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EFTA SURVEILLANCE
AUTHORITY

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Sent by email only to [REDACTED]

Subject: Sale of land by Nesna Kommune (complaint)

- *Preliminary assessment under paragraph 48(b) of the Authority's Guidelines on Best Practice for the conduct of state aid control procedures*

1 General

Reference is made to your complaint dated 10 February 2017 to the Competition and State Aid directorate of the EFTA Surveillance Authority (“the Authority”) regarding alleged state aid to Mo Industripark AS.

In your complaint, you allege that Nesna Municipality (“the Municipality”) has granted aid to Mo Industripark AS by selling Langsetvågen Industrial Area with a bordering property and quay (“the Area”) below market price.

Since receiving your complaint, the Authority has gathered information from the Norwegian authorities and conducted a preliminary examination of this measure.

2 No advantage

According to Article 61(1) of the EEA Agreement, a measure constitutes state aid if the following conditions are cumulatively fulfilled: the measure (i) is granted by the state or through state resources; (ii) confers a selective economic advantage on the beneficiary; and (iii) is liable to affect trade between Contracting Parties and to distort competition.

Following a preliminary examination of the complaint, the Authority is of the view that Mo Industripark AS has not received aid in breach of the EEA state aid rules as the Area appears to have been sold at market price. Therefore, no economic advantage has been bestowed upon Mo Industripark AS, within the meaning of the state aid rules.

The Authority would like to point out that an economic advantage, within the meaning of Article 61(1) of the EEA Agreement, is any economic benefit which an undertaking could not have obtained under normal market conditions.¹

¹ See the Authority's Guidelines on the notion of State aid as referred to in Article 61(1) of the EEA Agreement (Notion of aid), available at: <http://www.eftasurv.int/media/esa-docs/physical/EFTA-Surveillance-Auhtority-Guidelines-on-the-notion-of-State-aid--812818--corrected-version-published-onlinen.pdf>, at paragraph 66.

Economic transactions carried out by public bodies (including public undertakings) do not confer an advantage on its counterpart, and therefore do not constitute aid, if they are carried out in line with normal market conditions.²

Whether a sale of assets is carried out in line with normal market conditions can be established though benchmarking against similar transactions, through a competitive, transparent non-discriminatory and unconditional bidding procedure, or through other assessment methods such as an independent expert evaluation.³

It is the Authority's preliminary opinion that in this case, benchmarking, the competitive bidding procedure and an independent expert evaluation all indicate that Langsetvågen Industrial Area was sold at market price.

1. Benchmarking

To establish whether a transaction has been carried out in line with market conditions, that transaction can be assessed in the light of the terms under which comparable transactions carried out by comparable private operators have taken place.⁴ It is not necessary to establish one precise reference value, but rather a range of possible values by assessing comparable transactions.⁵ In this respect, the Authority enjoys a wide margin of appreciation when verifying the economic soundness of a transaction,⁶ and in deciding on an appropriate benchmark.⁷

The Norwegian authorities have underlined that the price level in this rural part of Nordland County is generally well below similar areas in more densely populated parts of Norway and Europe. The price of Langsetvågen Industrial Area is further influenced by the fact that the topography of the land is uneven and largely consists of rock, and the area is unsuitable for industrial use without heavy investment. Therefore, according to the Norwegian authorities, there is limited commercial interest in the area.

Even so, the Norwegian authorities have provided information showing that a plot of land adjacent to the Area was recently sold by a private vendor to a lower price per square meter than the land sold by the Municipality. The land sold is smaller and without a quay area, but has a topography similar to Langsetvågen Industrial Area and therefore the transactions can be considered comparable. It was sold for NOK 15 per square meter, a price about 50% lower than the price of the Area.

As the Area was sold at a higher price than a similar plot of land sold under similar market conditions, the Authority is of the preliminary opinion that benchmarking shows it was sold at market price.

² Notion of aid, paragraph 74

³ Notion of aid, paragraphs 84, 97 and 101

⁴ Notion of aid, paragraph 98.

⁵ Notion of aid, paragraph 100.

⁶ Commission communication on the Application of Articles 92 and 93 of the EEC Treaty and of Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector, paragraph 27, available at [http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31993Y1113\(01\)](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31993Y1113(01))

⁷ See for example judgments in *Belgium v Commission*, C-56/93, EU:C:1996:64, paragraphs 10-11; *Air France v Commission*, T-358/94, EU:T:1996:19, paragraph 149; and *Lenzing AG v Commission*, T-36/99, EU:T:2004:312, paragraph 150.

2. Competitive bidding procedure

Further, in the present case, the Norwegian authorities have presented information showing that the sale of the Area was conducted through a competitive bidding procedure. The property was advertised several times in a national newspaper, several times on a national web market place, and in two local/regional newspapers. As explained above, heavy investment is necessary to prepare the land for industrial use. Therefore, the interest in developing the Area was limited. Even so, several parties expressed interest for the property following these advertisements, and the Municipality received two bids, one for the quay facilities and one from Mo Industripark AS.

This supports that the property was sold for market price.

3. Independent evaluation

Whether a transaction is in line with market conditions can also be established on the basis of a generally-accepted, standard assessment methodology.⁸ In the case of sales of land, an independent expert evaluation prior to the sale negotiations to establish the market value on the basis of generally accepted market indicators and valuation standards is in principle satisfactory.⁹

The Municipality used Norconsult to assess the area. Norconsult estimated the market price to be NOK 3.27 million, corresponding to the later bid from the buyer, Mo Industripark AS, when adjustments had been made for the ongoing dispute with Westcon.

The independent evaluation therefore also supports that the Area was sold at market price, and that no aid is involved in the sale.

3 Preliminary view

On the basis of the above and with reference to paragraph 48(b) of the Authority's Guidelines on Best Practice for the conduct of state control procedures,¹⁰ it is the Authority's preliminary view that Mo Industripark AS has not received any aid in breach of the EEA state aid rules.

If you have any additional information that you would like to submit that might change this preliminary view, please do so **by 8 August 2017**. Otherwise the case will be closed without further notice.

Yours faithfully,

Gjermund Mathisen
Director
Competition and State aid

This document has been electronically signed by Gjermund Mathisen.

⁸ Notion of aid, paragraph 101.

⁹ Notion of aid, paragraph 103.

¹⁰ Available at <http://www.eftasurv.int/media/state-aid-guidelines/Part-II---Guidelines-on-Best-Practice-for-the-conduct-of-state-aid-control-procedures-DOC.pdf>.