík by directly and indirectly supporting Stáltak's operations.

The Port of Reykjavík bought all of Stáltak's shares in DR on 29 October 2000. The price was ISK 51.2 million, i.e. equal to the nominal value of the shares. The complainant believes the purchase price in question to be too high. In that respect the complainant has pointed out that it was clear to the Port that DR incurred operating losses.¹⁵ Furthermore, it followed from the agreement between Stáltak and DR concerning Stáltak's use of DR's assets that the operations of DR were to be wound up within two years from signing the agreement.

On 29 October 2000, Stáltak and the Port entered into a share purchase contract¹⁶ under which the Port bought all of Stáltak's shares in Stáltak's subsidiary Stálsmiðjan-Slippstöðin. The purchase price was ISK 323 million.

The complainant has argued that the purchase price was around ISK 150 million above market price. This statement is based on the fact that the sole assets of Stálsmiðjan-Slippstöðin were the properties in Mýrargata valued at circa ISK 175 million, which roughly amounts to the price paid by Stálsmiðjan-Slippstöðin for the property when bought from Stáltak two days earlier (by takeover of mortgage debts and payment of outstanding debt instalments). The complainant claims that the Port was well aware of this fact. The complainant did not submit any comments to the Authority's decision to open the formal investigation procedure.

¹⁴ See letter from the Icelandic authorities of 30 November 2006, Event No 400992.

¹⁵ DR's operating losses amounted to ISK 8 428 692 in the year 2000.

¹⁶ Event No 292795, attachment 15.

7. Comments of the Icelandic authorities

7.1. The purchase by the Port of Reykjavík of Stáltak's shares in DR

The Icelandic authorities have confirmed that DR's slipways were used less than predicted and thus DR's operations did not make a profit as had been anticipated. The Icelandic authorities claim that the purchase price for the shares was reasonable, notwithstanding DR's operating losses. The authorities point out that the price was decided taking into account the inflation rate at the time, the increased value of DR's real estate and its other assets due to renewals and price changes to real estate. With regard to the operating losses DR incurred, the Icelandic authorities claim that although DR was not making a profit in 2000 this did not mean that it was clear at the time of the transaction that the operation of slipways could not generate profit in the future.

The Icelandic authorities have explained that as no market reference was available, both parties agreed to use the contribution made upon establishment of DR as a benchmark when it came to pricing its assets.¹⁷ The Icelandic authorities state that all assets put into DR were valued by an accountant and this valuation was the basis for the later selling price of the shares.¹⁸ Furthermore, although the nominal value of shares was the same at the time of the purchase of the shares by the Port as it was when DR was established, the value in real terms had increased. This assessment must take into account inflation and the increased value of the property rights as well as the other assets of the company.

The Icelandic authorities in this regard refer to a statement from a chartered accountant confirming the sales value of the shares.¹⁹ The statement asserts that the value of the share subscriptions of the parties was undervalued at the time of the founding of DR. Furthermore, the statement considered the calculated loss in 2000 to be exaggerated as this was not a monetary loss but, according to the accounts of DR, a loss in terms of imputed expenses. Moreover, the statement claims that the depreciation in 2000 was set too high and bore no relation to actual depreciation of assets based on their use. Finally, according to annual accounts of DR, the equity capital by the end of year 2000 amounted to ISK 93.2 million, down from ISK 97.7 million at the time of the founding of the company, and had only deteriorated by 4.6%, showing that the company still possessed assets.

The authorities moreover state that the Port's objective when buying the shares was not to profit from the investment but to gain control of the sites in question and DR's properties.²⁰ The Port was in particular interested in DR's land lease rights as part of its strategy to invest in land in the harbour area. On the basis of zoning and development purposes, it was considered of paramount interest for the Port to secure the land and avoid other private parties obtaining the land lease rights.

In addition to the above, the Icelandic authorities have pointed out that at the time the Port bought the shares in DR, Stáltak had ceased all operations and only owned shares in DR. At the same time Stáltak owed the Port substantial amounts. The Port's buying of the shares was thus a step in concluding all relations between the Port and Stáltak. The authorities have moreover explained that as a pilot project, DR was from the beginning intended to last for a relatively short period of time. If the project had fulfilled expectations, the next step would have been to continue cooperation with the parties

¹⁷ See letter from the Icelandic authorities of 25 July 2005, Event No 328142.

¹⁸ Letter from the Icelandic authorities of 10 February 2010, Event No 546413.

¹⁹ Statement of 3 February 2010, Annex 8 to letter from the Icelandic authorities of 10 February 2010, Event No 546413.

²⁰ See letter from the Icelandic authorities of 30 August 2004, Event No 292795 and letter from the Icelandic authorities of 30 November 2006, Event No 400992.

involved in establishing DR and thus continue to fulfil the Port's obligation to ensure access to slipway facilities. The Icelandic authorities have explained that the three founders of DR expected that more entities involved in ship repairs and shipbuilding would want to become shareholders and cooperate on DR's operation.²¹ The Port's hope was that it would eventually sell its shares in DR to interested maritime service providers. Those expectations were not realised.²²

7.2. The Port's purchase of Stáltak's subsidiary Stálsmiðjan-Slippstöðin ehf.

Explaining the price paid by Stálsmiðjan-Slippstöðin for the properties in Mýrargata, the Icelandic authorities have pointed out that Stálsmiðjan-Slippstöðin's objective for acquiring the properties was not to make profit but rather to be ready to invest in new residential housing on the sites as soon as a new land use plan had been approved for the area and authorisation given for construction on the sites. According to the Icelandic authorities, it later became clear that the purchase price was very favourable and that the City of Reykjavík could expect a considerable profit when selling the construction rights to the site.²³ Moreover, the authorities point out that by the purchase, the Port ensured its final control over all real estate on the sites in question which meant that it had the sole discretion to decide on the future use of the shipbuilding and ship repair area, in accordance with the general land use plan for Reykjavík. The authorities have pointed out that, at the time in question, it had become clear that the sites would be intended for residential use in the future and that this had come to the attention of building developers who were prepared to buy them for a much higher price. The area represented a unique opportunity of mixing port activities, other commercial activities and residential housing. The Port saw it as urgent and necessary to gain control over the properties in order to avoid the danger of disturbance to the zoning and planning process.²⁴

The Icelandic authorities have moreover explained that when evaluating a reasonable purchase price for all shares in Stálsmiðjan-Slippstöðin, the Port based its calculations and prerequisites on the value of the properties in Mýrargata. The purchase price was primarily based on the fire insurance value of buildings according to Iceland Property Registry.²⁵ In addition, the value of the land lease contracts had to be taken into account. The Port was interested in avoiding having to resort to expropriation in order to gain control over the area. The land as such was already the Port's property but the buildings were not, and valid lease agreements existed. The price paid exceeding the price of buildings amounted to compensation for cancellation of the lease rights.

With regard to the value of the land lease agreements, the potential use of the land was crucial. At the time of the purchase, there was no market for property transactions in the harbour area, but it was clear that the city planned zoning a residential site in this area. This influenced the price.

When assessing the value of the shares, the Port was guided by official valuation statements that applied to the properties at the time of the transaction. Moreover, Article

²¹ As a prove thereof, the Icelandic authorities have pointed out that in DR's founding agreement, Event No 280698, attachment 1, it says that the Board of Directors is authorised to increase DR's share capital by up to ISK 30.000.000 through the sale of new shares, within 12 months from the establishment of the company. This the Port saw as a prevention of construction of multiple facilities and over investment in the sector.

²² See letters from the Icelandic authorities of 30 November 2006, Event No 400992 and letter of 29 October 2007, Event No 449597.

²³ See letter from the Icelandic authorities of 30 November 2006, Event No 400992.

²⁴ Letter from the Icelandic authorities of 10 February 2010, Event No 546413.

²⁵ Letter from the Icelandic authorities of 10 February 2010, Event No 546413.

15 of Act No 94/1976 on the Registration and Valuation of Real Property stipulated that public authorities, state institutions, state enterprises, municipalities and all agencies under their auspices are obliged to use information from the Property registry as reference basis in all their transactions, as applicable. This implies that the Port was not allowed to offer a lower amount than fire insurance value of the buildings.

Concerning the difference between the price of the shares paid by the Port and the price of the property when Stálsmiðjan-Slippstöðin bought it from Stáltak two days earlier, the Icelandic authorities note that Stáltak was the sole owner of Stálsmiðjan-Slippstöðin. According to the authorities, a transaction between related companies cannot be used to determine market price, since other considerations such as taxation issues, debt or other business interests might be of importance when determining the price in a transaction between a principal company and a subsidiary.

The Icelandic authorities claim that the purchase price was based on business views and that the transaction in fact constituted a certain guarantee for the price not being determined by the general property market. The authorities have explained that the purchase price was only based on the value of the property and that Stálsmiðjan-Slippstöðin's operational value was not seen as adding to the price. The authorities have specifically pointed out that the properties' fire insurance value, excluding the lots, was approximately ISK 302 million at the end of 1999.²⁶ The parties to the agreement agreed on basing the purchase price on the latest insurance value, including an increase of little under 7%. In that respect, the Icelandic authorities have added that the market price of industrial property is generally somewhat higher than its fire insurance value, especially when it comes to older buildings that have been depreciated due to age. In addition, the price was affected by the fact that the buildings in question were steel framed buildings which could easily be transported to a new industrial area for vessel ships. Everything considered, the Icelandic authorities are of the opinion that the purchase price paid by the Port can be regarded as low.²⁷

II. ASSESSMENT

1. The presence of state aid

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.”

It follows from this provision that, for state aid within the meaning of the EEA Agreement to be present, the following conditions must be met:

- The aid must be granted through state resources;
- The aid must favour certain undertakings or the production of certain goods, i.e. the measure must confer an economic advantage upon the recipient(s), which must be selective;

²⁶ At the same time the properties' ratable value, including the lots, was ISK 197 million.

²⁷ See letter from the Icelandic authorities of 25 July 2005, Event No 328142.

- The beneficiary must be an undertaking within the meaning of the EEA Agreement;
- The aid must be capable of distorting competition and affect trade between contracting parties.

1.1. The Port's purchase of Stáltak's shares in DR

The Port of Reykjavík bought all Stáltak's shares in DR on 29 October 2000. The purchase price was ISK 51.2 million, which was equal to the nominal value of the shares. The question is whether the price paid by the Port for the shares in DR corresponded to the market value of the shares at the time of the transaction. If, and to the extent that the price paid by the Port for Stáltak's shares in DR does not reflect the shares' market value, that is to say if the price paid for the shares was above the price a private investor would have paid for the shares, Stáltak obtained an economic advantage in the form of the difference between the market value and the higher price paid. Moreover, the measure would be selective as it only benefits the seller of the shares.

Initially, the Authority notes that there are difficulties involved in assessing, so many years later, the exact market value of the shares in DR as well as in Stálsmiðjan-Slippstöðin at the time of the transactions. It is true of both transactions that it would be very difficult today to provide an accurate estimation of the value of the shares in 2000, in particular in view of the nature of the underlying assets of the companies. In such a case, the Authority has to assess whether it is probable that the price paid for the shares compared to the market price at the time deviates sufficiently to justify a finding that there is a benefit. Hence, when assessing whether any state aid is involved, account must be taken of the uncertainty implied in a retrospective determination of market prices.²⁸ It follows that in the matter at hand, the assessment of whether the sales price at the time corresponded to the market price will have to be approximate.²⁹

Concerning the sale of shares in DR, the price of the shares was set at nominal value despite the fact that DR had been run at a loss. The operating losses may be seen as indicating that the nominal value of the shares at the time exceeded the market value. On the other hand, a statement from a chartered accountant asserts that DR's calculated loss in 2000 is exaggerated as this was not a monetary loss but, according to the accounts of DR, a loss in terms of imputed expenses. Moreover, the statement claims that the depreciation in 2000 was set too high and bore no relation to actual depreciation of assets based on their use.

Furthermore, as the price of the shares was set at nominal value, the selling price of the shares reflects the value of DR's assets at the time DR was established. Hence, it seems reasonable to expect that if all assets of DR were to be sold, this would achieve at least the nominal value of the shares since there had been a considerable inflation and increase in property prices in the meantime. The Icelandic authorities have referred to a statement from an accountant confirming the sales value of the shares. The statement asserts that the value of the share subscriptions of the parties were undervalued at the time of the founding of DR. Finally, it is stated that, according to annual accounts of DR, the equity capital by the end of year 2000 amounted to ISK 93.2 million, down from ISK 97.7 million at the time of the founding of the company, and had only deteriorated by 4.6%, showing that the company still possessed its assets.

²⁸ Cf. Case T-274/01, *Valmont v. Commission*, [2004] ECR II-3145, paragraph 45 and the Authority's Decision 55/05/COL of 11 March 2005 concerning the sale of 1744 rental apartments in Oslo.

²⁹ Cf. Case C-290/07 P, *Commission v. Scott SA*, not yet reported, paragraph 70.

It follows from the above that although DR incurred losses, these may have been less important than apparent. Furthermore, more than 95% of the equity capital in the company was intact. Taking into account inflation and increased property prices, it therefore seems reasonable to assume that the nominal value of the shares did not substantially differ from the market price of the shares in DR.

Against this background, the Authority has reached the conclusion that the Port's purchase of Stáltak's shares in DR did not grant Stáltak an advantage. Accordingly, the Authority concludes that the transaction does not involve state aid within the meaning of Article 61(1) EEA.

1.2 The Port's purchase of Stálsmiðjan-Slippstöðin

The Port bought all Stáltak's shares in Stáltak's subsidiary Stálsmiðjan-Slippstöðin on 29 October 2000. The purchase price was ISK 323 million. Stálsmiðjan-Slippstöðin's sole assets were properties in Mýrargata, transferred to it by Stáltak on 27 October 2000 in return for approximately ISK 175 million. Upon the conclusion of the purchase of the shares, the Port was aware that it would not receive any rental income from the properties in Mýrargata during the next two years, as the two years' rent had already been paid in full. If, and to the extent, that the price paid by the Port for Stáltak's shares in Stálsmiðjan-Slippstöðin is above the price a private investor would have paid for the shares, Stáltak would have obtained an advantage in the form of the difference between the applicable market value and the higher price paid. Furthermore, the measure would be selective as it only benefits the seller of the shares.

The complainant argues that, since the sole assets of Stálsmiðjan-Slippstöðin were the properties in Mýrargata, the fact that the Port paid substantially more for the shares in Stálsmiðjan-Slippstöðin than the company paid for these properties two days earlier indicates that the price paid by the Port was excessive. The Authority agrees with the view of the Icelandic authorities that the price paid in a property transaction between the principal company and its subsidiary is not necessarily a suitable indicator of the market price of the company, since other considerations such as taxation issues, debt or other business interests might be of importance when determining the price in this transaction. On this basis, the Authority does not see the price charged in the transaction between Stáltak and Stálsmiðjan-Slippstöðin as decisive.

The Authority regrets that the price of the shares was not decided on the basis of an independent expert's valuation of the properties. However, the Icelandic authorities have explained that the Port was guided by official valuation statements that applied to the properties at the time of the transaction. It appears that the price was to a large extent based on an objective indicator, namely the buildings' fire insurance value according to Iceland Property Registry. The properties' fire insurance value, excluding the lots, was approximately ISK 302 million at the end of 1999. When setting the price of the shares, the fire insurance value of the buildings was increased by 7% in order to compensate for the market price of industrial property generally being somewhat higher than its fire insurance value, especially when it comes to older buildings that have been depreciated due to age. In addition, the price was affected by the fact that the buildings in question were steel framed buildings which could easily be transported to a new industrial area. Moreover, the value of the land lease contracts had to be taken into account. Even if the land as such was already the Port's property, the buildings were not. Valid lease agreements existed and the purchaser had to compensate for the cancellation of the lease rights.

Furthermore, the Icelandic authorities noted that it should be kept in mind that by purchasing the shares, the Port ensured its final control over all real estate in the area which meant that it had the sole discretion to decide on the future use of the shipbuilding and ship repair area, in accordance with the general land use plan for Reykjavík. It has been pointed out that at the time it had become clear that the sites would be intended for residential use in the future and that this had come to the attention of building developers. The Port saw it as urgent and necessary to gain control over the properties in order to avoid the danger of disturbance to the zoning and planning process.

It follows from the above that, on the basis of the information available, it cannot be established that the price paid by the Port for the shares in Stálsmiðjan-Slippstöðin substantially differed from the market price of the shares at the time of the transaction.

Against this background, the Authority has reached the conclusion that the Port's purchase of Stáltak's shares in Stálsmiðjan-Slippstöðin did not grant Stáltak an advantage. Accordingly, the Authority concludes that the transaction does not involve state aid within the meaning of Article 61(1) EEA.

2. Conclusion

On the basis of the foregoing assessment, the Authority considers that the transactions whereby the Port of Reykjavík's purchased shares in DR and Stálsmiðjan-Slippstöðin from Stáltak do not constitute state aid within the meaning of Article 61(1) EEA.

HAS ADOPTED THIS DECISION:

Article 1

The Port of Reykjavík's purchase of shares in Dráttarbrautir Reykjavíkur ehf. and Stálsmiðjan-Slippstöðin ehf. from Stáltak hf. does not constitute state aid within the meaning of Article 61 of the EEA Agreement.

Article 2

This Decision is addressed to the Republic of Iceland.

Article 3

Only the English language version is authentic.

Done at Brussels, 29 September 2010.

For the EFTA Surveillance Authority,

Per Sanderud
President

Sverrir Haukur Gunnlaugsson
College Member