

Case handler: Christian Jordal
Tel: (+32)(0)2 286 1889
cjo@eftasurv.int

Brussels, 13 June 2017
Case No: 79322
Document No: 857101

EFTA SURVEILLANCE
AUTHORITY

NHO Transport
Att: Jon H. Stordrange
PO Box 5477 Majorstuen
NO-0305 Oslo
Norway

Sent by email only to:
jon.stordrange@transport.no

Subject: Complaint about alleged unlawful state aid to Norges Statsbaner
- *Closure of case*

Reference is made to your complaint dated 4 July 2016 to the Competition and State Aid directorate of the EFTA Surveillance Authority (“the Authority”) regarding alleged unlawful aid to Norges Statsbaner (“NSB”). Reference is also made to the Authority’s letter of 13 March 2017 setting out its preliminary view that NSB has not received any aid in breach of the EEA state aid rules. Finally, reference is made to your response to that letter by letter dated 19 May 2017.

Your latest letter does not provide any new information nor new arguments that have led the Authority to change its preliminary views presented in the letter of 13 March 2017. In the following, the Authority sets out the reasons for this conclusion in more detail.

The Authority notes that this letter must be read in conjunction with the letter of 13 March 2017, it is nevertheless prudent to repeat that the Authority, in order to simplify the presentation, in the following, refers to the compensation to NSB as a form of state aid. However, please note that this does not mean that the Authority has concluded that the compensation constitutes a form of state aid within the meaning of Article 61 of the EEA Agreement.

In your latest letter you refer to your complaint of 4 July 2016 and maintain that there is a risk of overcompensation under the current scheme. You alleged that there is “no mechanism in force for preventing overcompensation” and that you “do not find the method for calculating the compensation sufficiently clear and transparent to be able to rule out that overcompensation does occur.”

In that regard, the Authority refers to its letter of 13 March 2017 where it stated as follows:

“The Norwegian authorities have explained that since the conclusion of the 1992 contract for rail passenger transport services with NSB,¹ the compensation for rail passenger transport has been granted on the basis of the same administrative

¹ «Rammetilskuddsavtale for 1992 mellom Norges Statsbaner og Samferdselsdepartementet for statlig betaling for persontrafikkjenester».

procedure. According to that procedure, the authorities identify the transport needs, and identify which passenger transport services are necessary to create an effective transport system with the desired capacity, according to the transport policy. On the basis of this exercise, the authorities define the necessary frequency, tariffs etc. for the public service obligation. For directly awarded public service contract (such as the ones with NSB), negotiations are held with the rail service provider. The amount of the remuneration is decided in the negotiations and reflected in the draft state budget. The contract is signed, subject to the Parliament's approval of the state budget. The contract is then monitored by the awarding authority, and revised as prescribed according to different needs, administrative changes, changes in the legal framework, external factors etc. The Norwegian authorities have consistently ensured that overcompensation does not take place. There is an administrative requirement dictating that no more public funds should be spent than what is required for procuring the service as specified for the intended purpose. The Norwegian authorities have implemented this principle in the contract negotiations with NSB. Additionally, the Norwegian authorities have subjected the rail passenger transport to an efficiency requirement.”

Your latest letter mostly relies on the information provided in your complaint of 4 July 2016. The Authority, after having assessed the information provided by the Norwegian authorities, has come to the conclusion that your allegations are incorrect. Contrary to what you allege, there is a method in place for calculating the compensation. The Norwegian authorities have systems in place to check for overcompensation. The Authority does not see any grounds for pursuing this issue further on the basis of your complaint.

You stress that aid “may” have been granted outside the scope of the aid scheme. You do, however, apart from referring to overcompensation in the abstract, not elaborate in any detail on how this might have occurred. You do not analyse the legal basis for the scheme, nor do you make an attempt at identifying any concrete payments and how they have not been made on the basis of the provisions providing for the scheme. The Authority, in reviewing the information provided by the Norwegian authorities, has found no signs of payments to NSB that fall outside the scope of the scheme. Therefore, the Authority will not pursue this issue further.

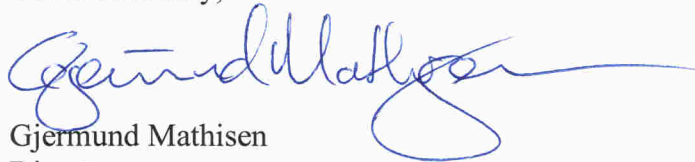
You have not provided further information or arguments to substantiate that new aid is being granted to NSB. With reference to your complaint of 4 July 2016, you maintain that the changes made to the contracts and the organisation of NSB entail that the scheme has turned into new aid. The Authority addressed these concerns in its letter of 13 March 2017.² You have provided no new facts or arguments in this regard. The Authority will therefore not further comment on these allegations.

The Authority, in cooperation with the EFTA States, keeps systems of existing aid under constant review in accordance with Article 1(1) of Protocol 3 to the Surveillance and Court Agreement. It is for the Authority to decide which schemes to review and when. The Authority will take circumstances such as the fact that the Norwegian authorities are planning to shift the award of rail contracts from direct awards to tenders into account when using its discretion on whether or not to review an existing system of aid. On the basis of the information available, the Authority sees no reason to initiate a formal existing aid review of the compensation paid to NSB at this point in time.

² See the Authority's letter of 13 March 2017, page 3.

As your letter of 19 May 2017 has not provided any information that has led the Authority to change its preliminary position set out in the letter of 13 March 2017, the Authority has decided that there are no grounds for pursuing your complaint further. You are hereby informed that the case opened on the basis of your complaint has been closed.

Yours faithfully,



Gjermund Mathisen
Director
Competition and State aid