

Case No:74081
Event No:687261
Decision No: 111/14/COL

EFTA SURVEILLANCE AUTHORITY DECISION
of 12 March 2014
on the PCC Silicon Metal Plant at Bakki

(Iceland)

The EFTA Surveillance Authority (“the Authority”)

HAVING REGARD to the Agreement on the European Economic Area (“the EEA Agreement”), in particular to Articles 61(3)(c) 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 Protocol 3 to the Surveillance and Court Agreement (“Protocol 3”), in particular to Article 1(3) of Part I and Article 4(3) of Part II,

Whereas:

I. FACTS

1. Procedure

- (1) By letter of 4 July 2013 (Event Nos 677927-677929), the Icelandic authorities notified their plans to grant aid for the construction of a silicon metal smelter at Bakki in the municipality of *Norðurþing* in the Northeast part of Iceland, by PCC BakkiSilicon hf., pursuant to Article 1(3) of Part I of Protocol 3. On 2 August 2013 (Event No 678730), the Authority requested supplementary information. The Icelandic authorities replied to this request by a letter received 4 September 2013 (Event Nos 681847, 681849, and 681852-681864), and submitted further information by an email of 2 October 2013 (Event No 685493).
- (2) The Authority requested further information in a letter dated 30 October 2013 (Event No 687468). The Icelandic authorities responded by an email of 17 November 2013 (Event No 690358) and provided further information in two emails of 19 November 2013 (Event Nos 690998-690999). Meetings between the representatives of the Icelandic authorities and the Authority took place on 16 October and 22 November 2013. On 20 December 2013, the Icelandic authorities submitted further information (Event Nos 694808, 694302-694843). The Icelandic authorities provided the Authority with additional clarifications and information between December 2013 and March 2014. The Authority considered the notification to be complete on 5 February 2014.

2. Description of the proposed measures

- (3) The Icelandic authorities intend to promote regional development in Northeast Iceland by providing regional investment aid¹ amounting to EUR 23.33 million in nominal value (EUR 13.64 million NPV)² to PCC BakkiSilicon ehf., for setting-up a plant to produce silicon metal close to *Húsavík* town in *Pingeyjarsýsla* county, Iceland. The eligible investment amounts to EUR 176 million in nominal value (EUR 156.7 million in net present value, “NPV”).

2.1 The aid beneficiary

- (4) The direct aid beneficiary of the notified measures, PCC BakkiSilicon hf., is a limited liability company established under Icelandic law in 2012. The current owner of PCC BakkiSilicon hf. is PCC SE ([...]percent) and the senior management of the latter ([...]percent). All business obligations related to the development, construction and operation of the planned silicon metal plant are to be performed by PCC BakkiSilicon hf. According to the Icelandic authorities’ submission, PCC SE will hold the majority of the shares in PCC BakkiSilicon hf. (around [...]percent); [...] percent will be owned by PCC SE management, and [...]percent will be held by third party investors. These third party investors will most likely be [...].
- (5) PCC SE is an international holding company based in Duisburg, Germany. The group employs more than 2 800 employees at 32 sites in 16 countries. Their group sales are generated in three divisions, i.e. chemicals, energy and logistics. In 2012, group sales amounted to EUR 680 million.³
- (6) For the purposes of this Decision, PCC BakkiSilicon hf. and PCC SE will be referred to as “PCC”.

2.2 Background

- (7) According to the notification, the Icelandic authorities, including six municipalities in the Northeast part of Iceland,⁴ have since the beginning of this century made an effort to attract investors to establish an energy intensive project in *Pingeyjarsýsla* county, utilising the geothermal resources of the region, with the aim to offset the continuing emigration and economic stagnation in the area. On 25 May 2011 the Icelandic Government and the municipalities of *Norðurþing*, *Skútustaðahreppur*, *Pingeyjarsveit* and *Tjörneshreppur* signed a joint declaration on the cooperation of the use of geothermal rights in the county of *Pingeyjarsýsla* for industrial development. The declaration stipulates that the parties are to jointly work to utilise the energy resources in the region and build up infrastructure with the objective of achieving extensive economic development of the region.
- (8) In June 2011, formal discussions commenced between PCC and *Norðurþing* municipality with the aim to investigate the possibility of building a silica processing plant at the industrial site planned at Bakki, utilising geothermal energy sources.
- (9) In October 2011, *Norðurþing* municipality and PCC signed a declaration of intent on an examination of the feasibility of building a silicon metal smelter at the planned industrial site at Bakki.

¹ The measures will be described in detail in subsection I.2.6 below.

² NPV is the net present value of the nominal aid cash flows, discounted at an appropriate discount rate.

³ Further information is available at: https://www.pcc.eu/ttw/pcc.nsf/id/DE_Home?OpenDocument.

⁴ These municipalities are: *Norðurþing*, *Pingeyjarsveit*, *Skútustaðahreppur*, *Tjörneshreppur*, *Svalbarðshreppur* and *Langanesbyggð*, which together form *Pingeyjarsýsla* county.

- (10) On 28 June 2012, a power purchase agreement was signed between the national power company, *Landsvirkjun hf.*, and PCC for the purchase of electricity to be provided by a new geothermal plant. However, *Landsvirkjun* and PCC have not yet negotiated the exact terms and conditions of the final contract. *Landsvirkjun* intends to provide PCC's silicon metal plant with 52 megawatts (MW) of power, amounting to 456 gigawatt-hours (Gwh) annually.⁵ In addition, the national transmission system operator, *Landsnet ehf.*, and PCC have formally opened discussions on a joint declaration for the transmission of electrical power for a silicon metal smelter.
- (11) For reasons of legal certainty, the Icelandic authorities intend to notify to the Authority the power contract between *Landsvirkjun* and PCC, as soon as the terms have been negotiated. The expected contracts on the purchase and transmission of power are therefore beyond the scope of the assessment in the present Decision.
- (12) On 8 February 2013, *Norðurþing* Municipal Council, the Minister of Industries and Innovation, and PCC, signed a Joint Declaration with the aim of progressing to the signature of all the contracts that had to be concluded before it was possible to start the work on developing the industrial site at Bakki.
- (13) On 8 April 2013, the Icelandic Parliament adopted Act No 52/2013 ("the PCC Act"), authorising the Government to enter into an Investment Agreement with PCC on aid for the construction of a silicon metal plant at Bakki.
- (14) On 30 July 2013, a Site Agreement between *Norðurþing* and PCC ("the Site Agreement") and a Harbour Agreement between the *Norðurþing* Harbour Fund and PCC were concluded ("the Harbour Agreement"). The duration of these two agreements is 30 years with an automatic extension of an additional 10 years.
- (15) On 27 September 2013, an Investment Agreement was concluded between the Icelandic Government and PCC ("the Investment Agreement").⁶
- (16) On 18 October 2013, PCC and SMS Siemag signed a final engineering procurement construction contract for the construction of a silicon metal plant at Bakki.
- (17) On 19 December 2013, an agreement was signed between the Ministry of Industries and Innovation, on the one hand, and the municipality of *Norðurþing* and the *Norðurþing* Harbour Fund on the other hand, on the monitoring of the process of PCC's investment project at Bakki and the state aid granted ("the Monitoring Agreement").
- (18) On 19 December 2013, PCC signed a legally binding statement in which it undertook to repay any amount of aid in excess of the aid levels approved by the Authority.
- (19) Furthermore, by a letter dated 11 June 2013, the Icelandic authorities notified to the Authority their plans to grant aid for the construction of harbour infrastructure at Bakki. The infrastructure measure is subject to a separate notification and assessment by the Authority and consequently falls outside the scope of this Decision.⁷

⁵ Information available at: <http://www.landsvirkjun.com/company/mediacentre/news/news-read/1616->

⁶ The Investment Agreement, available at: <http://www.atvinnuvegaraduneyti.is/media/Acrobat/IA-PCC-1-okt-2013.pdf> (English version).

⁷ See Decision No 90/14/COL of 26 February 2014 on the public financing of Harbour infrastructure at Húsavík [not yet published in the OJ].

2.3 The project

- (20) PCC plans to construct and operate in Iceland a silicon metal plant (“the Plant”), which will be designed for the production of 33 000 to 40 000 tons of silicon metal per year.⁸ It is envisaged that the Plant will start operating in the beginning of 2017 and it will reach full capacity in 2018.
- (21) The Plant will be power intensive and consume approximately 52 megawatts (MW) of electricity for its operation. A new geothermal plant in the geothermal region of Northeast Iceland will provide the energy required for production.
- (22) The Plant will be constructed at an industrial site planned at Bakki, approximately 1.8 km from *Húsavík*,⁹ a town situated on the Northern coast of Iceland, part of *Norðurþing* municipality¹⁰ in the county of *Pingeyjarsýsla*.¹¹ The planned industrial area will be connected to a harbour (to be built in *Húsavík* town) by a new road to be constructed. PCC will rent from *Norðurþing* municipality 24 hectares of land at the planned industrial site.
- (23) For this purpose PCC signed a contract with the German furnace technology supplier, SMS Siemag AG, dated 18 October 2013, for the design, engineering, procurement and construction of a new silicon metal production plant in Iceland.¹² The total contract price for the construction of the silicon metal plant is EUR 176 million.

Time schedule

- (24) According to PCC’s provisional schedule, it is envisaged that the project will proceed in five stages, as demonstrated in the table below, provided by the Icelandic authorities.

Stage	Project	Year
1	Development	2011-2013
2	Initial Investment	2014-2016
3	Start of operations, run-up time	2016-2018
4	Maximum capacity of the silicon smelter	2018-
5	Expansion of silicon smelter (phase 2)	2020?

Table 1. PCC project schedule.

- (25) A potential expansion of the silicon smelter (phase 2), listed as stage 5 in Table 1 above, falls outside the scope of this Decision.
- (26) As illustrated in Table 1, the Plant’s development started in 2011. Between 2011 and 2013 the project was focused on designing the site, selecting equipment supplier and the conceptual engineering of the Plant. Initial construction work for the Plant is scheduled to

⁸ It is foreseen that the maximum capacity of the Plant may increase from 33 000 to 40 000 tons with the investment subject to this Decision.

⁹ Information based on a memorandum by the Icelandic Public Road Administration, available at: http://www.althingi.is/altext/141/s/fylgiskjol/s1109-f_V.pdf

¹⁰ *Norðurþing* municipality merged with four other municipalities in 2006, *Húsavík* town, *Kelduneshreppur*, *Öxarfjarðarhreppur* and *Raufarhafnahreppur*.

¹¹ On 1 January 2013, *Húsavík* town had 2 228 inhabitants representing 78% of the population of *Norðurþing* municipality. *Húsavík* is situated in a distance of about 480 km from *Reykjavík*, the capital city. The driving distance from *Húsavík* to *Akureyri*, the nearest industrial area, is 91 km.

¹² The appointment of SMS Siemag was the result of a tender procedure that started early 2011, main suppliers of silicon metal furnaces were invited to submit proposals for a state-of-the-art greenfield silicon metal plant with 32 000 tons of annual production capacity. Proposals had been submitted from six other bidders and after the assessment and final negotiations in January 2012, SMS Siemag was selected as a final bidder.

start in early 2014 and is expected to be finished by the end of 2016, when the Plant is scheduled to start production. After start-up of the first furnace, a few weeks will be necessary to achieve full production capacity. It is estimated that the Plant will be operated continuously at full capacity after four months at the latest. The Icelandic authorities have submitted that the Plant is expected to yield revenues after 2016 and achieve full operational capacity in 2018.

Construction of the Plant and expected production capacity

- (27) The Plant will have two furnaces, which will be built in the initial stage. Each furnace is designed to produce about 16 000 tons of tradable silicon metal per year. The total tapped amount from the furnaces will be 33 600 tons per year, but this amount is reduced as a result of refining losses after the tapping and will therefore normally be 32 000 tons per year. The maximum target production capacity is 40 000 tons per year, with power consumption of 26 MW per furnace. In the first years of the operation, the Plant will have an approximate annual demand of about 176 000 tons of raw materials.
- (28) The main Plant facilities will consist of the furnace building with tapping and casting areas, bag house for the collection and conditioning of the silica dust and the raw material day bins with connected weighing and mixing system to feed the furnaces. Furthermore, closed storage areas for each type of raw material will be built nearby to ensure a continuous delivery to the day bins. The expected useful economic life of the Plant is estimated to be 40 years.
- (29) All deliveries of raw materials and products will be made by ship to and from a harbour in *Húsavík* town and through a new industrial road to the Plant site. The finished product of the metal will be prepared for the customers in on-site crushing and screening facilities and finally shipped in bulk containers, while the silica dust will be compressed, sacked and stacked on pallets for delivery to the port. It is estimated that the shipping volume will vary between approximately 4 000 and 6 000 tons per ship.

Employees

- (30) For the operation of the Plant it is estimated that approximately 120 people will be employed, out of which 80 people will need to be trained. It is estimated that 70 percent of these will require special training and 30 percent general training. The approximate cost is EUR 3 million and PCC will be entitled to a maximum grant amount of EUR 2 million from the Icelandic authorities, as stated in Section 10.2 of the Investment Agreement. The aid will be granted on the basis of the General Block Exemption Regulation. The training aid therefore falls outside the scope of this Decision.

Financing of the project

- (31) According to the Icelandic authorities' submissions, [...]percent of the total project cost will be financed by a loan from [...],[...]percent by [...], and [...]percent by [...]. Financing is expected to be secured and finalised by the end of March 2014.

2.4 Eligible costs

- (32) In the present case, the eligible investment costs will be incurred over a three year period (from 2014 to 2016), while the investment aid measures will be disbursed over a period of up to 14 years from the signature of the Investment Agreement. Due to the time value of money it is therefore necessary to convert all eligible investment costs and aid measures

into NPV, in order to render them comparable, by discounting them at an appropriate discount rate.

- (33) The total investment cost of the Plant is estimated at EUR [...]million, including certain financing costs. The total eligible investment cost is estimated to be approximately EUR 176 million in nominal terms and EUR 156.7 in net present value (NPV) terms.
- (34) The Icelandic authorities have submitted the following breakdown of the estimated eligible investment costs in nominal and net present value terms:

Investment category (in million EUR)	2014	2015	2016	Total
Buildings	[...]	[...]	[...]	64.3
Machinery and Equipment	[...]	[...]	[...]	111.4
Nominal Eligible Costs	84.9	57.6	33.5	176.0
NPV Eligible Costs	79.3	50.2	27.3	156.7

Table 2. Estimated eligible investment costs.

2.5 National legal basis

- (35) The legal basis for granting aid to PCC, for the construction of the silicon metal plant at Bakki is Act No 52/2013 (“the PCC Act”). The PCC Act authorises the Minister of Industry and Innovation, on behalf of the Treasury, to enter into an Investment Agreement with PCC on measures for the construction of the Plant.¹³
- (36) The Plant will be located in an area which is eligible for regional investment aid, as set out in the Authority’s Decision No 378/06/COL,¹⁴ on the regional aid map of assisted areas for Iceland 2007-2013, which was prolonged by the Authority’s Decision No 495/13/COL until 30 June 2014.¹⁵
- (37) According to Article 7 of the PCC Act, the Investment Agreement is conditional upon the Authority’s approval.

2.6 Description of the measures

- (38) The Icelandic authorities plan to grant aid to PCC through three separate agreements, where the grantors of the aid are (i) the Icelandic Government, (ii) the *Norðurþing* municipality and (iii) the *Norðurþing* Harbour Fund respectively. The three agreements are:

I. the Investment Agreement

¹³ Act No 52/2013, “Lög um heimild til samninga um kísilver í landi Bakka í Norðurþingi“ (Act authorising the signing of agreements concerning a silicon metal smelter on the property of Bakki in Norðurþing), adopted by the Parliament on 8.4.2013, available at: <http://www.althingi.is/lagas/142/2013052.html> (Icelandic version).

¹⁴ Authority Decision No 378/06/COL, adopted 6.12.2006, OJ L 54, 28.02.2008, p. 28 and EEA Supplement No 11, 28.02.2008, p. 28.

¹⁵ Authority Decision No 495/13/COL, adopted 11.12.2013, available at <http://www.eftasurv.int/state-aid/state-aid-register/> [not yet published in the OJ]. A notification on a new regional aid map of assisted areas for Iceland 2014-2020, is expected during spring 2014. No changes are foreseen with regard to the eligibility for the relevant geographical area.

II. the Site Agreement

III. the Harbour Agreement

(39) The Icelandic authorities have submitted that these three Agreements contain the following aid elements:

- A. a direct cash grant for site preparation;
- B. a fixed land lease for ten years; and
- C. exemptions or discounts from the following taxes and charges for up to ten years:
 - (i) Corporate Income Tax
 - (ii) Social Security Contribution
 - (iii) Deprecation Rules
 - (iv) Customs Duties
 - (v) Stamp Duties
 - (vi) Electrical Safety Control
 - (vii) Market Charge
 - (viii) Municipality Property Tax
 - (ix) Road Construction Tax
 - (x) Building License Fee
 - (xi) Wharfage Fee

(40) The Authority will describe the notified measures in detail in the following sections, taking each agreement in turn and setting out the measures therein. This description will form the basis of the Authority's assessment in Part II of the present Decision.

2.6.1 The Investment Agreement

(41) Under the Investment Agreement the Icelandic Government grants PCC various tax and fee concessions for the construction of the Plant and a direct cash grant for preparing the site where the Plant will be constructed.

(42) The duration of the Investment Agreement is 14 years from the date of the signature, which is 27 September 2013. However, PCC will only be able to benefit from the derogations for a maximum period of ten years as regards each individual aid measure, calculated from the day the relevant tax or charge obligation occurs. Therefore, all exemptions and discounts will be discontinued on 27 September 2027 at the latest.

(43) If the total aid granted from all sources exceeds the levels permitted under the PCC Act or the Investment Agreement, the excess amount is to be recovered from PCC and further granting of aid shall be discontinued.

2.6.1.1 Fixed corporate income tax

(44) According to Section 7.1 of the Investment Agreement and Article 3(2)(1) of the PCC Act, PCC is to pay a maximum of 15 percent in corporate income tax. The currently applicable statutory corporate income tax rate is 20 percent, according to the provisions of the Income Tax Act No 90/2003.

(45) Based on the assumption that the statutory corporate income tax rate in Iceland will remain at a rate of 20 percent, the Icelandic authorities have estimated the total aid

element to be approximately EUR 3.93 million in net present value terms, accrued in fiscal years 2019 to 2026 and payable in 2020 to 2027.¹⁶

2.6.1.2 Site preparation grant

- (46) Article 4 of the PCC Act and Section 10.1 of the Investment Agreement provide that the Icelandic Government will grant PCC financial aid for the development of the PCC's industrial site at Bakki. The Treasury will share with PCC the cost of the preliminary work needed to prepare the site, *i.e.* the excavation work required before the construction can begin.
- (47) The Icelandic authorities have estimated that the total cost of the site preparation work undertaken by PCC will be approximately EUR 6 million. This estimate is based on a civil engineering cost evaluation jointly undertaken by the Icelandic Government and PCC. The State will grant PCC EUR 3.3 million to cover part of the costs of preparing the site. The Icelandic authorities have calculated the aid element to a net present value of approximately EUR 3.08 million, to be disbursed in the course of 2014.¹⁷
- (48) The Icelandic authorities have submitted the following breakdown on the costs attributed to the State:

The earthwork of the site preparation – Breakdown of the aid	Estimated cost
Item 1. Excavation of topsoil The work includes: Removing loose surface soil layers and stockpiling at a designated area within the Site for further use in sound barriers, landscaping for other purposes, potentially also outside the Site.	620 000 EUR
Item 2. Filling of topsoil The work includes: Using the excavated topsoil for landscaping purposes and as top-grade for cultivation. The coarser fill will be used in sound barriers.	30 000 EUR
Item 3. Excavation of bedrock The work includes: Blasting, ripping and chiselling of the bedrock under the topsoil. Outcrops indicate that the rock is rippable and that blasting will be more occasional.	1 700 000 EUR
Item 4. Graded aggregates The work includes: Using the excavated bedrock material, sorting it and running selected dimensions through a stone crushing plant that separates the processed material into selected aggregate sizes.	650 000 EUR
Item 5. Filling and compaction of foundation fill. The work includes: Filling and compaction of two grades of loose material for use under slabs. Estimated Cost for Filling and Compaction.	300 000 EUR
Total	3 300 000 EUR

Table 3. Site preparation costs covered by the Icelandic State.

2.6.1.3 Exemption from social security contribution

- (49) In accordance with Section 7.3 of the Investment Agreement and Article 3(4) of the PCC Act, PCC will be exempted from 5.29 percent general social insurance tax, as provided for in Article 2(3) of Act No 113/1990 on Social Security Charge. The Icelandic authorities

¹⁶ See Table 4 in Section I.2.7.

¹⁷ Ibid.

have estimated that PCC will benefit from this exemption as of the first year of the operation, which is 2017 until 2026. The aid element is calculated by the Icelandic authorities on the basis of an estimate of the labour costs of PCC to a net present value of approximately EUR 1.57 million.¹⁸

2.6.1.4 Flexible depreciation rules

- (50) Under Section 7.4 of the Investment Agreement, when new assets are taken into operation, PCC can depreciate those assets with a proportional factor of the annual depreciation instead of full year depreciation as otherwise provided for in Article 34 of Act 90/2003 on Income Tax.
- (51) Furthermore, PCC is allowed to depreciate its assets down to scrap value instead of keeping the assets valued at 10 percent of the original value of the asset, as statutory rules in the Income Tax Act prescribe. This measure will only apply in 2026 with effect in 2027. The Icelandic authorities have calculated the aid element to a net present value of approximately EUR 640 000.¹⁹

2.6.1.5 Exemption from customs duties

- (52) Under Section 8.1 of the Investment Agreement, PCC will be exempted from Icelandic customs duties, which would otherwise apply pursuant to Act No 88/2005 on Customs and excise duties pursuant to Act No 97/1987 on Excise Duties. PCC will be exempted from paying the custom on importation or domestic purchase by or on behalf of PCC for construction material, machinery, equipment, other capital goods and spare parts for the building of the investment project and the operation thereof.
- (53) The Icelandic authorities have calculated the aid element to a net present value of approximately EUR 260 000, available in 2016-2025.²⁰

2.6.1.6 Exemption from stamp duties

- (54) Section 7.2 of the Investment Agreement and Article 3(2) of the PCC Act provide that PCC will be exempted from stamp duties on all documents which the company issues or which are drawn up in connection with the construction of the Plant.
- (55) Under Act No 36/1978 on Stamp Duties, stamp duties are payable when various types of legal documents are issued or signed, *i.a.* bonds (1.5 percent stamp duty of bonds with interests and collateral or guarantee or 0.5 percent of other bonds without interests), alienation and purchase agreements (0.4 percent stamp duty on property rateable value) and agreements on lease of land (2.0 percent stamp duty of the rental charge).
- (56) The aid element is estimated by the Icelandic authorities to amount to net present value of approximately EUR 220 000, available in 2014 only.²¹

2.6.1.7 Exemption from electrical safety control fee

- (57) Section 9.8 of the Investment Agreement provides that PCC will be exempted from the provisions of sub-sections 1, 4 and 5 of paragraph 1 of Article 14 of Act No 146/1996 on the Safety of Electrical Installations, Consumer utilities and Electrical Equipment.

¹⁸ See Table 4 in Section I.2.7.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

- (58) First, PCC will be exempted from paying a service fee for overall supervision and the supervision of electrical equipment of up to 0.15 percent of the customs value of imported goods or equivalent. Second, PCC will be exempted from a fee of 0.2 percent of the total income of purchase of electricity and rental of measuring equipment.
- (59) The electrical safety control fee is payable at the point in time when operation starts. The aid element calculated by the Icelandic authorities' amount to the net present value of approximately EUR 30 000, available in 2017 to 2026.²²

2.6.1.8 Exemption from market charge

- (60) Under Section 9.7 of the Investment Agreement, PCC will be exempted from the market charge of 0.05 percent of the labour costs, levied on all companies operating in Iceland in accordance with Act No 38/2010 to Promote Iceland. Income from the market charge is specially designed to cover part of the operational cost for "Promote Iceland", a public agency.
- (61) According to statutory rules in Iceland, the market charge is imposed on the taxable amount for the payroll charge, as specified in Chapter III of Act No 113/1990 on Social Security Charge.
- (62) The aid element is calculated by the Icelandic authorities, on the basis of an estimate of the labour costs of PCC, to the net present value of approximately EUR 10 000, available in 2017 to 2026.²³

2.6.2 The Site Agreement

2.6.2.1 Reduced municipal property tax

- (63) Under Article 5 of the Site Agreement and Section 9.4 of the Investment Agreement, PCC will pay a rate which is 50 percent lower than the general rate of tax for municipal properties, which would otherwise be payable in accordance to Chapter II of Act No 4/1995 on Municipalities' Revenue Bases. The currently applicable tax rate in *Norðurþing* municipality is 1.65 percent.
- (64) The tax base for municipal property tax is calculated on the basis of an official evaluation of the value of the structures and land held by the taxable person. At present there is no official valuation of the land at Bakki, which will serve as the industrial site. Based on an evaluation of similar industrial sites in Iceland, the Icelandic authorities have estimated that the tax base of the structures and land at Bakki will be around EUR 24 million.
- (65) The Icelandic authorities have submitted that PCC will benefit from the reduced property tax in 2017 to 2026. The aid element calculated by the Icelandic authorities amounts to the net present value of approximately EUR 1.38 million.²⁴

2.6.2.2 Reduced road construction tax

- (66) According to Article 4 of the Site Agreement and Section 9.2 of the Investment Agreement, *Norðurþing* municipality will grant PCC a 30 percent discount on road construction tax from the rate listed in the *Norðurþing* statutes,²⁵ adopted on the basis of Act No 153/2006 on Road Construction Tax. The fee is a one-time charge levied by the

²² See Table 4 in Section I.2.7.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ Available at: http://www.nordurthing.is/static/files/gjaldskrar/2011/samthykkt_gatnagerdargjald2011.pdf (Icelandic version).

municipality before issuing the development permits for the Plant. The aid element calculated to a net present value is estimated to be approximately EUR 1.02 million, available in 2014.²⁶

2.6.2.3 Reduced building license fee

- (67) Article 3 of the Site Agreement and Section 9.3 of the Investment Agreement provide that PCC will receive a 25 percent discount of the fee normally levied for the grant of a buildings licence, according to the *Norðurþing* municipality tariff.²⁷
- (68) The fee is a one-time charge and the value of the aid element is calculated to a net present value of approximately EUR 20 000, available in 2014.²⁸

2.6.2.4 Fixed land lease

- (69) Under Section 2.11 of the Site Agreement, PCC will pay *Norðurþing* municipality an annual rent amounting to EUR 10 000 for the site lease for the first ten years of the lease.²⁹ This amount is fixed and it is not indexed. The ten-year period will start when PCC's construction work on the site commences in 2014. After the expiry of the ten-year period, PCC will pay 2.5 percent of the officially established property value of the land, which is in line with *Norðurþing* municipality's official tariff on Levying of Charges.
- (70) The Icelandic authorities have submitted that the rent for the site will be, for the first ten years, potentially below the generally applicable rate (which would be 2.5 percent of the officially established property value, reviewed and adjusted annually). However, the official property value of the site has not yet been established by the Icelandic Property Registry in accordance with Act No 6/2001 on Registration and Evaluation of Real Property. The Icelandic authorities have explained that according to Act No 6/2001, the Property Registry will establish the official property value of the land, as well as the structures thereon, only when the Plant has been constructed and has become operational.
- (71) The aid element calculated to a net present value is estimated by the Icelandic authorities to be approximately EUR 70 000, made available in 2014 to 2023.³⁰

2.6.3 The Harbour Agreement

2.6.3.1 Reduced Wharfage Fee

- (72) According to Section 7.2 of the Harbour Agreement and Section 9.1 of the Investment Agreement, *Norðurþing* Harbour Fund intends to grant PCC a 40 percent discount on wharfage fees.³¹
- (73) The wharfage fee covers the use of the harbour, the use of a permanent secured area in the outer harbour for each extensive user to keep its containers and the access to the common area for loading and unloading vessels. The Harbour Committee decides the harbour tariff unilaterally on the basis of the Harbour Act No 61/2003. PCC will receive a 40 percent discount on the wharfage fee from the applicable tariff rate at any given time from the start

²⁶ See Table 4 in Section I.2.7.

²⁷ Available at: http://www.nordurthing.is/static/files/gjaldskrar/2011/samthykkt_gatnagerdargjald2011.pdf (Icelandic version).

²⁸ See Table 4 in Section I.2.7.

²⁹ The exact size of the site is 23.63 hectares or 236.299 square metres.

³⁰ See Table 4 in Section I.2.7.

³¹ Available at: http://www.nordurthing.is/static/files/gjaldskrar/2013/hofnin_2013_gjaldskra.pdf (Icelandic version).

of the operation of the Plant, for a total period of ten consecutive years.³² The aid element calculated to a net present value is estimated to be approximately EUR 1.48 million, available in 2017 to 2026.³³

2.7 Aid amount and aid intensity

- (74) The Icelandic authorities have calculated the total amount of state aid over the period from 2014-2027. The breakdown of the aid is as follows:³⁴

Discount Rate		7.14%	
Exchange rate EUR/ISK		169	
Inflation rate		2.5%	
Aid Grantor	Aid Categories	Nominal	NPV
Icelandic State – Investment Agreement	Corporate income tax	8.62	3.93
	Site preparation grant	3.30	3.08
	Social security contribution	2.82	1.57
	Depreciation	1.67	0.64
	Customs duties	0.37	0.26
	Stamp Duties	0.24	0.22
	Electrical safety control	0.06	0.03
	Market charge	0.03	0.01
Norðurþing municipality - Site Agreement	Municipal property tax	2.47	1.38
	Road construction tax	1.09	1.02
	Building Licence Fee	0.02	0.02
	Land lease	0.01	0.01
Harbour Fund - Harbour Agreement	Wharfage Fee	2.65	1.48
Total aid (million EUR)		23.33	13.64

Table 4. Summary of aid elements in nominal and net present value terms.

- (75) As illustrated in Table 4 above, the total aid amounts to a nominal value of EUR 23.33 million and a net present value of EUR 13.64 million. The concessions, exemptions, derogations and other stipulations will remain in force for ten years from the day the relevant taxable obligation or charge obligation is triggered. However, the aid will not extend for a period of time going beyond 27 September 2027.
- (76) Icelandic authorities have confirmed that the potential beneficiary of the measure has not received any other state aid.

2.7.1 Ceiling

- (77) The Icelandic authorities have submitted a calculation of the applicable aid ceiling. Paragraph 56 of the Regional Aid Guidelines (“RAG”)³⁵ states that the maximum amount of aid for large investment projects is to be calculated according to the following formula:

³² However, PCC will not receive any discount beyond 27 September 2027, which is 14 years after the signature of the Investment Agreement.

³³ See Table 4 in Section I.2.7.

³⁴ The discount rate is based on the applicable discount rate and exchange rate described in the Authority’s Guidelines on Reference and Discount Rates, available at: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>.

$$\text{maximum aid amount} = R \times (50 + 0.50 \times B + 0.34 \times C)$$

where R is the unadjusted regional aid ceiling, B is the eligible expenditure between EUR 50 million and EUR 100 million and C is the eligible expenditure above EUR 100 million.³⁶ The eligible investment costs are discounted using a discount rate of 7.14 percent.³⁷ The Icelandic authorities have provided the following calculation of the total allowable maximum aid intensity according to the RAG:

Up to 50 MEUR	15.0%	50.0	7.500
50-100 MEUR	7.5%	50.0	3.750
Above 100 MEUR	5.1%	56.7	2.892
		156.7	14.1

Aid ceiling

9.0%

- (78) Based on the net present value of eligible costs of EUR 156.7 million and a maximum aid ceiling of EUR 14.1 million, the maximum allowable aid intensity according to the RAG is 9.0 percent.³⁸ The notified aid amount is calculated to a net present value of EUR 13.64 million, as illustrated in Table 4 above. The aid intensity of the notified aid measures therefore corresponds to 8.7 percent, which is below the maximum total aid intensity of 9.0 percent.

2.8 The objective of the proposed measure

2.8.1 The importance of the aid for the project – incentive effect and proportionality

- (79) The Icelandic authorities have explained that the investment project would not be carried out at the industrial site of Bakki without the notified measures and the decision to locate there would only be taken if (i) necessary and sufficient infrastructure such as a harbour and access roads were in place; (ii) the cost of preparing the site were to be shared with the Icelandic State; (iii) training aid for new employees were to be made available; and (iv) a set of time limited investment incentives were provided.
- (80) To support this argument, the Icelandic authorities have submitted that the costs of constructing the Plant at the Bakki industrial site are higher than average, which can be attributed to the geological and geographical characteristics of the ground, and also to climatological conditions. The industrial site is currently not ideal in terms of surface elevation and surface layers and thus additional costs will be incurred in order to improve the site. In addition, there is no road connection that is suitable for heavy load traffic between the industrial site and the *Húsavík* harbour. However, the Icelandic authorities maintain that the location at Bakki is important as it has access to energy resources.
- (81) The Icelandic authorities have explained that the profitability of the notified project, without the notified aid, would not fulfil PCC's minimum profitability requirements and therefore would not be undertaken at Bakki site. PCC has not started construction on the

³⁵ National regional aid 2007-2013, (prolonged until 30 June 2014), OJ C 54, 4.3.2006, p. 13-14 and EEA Supplement No 11, 28.2.2008, p. 1.

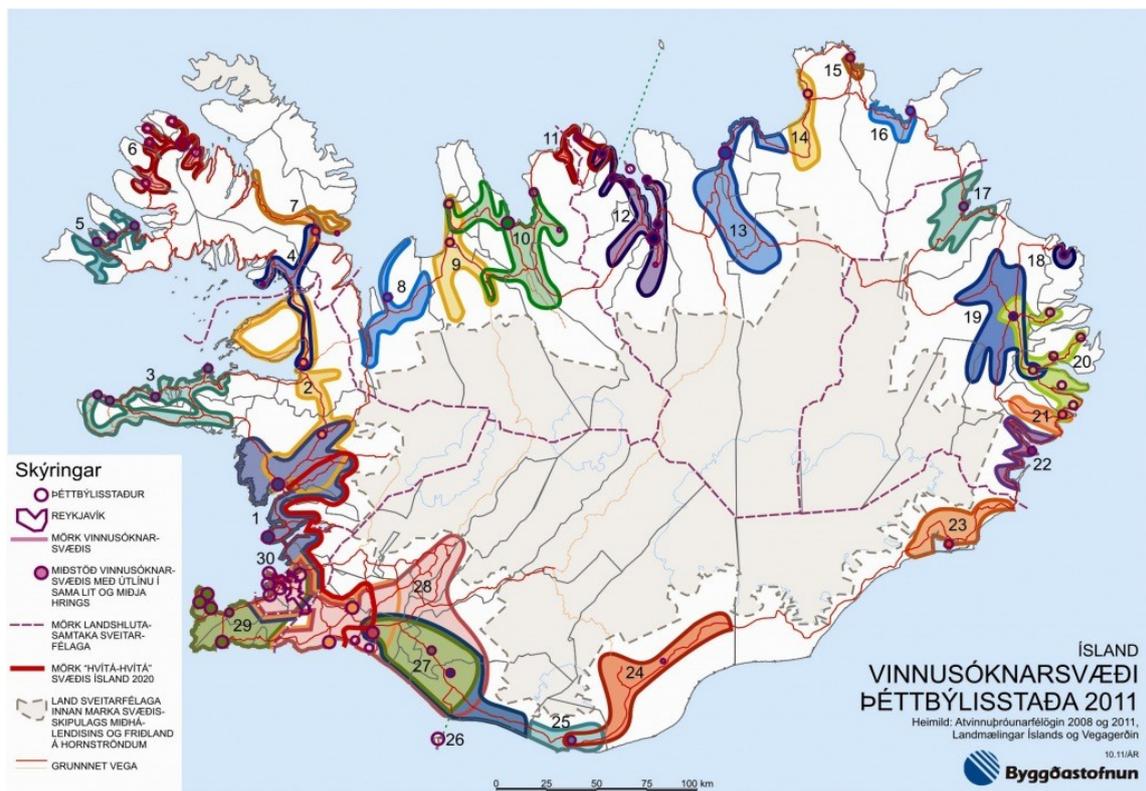
³⁶ Calculated on the basis of the official exchange rates prevailing on the date of notification.

³⁷ The present values in this Decision are calculated on the basis of a base rate of 6.14%, applicable on the date of notification, on top of which 100 basis points need to be added according to the Guidelines on Reference and Discount rates, available at: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>.

³⁸ Based on the ISK/EUR exchange rate of 169 for 2013. In accordance to part VII of the Authority's State Aid Guidelines on applicable rates conversions between national currencies and Euro. Available at: <http://www.eftasurv.int/state-aid/rates/>.

site, and is awaiting clearance from the Authority before commencing. According to the Icelandic authorities, the aid measures therefore produce the necessary incentive to undertake the investment. The Icelandic authorities submit that the measure is proportionate, as they consider that the project has safeguards to prevent overcompensation, since the aid is mostly related to the additional costs incurred in site preparation, transportation by land and sea and adverse weather conditions.

- (82) The Icelandic authorities take the view that a project in this part of the country, due to its distance from markets, population decline and insufficient infrastructure, needs a higher level of aid. The necessity of the aid is particularly evident because it is largely targeted at addressing the specific handicaps of the Northeast part of Iceland, in particular *Húsavík* town and its surrounding commuting area, defined as within 45 km driving distance from *Húsavík* town (marked as *Area 13* on Map 1 below, hereinafter referred to as “Zone 1”).³⁹ The biggest impact is expected to be closest to the construction site, as a result of to direct employment at the site. Other areas further away from the construction site will also benefit from increased demand for various services.⁴⁰ It is anticipated that the effects of the project will also be felt in other parts of *Pingeyjarsýsla* county (hereinafter referred to as “Zone 2”).⁴¹



³⁹ Zone 1 includes *Húsavík* town, and the municipalities of *Tjörneshreppur*, *Skútustaðahreppur* and *Pingeyjarsveit*. *Area 13* on Map 1 comprises most of the geographical area of the municipalities of *Tjörneshreppur*, *Skútustaðahreppur* and *Pingeyjarsveit*, but not all. However, population figures are not available for parts of these municipalities. For the purposes of this Decision, *Area 13* on Map 1 covers an identical population and geographical area as the three municipalities referred to, in addition to *Húsavík* town.

⁴⁰ Report submitted by the Icelandic authorities: *Industrial plant at Bakki, Húsavík*. Regional Development Agency in Iceland (i. Byggðastofnun), delivered in December 2012. Available at: http://www.althingi.is/altext/141/s fylgiskjol/s1108-f_X.pdf (Icelandic version).

⁴¹ Zone 2: The municipalities of *Norðurþing* (exl. *Húsavík* town), *Svalbarðshreppur* and *Langanesbyggð*. It is envisaged that some inhabitants of Zone 2 would commute to the industrial site at Bakki.

Map 1. Iceland - Area 13 constitutes “Zone 1”: Húsavík town, Tjörneshreppur, Skútustaðahreppur and Þingeyjarsveit.⁴²

- (83) The Icelandic authorities submit that Act No 99/2010, adopted by the Icelandic Parliament on 29 June 2010, which established an aid scheme that was approved by the Authority on 13 October 2010 (“the Investment Incentives Scheme”),⁴³ did not provide sufficient incentives for the project at hand. The area in which PCC will construct the Plant is characterised by very low industrial development beyond the fishing and tourism industries. The challenging topography makes additional investment in ground levelling necessary before the construction can take place. The Icelandic authorities therefore consider it to be important to encourage the first investment by a power intensive company with the measures proposed. Thus, the Icelandic authorities consider that the tax incentives that are offered in addition to what was available under the Investment Incentives Scheme are important to support future infrastructure development in the area in order to attract the first investment project to the industrial site of Bakki. Without state intervention, this area would not constitute a feasible investment option.
- (84) The Icelandic authorities maintain that no alternative instruments, such as legislative or administrative measures, would attract the investment at Bakki.

2.8.2 The social and the economic impact of the establishment of the Plant at Bakki

- (85) The Icelandic authorities maintain that the investment will contribute to the diversification of the economic activities of enterprises located in Zone 1. The main objective of the notified measures is therefore to strengthen the economic activities taking place in this zone.
- (86) The Icelandic authorities also contend that the investment will counter the tendency towards depopulation in the region. In early 2012 there were 3 587 inhabitants in the Zone 1, thereof 2 232 in Húsavík town, as illustrated in Table 5 below. Since year 2003 the number of inhabitants have decreased by 8.3 percent. In Húsavík town the population has decreased by 6.8 percent. This decrease has primarily been among young people with children.⁴⁴ As can be seen from Table 5 below, Zone 2 has also been facing depopulation.

Zone 1	2003	2012	Difference	Diff.%
<i>Þingeyjarsveit</i>	997	915	-82	-8.22
<i>Skútustaðahreppur</i>	453	385	-68	-15.01%
<i>Húsavík town</i>	2 394	2 232	-162	-6.77%
<i>Tjörneshreppur</i>	66	55	-11	-16.67%
Total	3 910	3 587	-323	-8.26%
Zone 2				
<i>Norðurþing (exl. Húsavík)</i>	825	652	-172	-20.97%

⁴² Available on the Icelandic Development Institute webpage: <http://www.byggdastofnun.is/is/utgefingefni/myndir/vinnusoknarsvaedi>.

⁴³ Act No 99/2010, “Lög um ívilnanir vegna nýfjárfestinga á Íslandi“, adopted by the Parliament on 29.6.2010, available at: <http://www.althingi.is/lagas/140a/2010099.html> (Icelandic version). The Act formed the legal basis for the Investment Incentives Scheme approved by the Authority on 13 October 2010 by Decision No 390/10/COL, available at: <http://www.eftasurv.int/media/state-aid/390-10-COL.pdf>.

⁴⁴ Report submitted by the Icelandic authorities: *Industrial plant at Bakki, Húsavík*. Regional Development Agency in Iceland (i. Byggðastofnun), delivered in December 2012. Available at: http://www.althingi.is/altext/141/s/fylgiskjol/s1108-f_X.pdf (Icelandic version).

<i>Svalbarðshreppur</i>	120	102	-18	-15.00%
<i>Langanesbyggð</i>	547	512	-35	-6.40%
Total	1 492	1 266	-226	-15.15%
Grand total	5 402	4 853	-549	-10.16%

Table 5. Population figures for Zone 1 and Zone 2 years 2003 and 2012.⁴⁵

- (87) Both zones have experienced negative net migration. From 2001 to 2011 (excluding 2010) emigration has exceeded immigration by a total of just over 300 in Zone 1. Furthermore, considerable emigration has taken place in Zone 2: approximately 150 more people have emigrated than immigrated during the period 2001-2011.⁴⁶ The Icelandic authorities are of the view that the Plant will have positive effects on these zones and on the national economy as a whole.
- (88) Temporary jobs will also be created related to the construction of the harbour and road infrastructure, a power plant and the Plant itself. The Plant is expected to have a significant positive effect on the community of Northeast Iceland, especially in terms of the demography of the county. The Icelandic authorities have stated that without the construction of the Plant, Zone 1 (*Húsavík* town, *Skútustaðahreppur*, *Tjörneshreppur* and *Pingeyjarsveit*) can expect an estimated population decline of around 200 inhabitants by 2022. With the construction of the Plant, it is estimated that the population will increase in Zone 1 to around 4 000 inhabitants, an increase in population of around 400 from 2013 to 2022. According to a report submitted by the Icelandic authorities, the increase in population would put services on a more stable footing and would make the operation of the *Húsavík* town and *Norðurþing* municipality as a whole more viable, better enabling the municipalities to support persons living in peripheral areas.⁴⁷ Furthermore, the Icelandic authorities consider that the construction will create considerable income for the community, both in the form of tax revenue for the municipality and as increased turnover in trades and services.
- (89) The Icelandic authorities maintain that the infrastructure in the *Húsavík* area is capable of supporting a growing population.⁴⁸ The supply of land sites for apartments is sufficient in *Húsavík* town, with an area for around 400 apartments planned in the town.⁴⁹

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Report submitted by the Icelandic authorities: *Northeast Iceland Infrastructure Analysis, compiled in preparation for energy intensive industry in the region in accordance with a memorandum of understanding between the Icelandic government and regional municipalities signed 21 May 2011* (i. Greining innviða á Norðausturlandi), Northeast Iceland Development Agency (i. Atvinnuþróunarfélag Pingeyinga hf.), 2012. Report available at: http://www.nordurthing.is/static/files/UmNordurthing/SkyrslurOgUtgefidEfni/Northeast_Iceland_Infrastructure_Analysis.pdf

⁴⁹ Report submitted by the Icelandic authorities: *Industrial plant at Bakki, Húsavík*. Regional Development Agency in Iceland (i. Byggðastofnun), delivered in December 2012. Available at: http://www.althingi.is/altext/141/s/fylgiskjol/s1108-f_X.pdf (Icelandic version). See also: Report submitted by the Icelandic authorities: *Northeast Iceland Infrastructure Analysis, compiled in preparation for energy intensive industry in the region in accordance with a memorandum of understanding between the Icelandic government and regional municipalities signed 21 May 2011* (i. Greining innviða á Norðausturlandi), Northeast Iceland Development Agency (i. Atvinnuþróunarfélag Pingeyinga hf.), 2012. Report available at: http://www.nordurthing.is/static/files/UmNordurthing/SkyrslurOgUtgefidEfni/Northeast_Iceland_Infrastructure_Analysis.pdf

- (90) The Icelandic authorities do not consider that the Plant is likely to have a negative impact on tourism in this particular area. On the contrary, they maintain that the proposed industrial construction in the region would strengthen infrastructure and services, including transportation to the region, which would increase tourism in the area. Among positive aspects of the development of lines and power plants, the Icelandic authorities refer to opportunities in educational tourism connected with geothermal energy, a stronger infrastructure and increased access to some remote regions.⁵⁰
- (91) Whale watching in *Skjálfandaflói* bay is the most important tourist attraction in *Húsavík* town. The Plant will be visible to some degree from *Skjálfandaflói* bay, depending on the angle and proximity to shore. The Plant will not, however, silhouette the skyline. Moreover, it will not be visible from the town of *Húsavík* itself.⁵¹
- (92) The Icelandic authorities have explained that the harbour area at *Húsavík* is divided into three main areas on the basis of its use: *i.e.* one area for shipping operations and service facilities, another for tourism such as whale watching, and a third area that serves fisheries. They maintain that the tourism industry will therefore not be affected by the industrial harbour constructions and operations in connection with the Plant.

2.8.3 Regional development strategy

- (93) The Icelandic authorities consider that the investment project contributes towards a coherent regional development strategy as referred to in Act No 106/1999 on the Icelandic Regional Development Institute. According to the National Regional Development Policy 2010-2013, adopted on the basis of Act No 106/1999, the main aim of the strategy was to improve living conditions, innovation and sustainable development in all regions. Innovation and start-up companies and foreign industrial investment were also part of the goals of the National Regional Development Policy 2010-2013.
- (94) Furthermore, the Icelandic authorities have submitted to the Authority a draft Regional Development Policy for the period 2014-2017.⁵² The principal objective of the new draft Regional Development Policy, as in the previous plan for 2010-2013, is to reduce regional disparities regarding jobs, services and other living conditions while ensuring sustainable development in all parts of Iceland, with an emphasis on regions which are suffering from depopulation. In addition, a specific emphasis is placed on supporting the infrastructure in connection with the planned industrial site at Bakki, according to Section 3.2 of the draft Regional Development Policy.
- (95) The Icelandic authorities therefore consider that the Plant will contribute towards a coherent regional development strategy. As regards the nature and size of the Plant, the Icelandic authorities maintain that it will not result in an unacceptable distortion of competition.

⁵⁰ This opinion is based on studies and consultation with stakeholders in the area. A study of the impact of industrial development at Bakki on local tourism was conducted and published by the Icelandic Tourism Research Centre in 2009. See: *The impact of industrial development at Bakki 2009* (i. “Mat á áhrifum álvers á Bakka á ferðamennsku”). Report available at: <http://www.ferdamalastofa.is/static/files/upload/files/201232210021vefutgafabakki.pdf>.

⁵¹ Icelandic authorities submitted a memorandum on the proposed industrial development at Bakki on Tourism by the Northeast Iceland Development Agency based on the study: *The impact of industrial development at Bakki 2009* (i. “Mat á áhrifum álvers á Bakka á ferðamennsku”) Report available at: <http://www.ferdamalastofa.is/static/files/upload/files/201232210021vefutgafabakki.pdf>.

⁵² Draft Regional Development Policy 2014-2017, put forward to the Icelandic Parliament on 20.12.2013, available at: <http://www.althingi.is/altext/143/s/0468.html> (not yet adopted).

- (96) On the basis of the information set out above, the Icelandic authorities have submitted that the notified aid measures are compatible with the state aid rules of the EEA Agreement and the basis of the provisions laid down in the Regional Aid Guidelines.

II. ASSESSMENT

1. The presence of state aid

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

(97) Article 61(1) of the EEA Agreement reads as follows:

(98) “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.”

(99) In the following, the Authority will assess whether the criteria of Article 61(1) of the EEA Agreement is fulfilled.

1.2 Presence of state resources

(100) To qualify as state aid, the measure of support must be granted by the State or through State resources. For the purposes of the state aid rules the term “State” covers also regional and local bodies.⁵³ A reduction in the tax base or a total or partial reduction on the amount of tax, fees or charges, involves a loss of revenue and is therefore equivalent to the consumption of State resources in the form of fiscal expenditure.⁵⁴ According to settled case-law, when State foregoes tax revenue which is normally due, State resources are thereby engaged.⁵⁵

(101) In the case at hand the State plans to grant PCC financial support through three separate agreements: the Investment Agreement, the Harbour Agreement and the Site Agreement. The grantors of the aid for each agreement are the Icelandic Government, the municipality and the Harbour Fund⁵⁶ respectively, as described in Section I.2.6 above. The financial support at issue in the present Decision can therefore be considered as given by the Icelandic State through State resources within the meaning of Article 61(1) of the EEA Agreement.

1.3 Selectivity

(102) In order to be caught by the state aid rules the aid measure must be selective, in that it favours “*certain undertakings or the production of certain goods*”. PCC is an undertaking within the meaning of the state aid rules of the EEA Agreement, as the concept of “undertaking” covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed.⁵⁷ PCC carries out an economic activity consisting in the manufacture of hi-tech silicon metal products.

(103) The Investment Agreement between the Government of Iceland and PCC was signed for the purpose of providing support solely to PCC for its investment at the Bakki site. The

⁵³ Case C-248/84 *Germany v Commission* [1987] ECR 4013.

⁵⁴ Authority’s Decision No 261/12/COL adopted on 4 July 2012, OJ L 324, 5.12.2013, p. 21 and EEA Supplement No 68, 5.12.2013, p. 21, concerning municipal tax measures; the sale of real estate; and the sale of electricity to Verne, paragraph 82. See also Part V: Specific aid instrument, Application of State aid rules to measures relating to direct business taxation (“Business taxation Guidelines”), OJ C 384, 10.12.1998, p. 3-9 and EEA Supplement No 26, 8.6.2000, p. 20-27, point 3.

⁵⁵ Case 173/73 *Italy v Commission* [1974] ECR 709, paragraph 15.

⁵⁶ The Harbour Fund is an independent public fund operated in *Norðurþing* and owned by the municipality of *Norðurþing*.

⁵⁷ Case C-41/91 *Höfner and Elser* [1991] ECR I-1979, paragraph 21.

Site Agreement and the Harbour Agreement between *Norðurþing* municipality and PCC were also signed only with PCC. The measure is therefore selective.

1.4 Economic advantage

1.4.1 Site preparation grant

- (104) The State will participate in the cost involved in preparing PCC's industrial site on the property of Bakki to the extent of a maximum of EUR 3.3 million or 55 percent of the cost in the form of a direct cash grant. This confers an economic advantage on PCC, as the financial support will relieve the company from expenses which it would otherwise have incurred. The site preparation grant therefore involves state aid within the meaning of Article 61(1) of the EEA Agreement.

1.4.2 Fixed land lease

- (105) PCC will pay to the municipality of *Húsavík* annually a fixed rent of EUR 10 000 for the site lease during the first ten years of the lease. The rent is not indexed. In Iceland, when companies lease land from the public authorities, such as municipalities, rent is normally established on the basis of a fixed rate, calculated as a percentage of the officially established market value of the land in question, according to Act No 6/2001 on Registration and Evaluation of Real Property. According to the *Norðurþing* municipality statutes this rate is 2.5 percent. The official valuation of the site has not yet taken place. However, the Icelandic authorities have estimated the officially established market value of the land for the future. The potential difference between the amount that other companies would pay the municipality and the negotiated annual rent for the land confers an economic advantage on PCC and therefore involves state aid within the meaning of Article 61(1) of the EEA Agreement.
- (106) The market value as assessed by Registers Iceland is revised annually and therefore the basis for the calculation of the rent is not normally fixed. A fixed rental amount for ten years, without any adjustment or indexing, confers an economic advantage on PCC. Furthermore, by fixing EUR 10 000 as an annual rent for ten years, the Site Agreement guarantees PCC a degree of planning security in regard to its land lease, which other economic operators do not enjoy. This guarantee against future adjustments of the lease in itself constitutes an advantage in the meaning of Article 61(1) of the EEA Agreement.

1.4.3 Exemptions and discounts from taxes and charges for up to ten years

- (107) According to settled case-law, a measure by which the public authorities grant to certain undertakings a tax exemption which, although not involving a transfer of state resources, places those to whom the tax exemption applies in a more favourable financial situation than other taxpayers constitutes aid granted by the state or through state resources.⁵⁸

- (108) As described in subsection I.2.6 above, exemptions and discounts from the following taxes and charges will be granted for periods of up to ten years:

- (i) Corporate Income Tax
- (ii) Social Security Contribution
- (iii) Depreciation Charges
- (iv) Customs Duties
- (v) Stamp Duties
- (vi) Electrical Safety Control

⁵⁸ Case C-387/92 *Banco Exterior de España* [1994] ECR I-877, paragraph 14; and Case C-222/04 *Cassa di Risparmio di Firenze and Others* [2006] ECR I-289, paragraph 132.

- (vii) Market Charge
- (viii) Municipality Property Tax
- (ix) Road Construction Tax
- (x) Building License Fee
- (xi) Wharfage Fee

(109) The exemptions and discounts from the taxes and charges listed above will relieve PCC from expenses established by statutory rules and therefore involve state aid within meaning of Article 61(1) of the EEA Agreement.

1.4.4 The aid amount

(110) In line with the methodology prescribed in paragraph 33 of the RAG the Icelandic authorities have estimated the net present value of the total aid to be disbursed to be EUR 13.64 million (see Table 4 in subsection I.2.7. above).

1.5 Distortion of competition and effect on trade between Contracting Parties

(111) As regards to the criteria set out in Article 61(1) EEA on aid “*which distorts or threatens to distort competition in so far as it affects trade between Contracting Parties*”, it is not necessary to establish that the aid has an actual effect on trade between Contracting Parties and that competition is actually being distorted, but only to examine whether that aid is liable to affect such trade and distort competition.⁵⁹ Moreover, where aid granted by the state strengthens the position of an undertaking compared with other undertakings competing in intra-EEA trade, the latter must be regarded as affected by that aid.

(112) PCC intends to produce silicon metal, a universal material used in the chemical industry; it can be added to aluminium alloys, in the solar power generation industry, and in chips for electronic devices. The silicon metal can be sold to and used by any silicone or aluminium producer, and can be transported worldwide, including to other EEA member states. On that basis, the Authority concludes that the aid is liable to distort competition and to affect trade between the Contracting Parties to the EEA Agreement.

1.6 Conclusion with regard to the presence of state aid

(113) Consequently, for these reasons the Authority considers that the notified measure constitutes state aid to PCC within the meaning of Article 61(1) of the EEA Agreement.

2. Procedural requirements

(114) Pursuant to Article 1(3) of Part I of Protocol 3, “[*t*]he 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”.

(115) By submitting a notification of the aid measure before granting the aid, the Icelandic authorities have complied with the notification requirement. Furthermore, the Icelandic authorities have not put the proposed measures into effect. The Authority can therefore conclude that the Icelandic authorities have respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.

⁵⁹ Case C-372/97 *Italy v Commission* [2004] ECR I-3679, paragraph 44; Case C-66/02 *Italy v Commission*, paragraph 111 and Case C-148/04 *Unicredito Italiano* [2005] ECR I-11137, paragraph 54.

3. Compatibility of the aid

- (116) In the following, the Authority will assess whether the aid measures identified above are compatible with the functioning of the EEA Agreement on the basis of Article 61(3)(c) of the EEA Agreement and the RAG.
- (117) The Authority observes that the Plant at Bakki will be located in an area which is eligible for regional investment aid based on the Authority's Decision No 378/06/COL⁶⁰ on the regional aid map of assisted areas for Iceland 2007-2013, which was prolonged by the Authority's Decision No 495/13/COL until 30 June 2014.⁶¹
- (118) In subsection 3.1 the Authority will assess the applicable aid intensity according to the provisions set out in paragraph 56 of the RAG, and will verify whether it is obliged to open the formal investigation procedure as prescribed in paragraph 57 of the RAG. In subsection 3.2 the Authority will assess the compatibility of the measures with the general provisions of the RAG.

3.1 Large investment project - paragraphs 56 and 57 of the RAG

3.1.1 Aid intensity under paragraph 56 of the RAG

- (119) Eligible expenditure in the case at hand is above EUR 50 million. Therefore the investment project is a "large investment project", subject to assessment under the provisions laid out in Section 4.3 of the RAG.
- (120) The estimated total eligible expenditure for the Plant is EUR 176 million in nominal terms and EUR 156.7 million in net present terms (as described in subsection I.2.7 above).
- (121) The total allowable maximum aid intensity in this case is calculated as follows, under the framework set out in paragraph 56 of the RAG:

Up to 50 MEUR	15.0%	50.0	7.500
50-100 MEUR	7.5%	50.0	3.750
Above 100 MEUR	5.1%	56.7	2.892
		156.7	14.1

Aid ceiling

9.0%

- (122) Together with the applicable standard regional aid ceiling of 15 percent, the scaling-down mechanism in paragraph 56 of the RAG, and applying a discount at the appropriate discount rate, the Authority considers that the net present value of the eligible costs is EUR 156.7 million, with a maximum aid intensity allowed of 9.0 percent Gross Grant Equivalent (GGE).
- (123) The planned total aid amount in present value terms is EUR 13.64 million, which leads to a notified aid intensity of 8.7 percent (see Table 4 in subsection I.2.7).
- (124) Since the notified aid intensity (8.7 percent GGE) for the project is lower than the maximum aid intensity allowed (9.0 percent GGE), the Authority takes the view that the proposed aid intensity for the project complies with the RAG.

⁶⁰ Authority's Decision No 378/06/COL (OJ L 54 28.02.2008 p. 28 and EEA Supplement No 11 28.02.2008 p. 28).

⁶¹ Decision No 495/13/COL, adopted 11 December 2013 available at <http://www.eftasurv.int/state-aid/state-aid-register/> [not yet published in the OJ].

(125) The Icelandic authorities have undertaken to ensure that the notified aid amount (EUR 13.64 million NPV) and the notified aid intensity (8.7 percent) will not be exceeded.⁶²

3.1.2 The rules under paragraph 57 of the RAG

(126) The Authority notes that the Regional Aid Guidelines provide that where the total amount of aid from all sources exceeds 75% of the maximum of aid an investment with eligible expenditure of EUR 100 million could receive, and where that aid falls within paragraphs 57(a) or (b) of the RAG, the Authority must open the procedure set out in Article 1(2) in Part 1 of Protocol 3 to the Surveillance and Court Agreement.

(127) The total amount of aid to PCC, which is EUR 13.64 million in net present value terms, exceeds the threshold prescribed in the first sentence of paragraph 57 of the RAG. Therefore, the Authority needs to examine whether the aid falls within paragraphs 57 (a) and (b) of the RAG, which concern circumstances where:

- a) the aid beneficiary accounts for more than 25% of the sales of the product(s) on the market(s) concerned before investment or will account for more than 25% after the investment, or;
- b) the production capacity created by the project exceeds 5% of the market, while the growth rate of the market concerned is below EEA GDP growth rate.

(128) The Authority's decision to allow regional aid to large investment projects falling under paragraph 57 of the RAG depends on the market shares of the beneficiary before and after the investment, and on the capacity created by the investment. To establish whether the aid falls within paragraphs 57(a) and (b) of the RAG, the Authority must first assess the appropriate product and geographic market definitions as described by the Icelandic authorities. The Authority recalls that the burden of proof is with the Icelandic authorities, as stated in paragraph 59 of the RAG.

Product concerned

(129) The product envisaged by PCC's investment at Bakki is silicon metal. Silicon metal is a universal material; it is used as an alloying element in aluminium alloys and is also the principal feedstock in the manufacturing of certain specialty chemicals such as silicones and silanes, which are important constituents of many everyday and industrial products. Substantial quantities of silicon are also consumed in the manufacture of polycrystalline silicon, which is used in the production of semiconductors for the electronics industry and solar cells.

(130) Once the investment is complete, other products cannot be produced at the Plant facilities without significant costs. Therefore, no other relevant products need to be taken into account.

(131) Following the above, for its further compatibility assessment of the notified measures the Authority will regard silicon metal as the product concerned by the investment project.

Relevant product market

⁶² Letter from the Icelandic authorities submitted 5.2.2014 (Event No 698616). PCC issued a legally binding statement where it commits to repay any amount of aid that exceeds the aid levels approved by the Authority (Event No 694836).

- (132) Silicon metal is used in the primary and secondary aluminium industry to improve the strength of aluminium. Secondly, it is used as a base product in the chemical industry as an alternative to hydrocarbon-based products. Thirdly, it is used in the fast-growing industries of high speed communication and solar energy, where the manufacturing of semiconductor chips, optical fibre and liquid crystal displays is made possible through the conducting properties of silicon.
- (133) In general, the qualities for silicon metal can be divided into “chemical grade” and “metallurgical grade”, where the major differences are defined by the chemical analysis. The quality requirement is dictated by the target market.
- (134) Suppliers to the chemical industry are subject to qualification processes to ensure that they can produce silicon of the desired quality on a consistent basis. Silicon producers generally require silicon with an iron content of around 0.3 percent. The calcium content is typically below 0.05 percent. Secondary aluminium smelters, especially those that make die-casting alloys, have more flexible specification. Silicon with 0.5-1.0 percent iron and 0.1-0.4 percent calcium is typically used in secondary specification alloys.
- (135) In the present case, the relevant markets for the silicon metal produced by PCC Plant have been investigated by an independent researcher, CRU, in a comprehensive market study, according to the Icelandic authorities’ submissions. The chemical industry has been identified as a priority market for PCC due to the stable forecast in demand development and the possibility to achieve price premiums. The second target market for PCC will be the secondary aluminium sector, where more or less off-grade production can be sold because of lower quality requirements.⁶³ The PCC Plant will be designed to produce silicon metal in a range from 553 to 3303,⁶⁴ with about 70-80 percent of the total production, after optimisation of the operation, being higher quality silicon metal. The higher quality silicon metal will be sold to chemical customers at a price premium, but the lower quality product as well as off-spec material will be sold to the secondary aluminium sector.
- (136) As the Commission of the European Union stated in Case No. COMP/M. 6082 *China National Bluestar/Elkem*: “the Commission considered [in Case No. COMP/M.1330 *Pechiney/Samacor*] a potential distinction between “chemical grade” and “metallurgical aluminium grade” silicon metal. Although the market investigation in that case provided indications that chemical grade could constitute a separate relevant product market, the precise market definition has been left open.”⁶⁵ The Authority considers that the exact product market definition can also be left open in the case at hand, as the PCC operation does not raise any competition concern under either a wide market for silicon metal, nor under the market segments discussed above.

Relevant geographical market

- (137) The Icelandic authorities have submitted that the relevant geographic market for silicon metal is worldwide.

⁶³ The silicon off-grade or slag material is a by-product from production of silicon metal of $\geq 99\%$ purity. This material is cheaper than $\geq 99\%$ purity silicon metal.

⁶⁴ According to the Icelandic submission (Event No 690999) different silicon metal grades have been developed and silicon metals are generally classified by their iron, aluminium and calcium content. For example, a 553 grade silicon metal refers to material containing 0.5% iron, 0.5% aluminium and 0.3% calcium. A 3303 silicon contains 0.3% iron, 0.3% aluminium and 0.03% calcium.

⁶⁵ See Commission Case No COMP/M. 6082 *China National Bluestar/Elkem*, dated 31.3.2011 and Case No IV/M.1330 *Pechiney Samacor*, dated 26.1.1999.

(138) The Icelandic authorities have submitted in the alternative that in order to achieve the financing of the project from a bank, PCC will conclude off-take agreements for the first five years with German customers for the major part of the annual production and the market during that period can therefore be considered to be the EEA. The Authority acknowledges these off-take agreements, but do not disagree with the Icelandic authorities that demand for the silicon metal is global, as the producers who are manufacturing and selling the product are active on a worldwide market. This conclusion is supported by demand forecasts presented by the Icelandic authorities which shows that demand for silicon metal in the EEA is expected to be constant over the forecast period, while the expected growth outside of the EEA is estimated to be significant.⁶⁶ The Authority therefore considers that the geographic scope of the market for silicon metal is worldwide for the purpose of this state aid decision.

Market shares

(139) In order to examine whether the investment project meets the conditions set out in paragraph 57(a) of the RAG, the Authority must analyse the market share of the aid beneficiary at group level before and after the investment on the relevant market.

(140) The construction of the Plant will commence in 2014. The start of operation is planned for the start of 2017 and PCC expects full production to be reached in 2018. The Authority will examine PCC's market share on the silicon metal market until 2025.

(141) The Icelandic authorities have submitted demand forecasts conducted by CRU, an independent researcher. Based on a maximum production capacity of 40 000 tons of silicon metal annually PCC will have a market share of 0.96 percent on the worldwide silicon metal market in 2025 on a group level.⁶⁷

(142) The figures indicate that the aid beneficiary's market share for silicon metal would account for much less than 25 percent of the total silicon metal market before and after the investment.

(143) Therefore, the proposed aid does not fall within paragraph 57(a) of the RAG.

Production capacity

(144) In order to conclude whether the project meets the condition set out in paragraph 57(b) of the RAG, the capacity created by the project must be more than 5 percent of the size of the market, measured using apparent consumption data⁶⁸ of the product concerned, unless the average annual growth rate of its apparent consumption over the last five years is above the average annual growth rate of the EEA's GDP ("an over-performing market").

(145) The Plant will consist of furnaces, where each furnace is designed to produce about 16 000 tons of sellable silicon metal per year. The total tapped amount from the furnaces is normally 32 000 tons per year. However, the Authority notes that, according to the Icelandic authorities, the target is a maximum production capacity of approximately 40 000 tons per annum to be produced in the Plant. Therefore, for the purposes of this Decision the Authority will use 40 000 tons as the capacity created.

⁶⁶ The Icelandic authorities have provided demand forecasts from an independent researcher, CRU, until 2020, see Table 7.

⁶⁷ The PCC Plant at Bakki will be the only plant in the PCC group producing silicon metal.

⁶⁸ Apparent consumption of the product concerned is production plus imports minus exports.

- (146) The Icelandic authorities have submitted figures from an independent researcher, CRU, which set out consumption data and forecast until 2025, as follows:

Volume [000 t/a]	2010	2011	2015	2020	2025
Europe	539	530	530	569	600
World	2 078	2 196	2 858	3 505	4 153

Table 7. Demand for silicon metal in thousands of tons per year.

- (147) Taking into account the maximum production capacity of 40 000 tons per annum, the capacity created by the Plant would be 1.14 percent of the worldwide market in 2020 and 0.96 percent in 2025. The capacity created by the Plant is therefore less than 5 percent of the size of the market measured using apparent consumption data.
- (148) The Authority therefore concludes that the proposed aid does not fall within paragraph 57 (b) of the RAG is not met.
- (149) On the basis of the above, the Authority concludes that it is not obliged to open the formal investigation procedure prescribed in paragraph 57 of the RAG.

3.2 Compatibility with the general provisions of the RAG

3.2.1 Regional development strategy

- (150) As a general rule, the Authority does not favour the award of *ad hoc* regional aid and seeks specific justification as to linking of the aid with regional development.⁶⁹
- (151) Regional aid areas covered by the derogation in Article 61(3)(c) of the EEA Agreement must form part of a well-defined regional policy and adhere to the principle of geographical concentration.⁷⁰ When an EFTA State envisages the grant of individual *ad hoc* aid to a single firm, it is the responsibility of that State to demonstrate that the project contributes towards a coherent regional development strategy.⁷¹
- (152) The Icelandic authorities have submitted that the project does indeed contribute towards a coherent regional development strategy, as discussed above in Section I.2.8, where reference is made to both the previous National Regional Development Policy (2010-2013) and the draft Regional Development Policy for the period 2014-2017. The importance of the industrial site of Bakki is highlighted in the draft Regional Development Policy for 2014-2017. Moreover, the Icelandic authorities have submitted that the notified measures are taken in order to tackle economic decline in the Northeast part of Iceland, especially in Zone 1 and to some extent in Zone 2.⁷² These zones have a low population density and experience relatively high negative net migration. Zone 1 has also limited diversity in its economic base, with high proportion of primary activities - mainly fisheries.
- (153) The Icelandic authorities have estimated that once the Plant has been constructed and has started operating, the population will increase in Zone 1 to around 4 000 inhabitants by the year 2022, an increase in population of around 400. 120 jobs will be created directly by the Plant and it is estimated that there will be one derived job created for each job created

⁶⁹ RAG, paragraph 10.

⁷⁰ RAG, paragraph 17.

⁷¹ RAG, paragraph 10.

⁷² See map of Iceland in Section I.2.8 – Area 13 (Zone 1).

by the Plant. The Icelandic authorities contend that the increase in population will put the service industry in Zone 1 on a more stable footing and that therefore the investment will have a positive effect on the community. The Plant will be the first investment on this industrial site and the Icelandic authorities consider it to be an important pioneer for the future development of Zone 1.

- (154) The Authority notes that these assumptions are supported by reports which the Icelandic authorities have submitted to the Authority.⁷³ Furthermore, these reports support the Icelandic authorities' submission that the Plant will improve infrastructure and services, including transportation which would benefit tourism in the area.
- (155) The Authority's notes that a Joint Declaration was signed between the Icelandic Government and the Municipalities in Northeast Iceland on 25 May 2011.⁷⁴ The Joint Declaration stipulates that the parties will jointly work to utilise the energy resources in the region and build up infrastructure with the object of achieving extensive economic development of the county of *Pingeyjarsýsla*, in particular within Zone 1.
- (156) The Authority has taken account of the fact that the Plant is intended to create 120 direct jobs. Furthermore, the Authority notes that the construction of the Plant will trigger the construction of important infrastructure at the *Húsavík* harbour and by road connection from the harbour to the industrial site. It is the Authority's view that the notified measures are designed to contribute to regional development by supporting investment and job creation. Furthermore, the Authority is of the view that Icelandic authorities have demonstrated that the project is part of a coherent regional development strategy in Iceland, by reference to the Joint Declaration and the draft Regional Development Strategy for 2014-2017.

3.2.2 Eligible cost

- (157) The eligible costs are calculated to EUR 176 million (net present value of EUR 156.7 million) and constitutes the eligible investment costs of building the plant from the preparatory ground works to the final construction of the building and the installation of the necessary machinery for production. The eligible costs involve the costs of land, buildings and plant/machinery and are therefore in line with paragraph 39 of the RAG.
- (158) According to the RAG, regional investment aid can be awarded for an initial investment project.⁷⁵ The Plant which PCC intends to construct at Bakki is an investment in material assets relating to setting up a new establishment and thus qualifies as an initial investment project in line with paragraph 25 of the RAG.

⁷³ Report from the Regional Development Agency in Iceland, dated in December 2012, submitted to the Authority. Available at: http://www.althingi.is/alttext/141/s/fylgiskjol/s1108-f_X.pdf (in Icelandic language only) See also: Report submitted by the Icelandic authorities: *Northeast Iceland Infrastructure Analysis, compiled in preparation for energy intensive industry in the region in accordance with a memorandum of understanding between the Icelandic government and regional municipalities signed 21 May 2011* (i. Greining innviða á Norðausturlandi), Northeast Iceland Development Agency (i. Atvinnuþróunarfélag Pingeyinga hf.), 2012. Report available at: http://www.nordurthing.is/static/files/UmNordurthing/SkyrslurOgUtgefingefni/Northeast_Iceland_Infrastructure_Analysis.pdf and see also a study of the impact of industrial development at Bakki on local tourism that was conducted and published by the Icelandic Tourism Research Centre in 2009. *The impact of industrial development at Bakki 2009* (i. "Mat á áhrifum álvers á Bakka á ferðamennsku"). Report available at: <http://www.ferdamalastofa.is/static/files/upload/files/201232210021vefutgafabakki.pdf>

⁷⁴ These municipalities are: *Norðurþing*, *Pingeyjarsveit*, *Skútustaðahreppur*, *Tjörneshreppur*, *Svalbarðshreppur* and *Langanesbyggð*.

⁷⁵ RAG, paragraph 25.

3.2.3 Form of aid

- (159) The form of the aid can be variable, it may take the form of grants, exemption or reductions in taxes, social security or other compulsory charges, or the supply of land, goods or services at favourable prices.⁷⁶ In the case at hand several of the measures are provided through the reduction or exemption from taxes and charges.
- (160) According to the Regional Aid Guidelines, regional investment aid can be awarded for an initial investment project.⁷⁷ In order for aid to qualify as investment aid the aid must be limited in terms of a fixed percentage of the investment costs. The maximum aid intensity for regional investment aid is the gross grant equivalent of 15% for large enterprises. Special ceilings apply for large investment projects, according to the Regional Aid Guidelines.⁷⁸
- (161) As a preliminary point, the Authority observes that the tax and fee concessions, identified above, are imposed on revenue and property (such as corporate income tax, municipality property tax, market charge etc.) rather than in relation to investment cost. Such aid normally constitutes operating aid. However, the Business Taxation Guidelines⁷⁹ provide that it is possible to qualify aid as investment aid where the aid is limited in terms of a fixed percentage of the investment costs.
- (162) Paragraph 4(3) of the Business Taxation Guidelines reads as follows:
- Where a fiscal aid is granted in order to provide an incentive for firms to embark on certain specific projects (investment in particular) and where its intensity is limited with respect to the costs of carrying out the project, it is no different from a subsidy and may be accorded the same treatment. Nevertheless, such arrangements must lay down sufficiently transparent rules to enable the benefit conferred to be quantified.*
- (163) As a preliminary point the Authority observes that it is a condition for granting the aid that the investment in the Plant at Bakki is undertaken and, in that sense, the aid is linked to the investment project. Moreover, the Authority considers that if the grant of the aid is subject to an overall ceiling which is expressed as a percentage of the amount of the investment, this would be sufficient to classify the aid as investment aid irrespective of the fact that the aid is not directly linked to investment costs but rather has the effect of reducing PCC's operating costs during a start up phase.
- (164) The Authority observes that the grant of aid in the case at hand is subject to an overall aid ceiling of EUR 13.64 million in net present value terms which, expressed as a percentage of the amount of the investment costs, represents 8.7 percent.
- (165) On the basis of these considerations the Authority considers that aid resulting from the identified tax and fee measures, by means of the ceiling expressed as a percentage of the investment costs, qualify as investment aid. Hence state aid resulting from:

- (i) Corporate Income Tax
- (ii) Social Security Contribution

⁷⁶ RAG, paragraph 29.

⁷⁷ RAG, subsection 4.1.1.

⁷⁸ RAG, paragraph 56.

⁷⁹ Part V: Specific aid instrument, Application of State aid rules to measures relating to direct business taxation ("Business taxation Guidelines"), OJ C 384, 10.12.1998, p. 3-9 and EEA Supplement No 26, 8.6.2000, p. 20-27.

- (iii) Depreciation Charges
- (iv) Customs Duties
- (v) Stamp Duties
- (vi) Electrical Safety Control
- (vii) Market Charge
- (viii) Municipality Property Tax
- (ix) Road Construction Tax
- (x) Building License Fee
- (xi) Wharfage Fee

qualifies as investment aid and can be counted towards the aid ceiling of EUR 13.64 in net present value terms, together with the cash grant for site preparation.

- (166) Under paragraph 31 of the RAG, PCC must provide a financial contribution of at least 25 percent of the eligible costs in a form which is free of any public support. As demonstrated in Section I.2.3 above PCC's own contribution is well above this threshold. Therefore, the Authority concludes that the condition in paragraph 31 of the RAG is fulfilled.
- (167) The Icelandic authorities have confirmed that the aid is conditional on the maintenance of the investment in the region for a minimum period of at least five years after the project's completion. PCC has signed a legally binding statement to that effect and that the company will repay the received state aid if the investment is not maintained in the region for five years after its completion. Therefore, the Authority can conclude that the condition in paragraph 32 of the RAG is fulfilled.

3.2.4 Incentive effect

- (168) The Icelandic authorities have submitted that the investment project would not be carried out in the area at Bakki without the notified measures and thus produces an incentive effect for PCC to undertake the investment at the Bakki site. The Authority considers that on balance the evidence, as presented in Section I.2.8. above, supports this.
- (169) As regards the incentive effect in a case of *ad hoc* aid, the competent authority must have issued a letter of intent, conditional on the Authority's approval of the measure, to award aid before work starts on the project.⁸⁰ The Authority considers that this criteria has been fulfilled. The granting of aid is conditional upon the Authority's approval of the aid and that the work on the construction of the Plant has not yet started and will not start until the Authority has issued a decision confirming that the envisaged aid measures are compatible with the state aid rules.
- (170) In the Authority's view, and based on the information submitted by the Icelandic authorities, the investment would not have taken place without the necessary and sufficient infrastructure (such as a harbour and access roads) being in place. Furthermore, documentation provided by the Icelandic authorities supports the argument that the aid measures are in large part compensation for costs arising from location-specific disadvantages as described in Section I.2.8.1 above. The costs of constructing the Plant at the Bakki industrial site are higher than average due to geological, geographical and climatological characteristics of the specific area.
- (171) On the basis of the above, the Authority considers that the Icelandic authorities have demonstrated the incentive effect.

⁸⁰ RAG, paragraph 30.

3.2.5 Cumulation

(172) The Icelandic authorities have submitted that they are aware of the fact that the aid beneficiary may not receive state aid in excess of the amount notified to and approved by the Authority. The Icelandic authorities have undertaken to ensure that the notified aid amount and the aid intensity, as calculated, will not be exceeded, even in case of higher or lower eligible costs.⁸¹ In addition the Icelandic authorities are aware that the aid cannot be cumulated with aid received from other local, regional or national Schemes to cover the same eligible costs.

4. Monitoring and reporting

(173) The Ministry of Industries and Innovation issued a letter dated 11 December 2013, on the monitoring of the aid to PCC granted on the basis of the Investment Agreement. The Icelandic authorities have confirmed that they will ensure that this monitoring will be in full conformity with Iceland's obligations under the EEA Agreement.

(174) The Ministry will monitor the state aid in question and collect relevant information every 12 months and request PCC to provide detailed information regarding the amount of the state aid that the company receives each year. In addition the Ministry will require verification from *Norðurljósi* municipality and the Harbour Fund who will grant state aid to the Plant.

(175) The Icelandic authorities have committed to submit annual reports on the aid disbursed, in the form of an information sheet annexed to this Decision.⁸²

(176) The Icelandic authorities have committed to submit to the Authority:

a. On a five-yearly basis, starting from the approval of the aid by the Authority, an intermediary report (together with information on the aid amounts being paid, on the execution of the aid contract and on other investment projects started at the same establishment/plant);

b. Within six months after payment of the last tranche of the aid, that is based on the notified payment schedule, a detailed final report.

(177) To ensure transparency with regards to the project, the Ministry will, on an annual basis inform PCC, *Norðurljósi* municipality and the Harbour Fund of the total amount of aid paid to PCC in connection with the project.

(178) The Icelandic authorities have committed to monitor effectively the state aid granted to PCC and that they will, in accordance with national law and EEA commitments, claw-back any aid that is in excess of the amount approved by the Authority. To this effect, the Authority has been provided with a copy of an agreement signed between the Ministry on the one hand, and the municipality of *Norðurljósi* and the Harbour Fund on the other hand, dated 19 December 2013.⁸³ This agreement contains provisions on the monitoring of the investment project and the state aid granted. Furthermore, on the same day PCC issued a legally binding statement where PCC commits to repay any amount of aid that exceeds the aid levels approved by the Authority.⁸⁴

⁸¹ Event No 694308, dated 20.12.2013.

⁸² Event No 700261, dated 24.02.2014.

⁸³ Event No 694308, dated 20.12.2013, Event No 694833, dated 19.12.2013.

⁸⁴ Event No 694836, dated 19.12.2013.

5. Conclusion

- (179) On the basis of the foregoing assessment, in particular in the light of the monitoring and reporting commitments made by the Icelandic authorities, and the repayment commitments made by PCC, the Authority considers that the notified measures are in line with the general provision of the RAG. The Authority likewise considers that the notified measures respect the conditions regarding aid to a large investment project as defined within the RAG. The Authority accordingly considers the aid to be compatible with Article 61(3)(c) of the EEA Agreement.
- (180) The Authority reminds the Icelandic authorities of their commitments to monitor the state aid to PCC and to report to the Authority, as described in Section II.4 above.
- (181) The Authority reminds the Icelandic authorities of their obligation to maintain detailed records regarding the granting of aid for all large investment projects. Such records, which must contain all information necessary to establish that the maximum allowable aid intensity has been observed, must be maintained for 10 years from the date on which the aid was granted.

HAS ADOPTED THIS DECISION:

Article 1

The following measures constitute state aid within the meaning of Article 61(1) of the EEA Agreement:

- (i) The 3.3 million EUR cash grant for the site preparation
- (ii) The fixed calculation of land lease
- (iii) The maximum 15 percent corporate income tax
- (iv) The exemption from social security contribution
- (v) The option to depreciate physical assets down to zero residual value and flexibility as regards timing and level of annual depreciation.
- (vi) The exemption from customs duties
- (vii) The exemption from stamp duties
- (viii) The exemption from payment of electrical safety control fee
- (ix) The exemption from market charge
- (x) The 50 percent discount from municipal property tax
- (xi) The 30 percent discount from road construction tax
- (xii) The 25 percent discount from building license fee
- (xiii) The 40 percent discount from wharfage fee

The notified aid intensity is 8.7 percent and the maximum aid amount is EUR 13.64 million NPV.

These aid measures will only be granted for the maximum period of 10 consecutive years for each category of aid.

All aid measures are to have ceased entirely after 27 September 2027.

These measures are compatible with the EEA Agreement.

Article 2

The EFTA Surveillance Authority raises no objections to the grant of aid in favour of PCC BakkiSilicon hf., for the construction of a silicon smelter in the industrial site of Bakki, Iceland by means of the aid measures identified above.

Article 3

This Decision is addressed to Iceland.

Article 4

Only the English language version of this decision is authentic.

Done at Brussels, on 12 March 2104.

For the EFTA Surveillance Authority

Oda Helen Sletnes
President

Frank Büchel
College Member

ANNEX I - Reporting

Form to be used by the Icelandic authorities for their submission of the annual report

Discount Rate		7.14%																		
Exchange rate EUR/ISK		169																		
Inflation rate		2.5%																		
Aid Grantor		Aid Categories		2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	Total	
Icelandic State – Investment Agreement	Corporate income tax	-	-	-	-	-	-	-	-	-	0.13	0.31	0.43	0.52	0.60	0.65	0.64	0.64	3.93	
	Site preparation grant	-	3.08	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3.08
	Social security contribution	-	-	-	-	0.18	0.18	0.17	0.16	0.16	0.15	0.15	0.14	0.14	0.13	-	-	-	-	1.57
	Depreciation	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0.64	-	0.64
	Customs duties	-	-	-	0.08	0.08	0.04	0.02	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	-	-	-	0.26
	Stamp Duties	-	0.22	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0.22
	Electrical safety control	-	-	-	-	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	-	-	0.03
	Market charge	-	-	-	-	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	-	-	0.01
Norðurljón municipality - Site Agreement	Municipal property tax	-	-	-	-	0.17	0.16	0.15	0.15	0.14	0.13	0.13	0.12	0.12	0.11	-	-	-	-	1.38
	Road construction tax	-	1.02	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1.02
	Building Licence Fee	-	0.02	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0.02
	Land lease	-	-	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	-	-	-	-	-	-	0.01
Harbour Fund - Harbour Agreement	Wharfage Fee	-	-	-	-	0.18	0.17	0.16	0.16	0.15	0.14	0.14	0.13	0.13	0.12	-	-	-	-	1.48
NPV total aid (million EUR)		-	4.34	0.00	0.08	0.61	0.55	0.51	0.62	0.78	0.87	0.95	1.01	1.04	1.01	1.28				13.64