EFTA SURVEILLANCE AUTHORITY

Doc. No: 00-9970-I
Ref. No: SAM 030.00.007
Dec. No: 417/01/COL

EFTA SURVEILLANCE AUTHORITY DECISION
of 19 December 2001
On Compensation for maritime transport services under the "Hurtigruten Agreement"

(NORWAY)

THE EFTA SURVEILLANCE AUTHORITY,

HAVING REGARD TO the Agreement on the European Economic Area[1], in particular to Articles 59 (2) and 61 to 63 thereof,

HAVING REGARD TO the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice[2], in particular Article 24 and Article 1 of Protocol 3 thereof,

HAVING REGARD TO the Procedural and Substantive Rules in the Field of State Aid[3], in particular Chapter 24A[4] thereof,

HAVING REGARD TO the Act referred to in point 53 a in Annex XIII of the EEA Agreement[5],

WHEREAS:

[1] Hereinafter referred to as the 'EEA Agreement'.
[2] Hereinafter referred to as the 'Surveillance and Court Agreement'.
[3] Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of protocol 3 to the Surveillance and Court Agreement, adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in OJ 1994 L 231, EEA Supplements 03.09.94 No. 32, last amended by the Authority's Decision No. 370/01/COL of 28 November 2001, not yet published; hereafter referred to as the 'Authority's State Aid Guidelines'.
[4] Chapter 24A on Aid to maritime transport, hereinafter referred to as the 'Maritime Guidelines'.
[5] Council Regulation (EEC) No. 3577/92 applying the principle of freedom to provide services to maritime transport within Member States, published in OJ L 30 of 5 February 1998, p. 42 and EEA Supplement No 5 of 5 February 1998, p. 175, hereinafter referred to as the 'Maritime Cabotage Regulation'.

I. FACTS

Procedure

Following several press reports, the EFTA Surveillance Authority became aware of the Norwegian Government's intention to conclude a new Agreement regarding the operation of maritime transport services along the coast between Bergen and Kirkenes (in the following referred to as the "Hurtigruten service"). By letter dated 8 February 2000 (Doc. No. 00-1073-D), it requested the Norwegian authorities to submit all information necessary to enable the Authority to ascertain whether the planned State payment for the operation of the "Hurtigruten service" was compatible with the EEA Agreement, and in particular, the Maritime Guidelines.

The Norwegian authorities responded to this request by letter of 14 March 2000, registered by the Authority on 17 March 2000 (Doc. No. 00-2279-A). The Norwegian authorities provided certain explanations regarding the framework conditions of the proposal for a new Agreement regarding the "Hurtigruten service" and further assured the Authority that the draft Agreement between the Ministry for Transport and the two companies operating the "Hurtigruten service" would be notified once negotiations were finalised. By letter dated 24 May 2000, registered by the Authority on 29 May 2000 (Doc. No. 00-4025-A), the Norwegian authorities informed the Authority that the draft Agreement would be signed only after the it had been approved by the EFTA Surveillance Authority.

By letter dated 5 July 2000, registered by the Authority on 13 July 2000 (Doc. No. 00-5038-A), the Norwegian authorities notified the draft "Hurtigruten Agreement" pursuant to Article 1 (3) of Protocol 3 of the Surveillance and Court Agreement. In a letter dated 27 July 2000 (Doc. No. 00-5316-D), the Authority requested additional information, which the Norwegian authorities partly provided by letter of 30 August 2000, registered by the Authority on 4 September 2000 (Doc. No. 00-6092-A).

By letter dated 4 October 2000 (Doc. No. 00-6965-D), the Authority requested additional information, in particular as regards the conditions under which the contract will be awarded. The issues addressed in this letter were discussed between representatives from the Norwegian Ministry for Transport and Communication and representatives from the Authority's Competition and State Aid Directorate in Oslo on 19 October 2000. By letter from the Ministry of Transport and Communications dated 2 November 2000, received and registered by the Authority on 8 November 2000 (Doc. No. 00-7956-A), part of the requested information was submitted. The response to the Authority's letter of 4 October 2000 was supplemented by letter of 6 April 2001 from the Ministry of Transport and Communication, received and registered by the Authority on 18 April 2001 (Doc. No. 01-2934-A).

By letter of 18 June 2001 (Doc. No. 01-4525-D), the Authority requested further information. In this letter, the Authority also stressed the importance of complying with the procedural rules laid down in the Maritime Cabotage Regulation and the Maritime Guidelines and asked the Norwegian Government to submit proposals of how compliance could be ensured. Following further contacts on this issue between the Norwegian Ministry of Transport and Communications and the Authority, in particular a meeting on 17 September 2001, at which representatives from the

Authority explained in detail remaining concerns as regards the draft "Hurtigruten Agreement", the Norwegian Government submitted, by letter from the Ministry of Transport and Communications dated 11 December 2001, sent by fax and received and registered by the Authority on the same day (Doc. No. 01-10062-A), a formal commitment regarding the future tender procedure for maritime transport services along the coast and amendments to the draft Hurtigruten Agreement as initially notified.

Description of Aid Measures

Introduction

The "Hurtigruten Agreement" establishes the legal framework, under which two maritime companies, *Ofotens og Vesteraalens Dampskibsselskab ASA* (OVDS) and *Troms Fylkes Dampskibsselskap ASA* (TFDS), will offer, as of 1 January 2002, maritime transport services consisting of the combined transport of persons and goods along the coastal line from Bergen to Kirkenes, serving 34 ports of call on a daily basis throughout the year. In return, the Norwegian State will grant an annual compensation of NOK 170 million (approximately € 21 million), expressed in 1999-prices, to these companies.

At present, the "Hurtigruten service" is operated by two maritime companies, OVDS and TFDS (the "Hurtigruten companies"), under a contract which was concluded in 1991 for a period of 10 years (cf. *St. prp. Nr. 21/Innst. S. nr. 37 (1991-92)).* The current contract expires 31 December 2001.

According to information, which was communicated to the Authority in 1994 as part of the general information on all aid measures in force in Norway at the time of the entry into force of the EEA Agreement, the current Agreement required the "Hurtigruten companies" to provide daily transport services between Bergen and Kirkenes throughout the year. Furthermore, the "Hurtigruten companies" were under an obligation to renew their fleet by investing an amount of NOK 1 300 million in the course of the contract period. In return, the current "Hurtigruten Agreement" provided for a State subsidy amounting to NOK 1 875 million to be disbursed over the period of 10 years.

The current "Hurtigruten Agreement" was concluded in1991 based on the assumption that State support was supposed to be granted only for a transitional period until the "Hurtigruten service" could be operated on a commercial basis (St.prp. nr. 21 (1991-92)/Innst. S. nr. 37 (1991-92); see also St. meld. Nr. 39 (1989-90) "*Transportstandarden langs kysten fra Bergen til Kirkenes*").

In the course of 1999, the "Hurtigruten companies" submitted a proposal regarding the operation of the "Hurtigruten service" beyond 2001 ("*Veivalg etter 2001*"). In this document, the companies outlined three possible models for providing the "Hurtigruten service" under different terms and conditions. The different models had in common that, due to substantial losses in the winter months, the current service level could not be maintained throughout the year without State support. On the other hand, a commercially viable solution would necessarily imply reduced frequency and/or stopping points.

By decision of 3 December 1999, the Norwegian Parliament chose to maintain the current service level and authorised the Norwegian Ministry for Transport and Communication to conclude a framework Agreement with the Hurtigruten companies regarding the purchase of transport services for NOK 170 million p.a. (*St. prp. Nr. 1, Tillegg nr. 7* and *Budsjett-innst. S. nr. 13 (1999-2000)*).

Determination of State payment required for the operation of the "Hurtigruten service"

On the basis of the Parliament's authorisation, the Norwegian Government asked the "Hurtigruten companies" to submit detailed information regarding the State payment required to compensate for extra costs due to the obligations set out in the Norwegian Parliament's Decision of 3 December 1999. In this respect, the Government also engaged an external consultant, Arthur Andersen, to verify that the amount of NOK 170 million would not entail any overcompensation. In its final report, which was presented in March/April 2000, Arthur Andersen came to the conclusion that the State payment of NOK 170 million p.a. would provide the "Hurtigruten companies" with a rate of return of around […][6] of invested capital. This was, according to Arthur Andersen, below the adequate rate of return, calculated as being […][7]. Therefore, the report concluded, the amount of NOK 170 million was the minimum necessary to maintain the current service level.

This conclusion was based on an analysis of the two companies' overall annual profitability with respect to the "Hurtigruten service" (passenger transport, including regular passenger transport and round trips, and the transport of goods). In the experts' view, this method was best suited to the purpose of the assessment since it ensured that extra profits generated in the summer season[8] would be used to cross-subsidise loss-making activities in the winter season.

The calculation carried out by Arthur Andersen was based on the "Hurtigurten companies'" financial figures for 1998[9], while taking into account foreseeable changes due to the envisaged investment into two new ships.

The figures presented by the "Hurtigruten companies" related exclusively to the "Hurtigruten service", which was accounted for separately to other economic activities which these companies provide. Both OVDS and TFDS maintain separate ledgers for the Hurtigruten activities. Each "Hurtigruten ship" is a profit centre and the books are closed monthly. Income is recorded directly for each ship, so are most of other common costs. As regards administrative costs (overheads), the Norwegian authorities have explained that, under the current "Hurtigruten Agreement", a fixed amount per ship was used. The Norwegian authorities submitted information according to which the actual share of the total administrative costs relating to the "Hurtigruten service" was higher than this fixed amount.

[6] Business secret.
[7] Business secret.
[8] i.e. profits exceeding the normal rate of return.
[9] According to the report, the 1999 figures, which were available only at a later stage, did not deviate substantially from the 1998 figures.

On the basis of the 1998 figures, the "Hurtigruten service" showed an overall annual deficit of […][10]. The overall deficit was expected to be lower, amounting to only […][11], with the `coming into operation of two new ships replacing the oldest generation of "Hurtigruten ships". This conclusion was based on the fact that, even though new ships generated higher costs than older ships, the new ships had a potential for increased revenues due to increased capacity.

Figures on profitability distinguishing between the summer and the winter season revealed that, in the winter season 1998 (defined as being from January until April and from September until December), the deficit incurred by the "Hurtigruten service" was […][12], whereas the summer season (from May until August) showed a profit of […][13]. When establishing the profitability separately for the winter and the summer season, most revenues and costs items were recorded when accrued, except for depreciation costs[14], which were allocated to the summer season according to its share of total income (which amounted, according to the report, to […][15]).

On the basis of this analysis, Arthur Andersen concluded that the State payment did not result in the "Hurtigruten companies" obtaining a return on capital which would exceed the normal rate of return.

The new "Hurtigruten Agreement"

In accordance with the Decision of the Norwegian Parliament and following the conclusions presented by Arthur Andersen, the Norwegian authorities negotiated the terms and conditions of the new "Hurtigruten Agreement". Both sides agreed on a draft Agreement with the following main provisions:

According to § 1, the Agreement governs the State purchase of services of combined passenger and goods transport between Bergen and Kirkenes. Furthermore, the parties agree that a commercial basis for providing these services exists only in the summer season. The winter season generates a significant deficit, which exceeds the amount of the State payment. Consequently, the parties to the Agreement understand that a substantial part of the profits generated in the summer season should be used to finance the unprofitable activity in the winter season.

Pursuant to § 3 (as re-negotiated by the parties), the new Agreement shall enter into force as from 1 January 2002 and shall have a duration of three years, until 31 December 2004. The Ministry of Transport and Communications reserved the right to prolong the Agreement for up to one year, should the operator(s) selected under a future tender procedure not be able to start operations as from 1 January 2005. Any such prolongation would be subject to the Authority's approval.

[10] Business secret.
[11] Business secret.
[12] Business secret.
[13] Business secret.
[14] The depreciation costs, on which the analysis was based, were calculated based on a linear depreciation of the ships over a period of 20 years.
[15] Business secret.

In accordance with § 4, the "Hurtigruten companies" are under an obligation to maintain daily transport services between Bergen and Kirkenes according to the route plan annexed to the Agreement. This implies that the companies operate with 11 ships and stop at 34 ports along the coast. Furthermore, it is stated that, in the summer months, transport services should be offered on a commercial basis, whereas services provided during the winter months will be partly financed through State payments. Amendments to the route plan regarding the frequency and number of stopping points shall be subject to the Ministry's approval.

§ 5 of the Agreement stipulates that the companies have to ensure that the service level as required can be maintained. The financing, construction and operation of new "Hurtigruten ships" lies exclusively within the "Hurtigruten companies'" responsibility.

In accordance with § 6 of the Agreement, the "Hurtigruten companies" are, in principle, free to set prices, whilst respecting certain upper limits and granting certain discounts as specified in an annex to the Agreement. The transport of goods by "Hurtigruten ships" shall be provided on a commercial basis, allowing the "Hurtigruten companies" to sell all or parts of their goods capacity to other transport operators.

Pursuant to § 7 of the Agreement, the State pays a compensation of NOK 170 million p.a. expressed in 1999-prices. Compensation payments for 2002 will be adjusted for the increase in the consumer price index between 15 January 1999 and 15 January 2001. According to additional information submitted by the Norwegian Government, the amount of NOK 170 million will be distributed between the two "Hurtigruten companies" in accordance with the number of ships operated by each company (six for OVDS and 5 for TFDS).

The compensation payments are subject to the annual budgetary decisions of the Norwegian Parliament. For 2002, the Government proposed and the Norwegian Parliament approved, in its decision of 13 December 2001, allocations of NOK 180.8 million[16] (Chapter 1330, post 70 of State Budget for 2002: *St. prp. nr. 1 (2001-2002)*).

According to § 9 of the amended Hurtigruten Agreement, the "Hurtigruten companies" are under an obligation to keep separate accounts, distinguishing between the "Hurtigruten service" and other business activities in which both companies are engaged in.

Even though both sides agreed in 2000 on a draft Agreement, the Norwegian authorities have assured the Authority that the Agreement will only be signed after the Authority has given its approval.

[16] The compensation amount for 2002 was calculated, in accordance with § 7.2 of the draft Agreement, based on NOK 170 million expressed in 1999-prices and adapted for the increase in the consumer price index between 15 January 1999 and 15 January 2001.

Beneficiaries

Parties to the "Hurtigruten Agreement" are the Norwegian Ministry of Transport and Communications on one side, and the two maritime companies, OVDS and TFDS, on the other.

OVDS is engaged in the following business activities: the "Hurtigruten service", regional transport services (including high-speed ferry services, bus transport), cargo business (through the undertaking Nor Cargo, of which it owns 1/3 of the capital), and hotel and tourism activities (including tour operations in Norway and abroad). In 1999, its total turnover amounted to NOK 1.172 billion, of which approximately 50 % was generated by the Hurtigruten service. With respect to the "Hurtigruten service", OVDS operates six vessels, the most recently constructed in 1997 and the oldest, constructed in 1964, which will be replaced by the newly ordered ship in April 2002.

TFDS is engaged in the following business activities: "Hurtigruten service", regional transport services (car ferries and high-speed ferries), services with special purpose vessels (tankers, offshore service vessels and cargo vessels), cargo business (through Nor-Cargo, of which it holds 1/3 of the capital) and tourism activities (through daughter companies). Its annual turnover in 1999 amounted to approximately NOK 1.081 billion, of which approximately 50% was generated by the "Hurtigruten service". It owns five of the "Hurtigruten ships", the most recent one constructed in 1996, and the oldest one constructed in 1960, which will be replaced by the newly ordered ship in April 2002.

The "Hurtigruten service" comprises transport of passengers, transport of goods and catering. Passenger transport may be further divided into so-called 'distance traffic' (regular passenger transport) and round trips (cruise business).

Distinguishing between the various "Hurtigruten services", the figures presented in the report presented by Arthur Andersen show that income from passenger transport amounted to approximately […][17] catering to approximately […][18] and transport of goods to approximately […][19] of total income from the "Hurtigruten service".

More specifically, figures provided by OVDS and TFDS in "*Veivalg etter 2001*", show that round trips amounted to 60-70% of revenues from passenger transport. With passenger transport generating approximately […][20] of total income, revenues from round trips amounts to some […][21] of total income from all "Hurtigruten services", whereas distance travel would generate only approximately […][22] of total income. Even though round trips constitute the most important source of income, distance traffic is most important in terms of number of passengers (approximately 45 000 passenger p.a. on a round trip compared to approximately 450 000 passengers using distance travel services on the "Hurtigruten ships").

[17] Business secret.
[18] Business secret.
[19] Business secret.
[20] Business secret.
[21] Business secret.
[22] Business secret.

Transport Services along the coast between Bergen and Kirkenes

The "Hurtigruten service" establishes a continuous transport service between Bergen and Kirkenes on routes to, from and between regional centres and ports of call located on islands, fjords and places on the mainland which, from a communication point of view, are similarly remote. The Norwegian authorities explained that there are few alternative means of transport in this area, especially in the winter season. The information submitted by the Norwegian authorities shows that several routes along the coast are served by high-speed ferries on a daily basis throughout the year. The information also shows that these ferries offer, in many instances, more frequent transport services, at prices comparable to the prices charged by "Hurtigruten" on the same routes. On routes, which are both served by the "Hurtigruten companies" and high-speed ferries, figures regarding market shares give the following picture: From Bergen to Sandnessjøen, "Hurtigruten's" market share was at maximum, and on some routes well below, […][23], whereas the Northern-most part from Hammerfest to Kirkenes its market share goes up to almost […][24]. On certain other routes, such as Harstad – Finnsnes – Tromsø, the "Hurtigruten companies'" market share is quite low, i.e. around […][25].

Routes along the coast not being served by high-speed ferries are, according to the information submitted by the Norwegian authorities, between respectively Måløy and Kristiansund, Trondheim and Sandnessjøen, Stamsund and Harstad, Skjervøy and Øksfjord, and from Honningsvåg to Kirkenes. The stretches on which alternative transport services are offered by high-speed ferries amount to less than 50 % of the overall coastal line between Bergen and Kirkenes.

The high-speed ferries provide regular services between certain regional centres. In contrast to the Hurtigruten service, high-speed services do not provide a connecting transport service along the coastline Bergen – Kirkenes. In addition, high-speed ferries have no facilities for the transport of goods.

Commitments given by the Norwegian Government as regards the award of future contracts on the route

Following discussions between the Norwegian authorities and the Authority regarding the scope of the new "Hurtigruten Agreement" and the conditions under which the new Agreement was awarded, the Norwegian Government committed itself to carrying out an open, transparent and non-discriminatory procedure as regards the provision of maritime transport services along the coast between Bergen and Kirkenes. Preceding such a procedure, an analysis would be made of the transport needs and the existing transport level for the various routes along the coast. This analysis would be used as a basis for establishing whether the continuous provision of maritime transport services along the coast between Bergen and Kirkenes is to be regarded as one single public service obligation route or whether individual public service obligation routes could be organised separately.

[23] Business secret.
[24] Business secret.
[25] Business secret.

Furthermore, the Norwegian Government limited the duration of the new "Hurtigruten Agreement" to the time necessary to carry out a thorough transport analysis, to determine the routes where public service obligations should be imposed and to select operator(s) for the provision of maritime transport services on this route/these routes. It is the Norwegian Government's aim to have selected an operator by spring 2004.

According to the Norwegian Government a total period of three years was regarded the minimum time necessary to carry out that process in an adequate way. Accordingly, the duration of the new "Hurtigruten Agreement" was, in principle, limited to three years (i.e. until the end of 2004). However, the Norwegian Government pointed out that the operator(s) selected would not necessarily be in position to start operations immediately. Under these circumstances and in view of the importance of maintaining a continuous transport service along the coast, the Norwegian Government reserved the right to prolong the new "Hurtigruten Agreement" for up to one additional year, subject to the Authority's approval, should the selected operator(s) not be in position to start operations as from 1 January 2005.

II. APPRECIATION

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

Article 61 of the EEA Agreement stipulates: " *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, insofar as it affects trade between the Contracting Parties, be incompatible with the functioning of the Agreement.*"

The new "Hurtigruten Agreement" was negotiated based on the Norwegian Parliament's Decision of 3 December 1999, which authorised the Norwegian Government to conclude a new contract providing for annual compensation for the provision of transport services on the route between Bergen and Kirkenes amounting to NOK 170 million expressed in 1999-prices. The annual compensation, provided for under the new "Hurtigruten Agreement" and subject to the annual budgetary decision adopted by the Norwegian Parliament, will be financed directly through a budgetary allocation. It can, therefore, be concluded that the aid is granted directly by the State.

The annual compensation amounting to NOK 170 million gives both "Hurtigruten companies" a financial benefit they would not have enjoyed in the normal course of business. The compensation payment thus strengthens the position of these undertakings compared with other undertakings competing in intra-Community trade.

As regards competition on the market for passenger and cargo transport, it should be recalled that the market for domestic maritime transport services (maritime cabotage) was opened to EEA-wide competition as of 1 August 1998 (Maritime Cabotage Regulation). Even if actual market penetration of foreign flags in Norway or

Norwegian flags in other EEA countries was limited in the past[26], the compensation may still have an effect on potential competition. Finally, the "Hurtigruten companies" are also engaged in the tourism market, in particular through the offer of cruise/round trips along the Norwegian coast. On this market, both other domestic operators and foreign operators offer cruise trips along the coastal line between Bergen and Kirkenes. The compensation granted to the "Hurtigruten companies" can therefore also have an effect on this market. Under these conditions, the compensation payment to the "Hurtigruten companies is liable to affect competition and trade.[27]

Notification requirement and Stand-still obligation

Pursuant to Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement, "[*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*".

Point 24A.11. (1) of the Authority's State Aid Guidelines further specifies that "*[t]o expedite the examination of aid measures, the EFTA States are urged to notify the Authority of proposed aid measures at the draft stage, supplying all the particulars necessary for their assessment, in accordance with Article 1(3) of Protocol 3 to the Surveillance and Court Agreement. The Authority considers that an EFTA State has failed to fulfil its procedural obligations where an aid measure, which has not been notified to and approved by the Authority, has been put into effect either in accordance with national law or by giving a financial commitment to potential beneficiaries.*"

The Norwegian authorities notified the Authority of the draft Agreement in July 2000. They have given assurance that the contract will not be signed before the Authority has given its approval. Therefore, the Authority can conclude that the Norwegian authorities have respected their obligations pursuant to Article 1 (3) of Protocol 3 of the Surveillance and Court Agreement and point 24A.11 (1) of Chapter 24A of the Authority's State Aid Guidelines.

Compatibility of Aid Measures

It should be recalled that direct aid aimed at covering operating losses is, in general, not compatible with the functioning of the EEA Agreement.

Since the annual compensation granted to the "Hurtigruten companies" under the "Hurtigruten Agreement" covers costs regarding the day-to-day operation of the

[26] See Third Report on the implementation of the Maritime Cabotage Regulation in 1997-1998, COM (2000) 99 final, 24.2.2000.
[27] Judgment of the Court of 17 September 1980, *Philip Morris Holland BV v Commission of the European Communities*, Case 730/79, ECR 1980 p. 2671, para. 11.

"Hurtigruten service" in which both companies are engaged, this payment is to be regarded as 'operating aid'.[28]

Such operating aid may, exceptionally, be approved if the conditions set out in derogation provisions of the EEA Agreement are fulfilled.

Based on the information submitted by the Norwegian authorities, the Authority takes the view that the aid under examination does not qualify for an exception under Article 61 (2) or (3) of the EEA Agreement, nor have the Norwegian authorities invoked any of these exceptions in the course of the proceedings.

Aid granted to undertakings performing a service in the general economic interest may be regarded as compatible with the functioning of the EEA Agreement, provided that the conditions laid down in Article 59 (2) of the EEA Agreement are respected.

Pursuant to Article 59 (2) "*undertakings entrusted with the operation of services of general economic interest…shall be subject to the rules contained in this Agreement, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary of the interests of the Contracting Parties.*"

In light of the relevant jurisprudence regarding the interpretation of Article 59 (2) of the EEA Agreement and ex Article 90 (2) of the EC Treaty (now Article 86 (2) EC)[29], the Authority examined whether the following conditions are fulfilled:

- The service in question must be a service of general economic interest and be clearly defined as such by the Member State;
- The undertaking in question must be officially entrusted by the Member State with the provision of that service;
- The application of the competition rules of the Treaty (in this case, the ban on State aid) must obstruct the performance of the particular tasks assigned to the undertaking (necessity);
- The development of trade must not be affected to such an extent as would be contrary to the interests of the Contracting Parties of the EEA Agreement (proportionality).

When carrying out that assessment, the Authority took into account sector specific rules, as laid down in the Maritime Cabotage Regulation and the Maritime Guidelines.

The "Hurtigruten service" as service in the general economic interest and definition of public service obligations

[28] Judgment of the Court of First Instance (Second Chamber) of 8 June 1995, *Siemens SA v Commission of the European Communities*, Case T-459/93, ECR 1995 p. II-1675, Para. 76/77; see also definition of "operating aid" in the summary of the judgment: "*Operating aid, that is to say, aid intended to relieve an undertaking of the expenses which it would itself normally have had to bear in its day-to-day management or its usual activities….*".

[29] Judgment of the Court of First Instance of 27 February 1997, Case T-106/96, FFSA and others v. Commission, ECR 1997-II, 229 and Judgment of the EFTA Court of 3 March 1999 in the "Husbanken" case.

EFTA States enjoy a wide discretion in determining the level of services in the general economic interest and may, where necessary, impose public service obligations in order to ensure that level. On the other hand, it is the Authority's duty to verify that the requirements laid down in Article 59 (2) EEA are fulfilled. Therefore, the Authority had to verify, as a first step, that the "Hurtigruten service" qualifies as a 'service of general economic interest' within the meaning of this provision.

It results from case law that the concept of 'services in the general economic interest' covers services that exhibit special characteristics as compared to the general economic interest of other economic activities.[30] A specific feature which can distinguish services of general interest from ordinary services is the fact that public authorities consider that they need to be provided even where the market may not have sufficient incentive to do so. Where certain services are in the general interest and market forces do not result in a satisfactory provision of such services, the State concerned can lay down specific service provisions to meet these needs in the form of public service obligations (hereinafter referred to as 'PSOs').[31]

When imposing PSOs, the EFTA State concerned shall act in a transparent way. This implies that the EFTA State concerned should identify the public service needs for which services of general economic interest are being established (in the case at issue, the transport needs), demonstrate that, and to what extent, these needs are not satisfied by the market and determine the public service obligations accordingly[32].
In addition to these requirements, which follow from the general principles underlying Article 59 (2) EEA, secondary legislation relevant for the sector concerned must be taken into account when assessing the scope of services regarded to be in the general economic interest and the justification for imposing PSOs.

It follows from Article 2 (3) of the Maritime Cabotage Regulation that obligations which may be imposed on a ship owner under a 'public service contract' may cover notably "*transport services satisfying fixed standards of continuity, regularity, capacity and quality*".

Article 2 (4) of the Maritime Cabotage Regulation further explains that "*'public service obligations' shall mean obligations which the Community shipowner in*

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[30] Judgment of the European Court of Justice of 10 December 1991, in Case C-179/90, *Merci convenzionali porto di Genova* (ECR 1991-I, 5889); see also Judgment of the EFTA Court of 3 March 1999 in the "Husbanken" case, para. 47; see also See EC Commissions communication on Services of general interest in Europe, 20 September 2000, section 3, para. 9, where the Member States' freedom to define is described as it being primarily for the State concerned to define what is regarded as services of general interest on the basis of the specific features of the activities in question (underlined here).

[31] See EC Commissions communication on Services of general interest in Europe, COM (2000) 580 final, 20 September 2000, section 3, point 14.

[32] Cf. point 22 of the above-mentioned EC Commission communication: For Article 86 (2) EC Treaty [Article 59 (2) EEA Agreement] to apply, "*the public service mission must be clearly defined (underlined here) and must be explicitly entrusted through an act of public authorities (including contracts)*."; see also section 2, point 9: "*In order to fulfil their mission, it is necessary for the relevant public authorities to act in full transparency, by stipulating with some precision the needs of users for which services of general interest are being established* (underlined here)".

question, if he were considering his own commercial interest, would not assume or would not assume to the same extent or under the same conditions (underlined here)".

As regards the geographical scope of such PSOs, Article 4 (1) of the Maritime Cabotage Regulation stipulates that "*[a] Member State may conclude public service contracts with or impose public service obligations as a conditions for the provision of cabotage services, on shipping companies participating in regular services to, from and between islands*".

The above-mentioned conditions are also contained in the Authority's State Aid Guidelines, and in particular in point 24A.9. (1) and (2) of the Authority's State Aid Guidelines: *"PSOs may be imposed for scheduled services to ports serving peripheral regions in the EEA States or thinly served routes considered vital for the economic development of that region, in cases where the operation of market forces would not ensure a sufficient service level* (underlined here)."

The Norwegian Parliament has, in its decision of 3 December 1999, required that the current service level be maintained. This guarantees daily combined passenger and goods transport services, serving 34 ports along the Coast between Bergen and Kirkenes throughout the year. Accordingly, the "Hurtigruten Agreement" requires the companies to provide such services throughout the year, according to a route plan determined by the Norwegian authorities and operating with a specified number of vessels. Furthermore, and as regards the companies' pricing policy, the "Hurtigruten Agreement" requires them to grant discounts for certain categories of passengers.

At the outset, the Authority observes that the service level laid down in the Parliament's decision and also required from the "Hurtigruten companies" under the new "Hurtigruten Agreement", refers to fixed standards of continuity (throughout the year, without it being possible for the "Hurtigruten companies" to reduce services in particular during the winter months), regularity (based on a fixed schedule, implying daily services at 34 predetermined ports of call, without it being possible for the "Hurtigruten companies" to adapt their schedules by including or excluding certain stopping points), capacity and quality (based on the requirement to operate the route with 11 predetermined vessels; certain requirements regarding pricing policy).

As regards the geographical scope of the PSOs laid down in the "Hurtigruten Agreement", the Authority observes that transport services are provided to, from and between islands or to, from and between ports of call located at the border of fjords and on the mainland, which are from a communication point of view similarly remote.

Although Article 4 of the Cabotage Regulation only refers to 'islands', it would not seem to exclude the imposition of PSOs on, and the conclusion of public service contracts with, maritime operators on other routes with characteristics comparable to those 'to, from and between islands'. Where other modes of transport, and in particular road transport, are not a real alternative due to the large distances or climatic conditions, routes like those operated by the "Hurtigruten companies" may, according to the Authority, also be subject to PSOs without this being considered to be in breach of Article 4 of the Regulation.

Furthermore, most of the ports of call are serving peripheral regions within the meaning of point 24A.9. (2) of the Maritime Guidelines.

In light of the above considerations, the Authority concluded that the geographical scope of the "Hurtigruten Agreement" does not go beyond what is acceptable under Article 4 of the Maritime Cabotage Regulation and the Maritime Guidelines.

As regards the necessity to impose PSOs (in order to ensure the service level required, not provided by the market), the Authority based its assessment on the relevant provisions contained in the Maritime Cabotage Regulation and the Maritime Guidelines, as interpreted by the Court[33].

The Authority examined whether "*the operation of the market would not ensure a sufficient service level*" and whether and to what extent the "Hurtigruten Agreement" imposed obligations on the "Hurtigruten companies", that they "*would not assume or not assume to the same extent or under the same conditions*". This examination requires the assessment of whether the service level required under the "Hurtigruten Agreement" corresponds to transport needs along the coast between Bergen and Kirkenes which are not satisfied by alternative means of transport and which cannot be served under purely commercial considerations.

The Authority observes that the scope of the "Hurtigruten Agreement" and the definition of the PSOs was apparently not based on a detailed analysis of the existing level of transport along the coast between Bergen and Kirkenes and on transport needs not satisfied by other alternative means of transport. It is, therefore, difficult to assess whether PSOs are necessary as regards maritime transport services on the whole route between Bergen and Kirkenes.

On the other hand, the Norwegian authorities submitted information showing that the proposals submitted by the incumbent operators did not offer the transport level required by the Norwegian Parliament's Decision, since all models implied, in the absence of further State support, either reduced frequency or stopping points. Furthermore, information submitted by the Norwegian Government shows that, in general terms, the "Hurtigruten service" has features that clearly distinguish it from other maritime passenger transport services offered along the coast. In this context, it should be mentioned that, based on the information submitted by the Norwegian Government to the Authority, it would seem that daily maritime passenger transport services are offered by high-speed ferries only on certain stretches along the coast, in principle, throughout the year. This information also shows that, even though high-speed ferries offer a more frequent service at comparable prices to the prices charged by the "Hurtigruten companies" on the same routes, this means of transport does not

[33] In its judgment in the "Analir" case, the EC Court of Justice ruled with respect to Article 4 of the Maritime Cabotage Regulation: "*Member States may impose public service obligations on Community shipowners only if a real public service need can be demonstrated (underlined here). The same must also be true of the conclusion of a public service contract*" Point 68 of the judgment of the EC Court of Justice of 20 February 2001, Case C-205/99, Analir and others v. Administracion General del Estado, not yet published) In addition, and with respect to the concurrent use of PSOs imposed on certain operators and the conclusion of public service contracts with another operator serving the same routes, the Court ruled that the conclusion of a public service contract was justified only where the State concerned could demonstrate that it was necessary to ensure the provision of additional transport services.

necessarily satisfy the transport needs along the coast. This is because high-speed ferries do not provide continuous travel possibilities and since these services may – in particular in the winter season and on certain parts along the coast – be interrupted due to bad weather conditions.

Furthermore, and assuming that the imposition of PSOs could, in principle, be regarded as justified only as regards certain transport services or certain stretches along the coast, it cannot be excluded that, by limiting the scope of PSOs to those routes/services not served/offered by other operators and to those routes/services which are loss-making, the overall deficit of the "Hurtigruten companies" would actually increase due to the lack of cross-subsidies from profitable routes/services. The State's expenditure would increase accordingly.

Based on the information in its possession and in light of the above considerations, the Authority takes the view that it cannot be excluded that the special characteristics of the "Hurtigruten service" could lead to it being be regarded as a service in the general economic interest and that the scope of the "Hurtigruten Agreement" is justified by reasons of limiting State expenditure. Under these circumstances, it was considered important not to jeopardise the continuous provision of maritime transport services along the coast, as defined in the "Hurtigruten Agreement", while at the same time ensuring compliance with the requirements resulting from the application of Article 59 (2) EEA.

Against this background, and given that the present contract expires on 31 December 2001, the Authority was satisfied that the Norwegian Government gave a commitment to carry out a thorough analysis of the transport level along the coast, as soon as possible, with the help of an external consultant. It also undertook to analyse the way in which PSO-routes may be defined in the future. Pending the outcome of such an analysis, the Authority regards the "Hurtigruten service" as defined in the new "Hurtigruten Agreement" as covered by the concept of a service of general economic interest.

Entrustment

It follows from case law that, in order for Article 59 (2) to be applicable, the undertaking(s) in question must be entrusted with the provision of services in the general economic interest through a public act. A contract by which the competent authorities impose certain obligations in the public interest on the other party, constitutes such a public act of entrustment.[34] Consequently, the "Hurtigruten Agreement" constitutes a public act through which the "Hurtigruten companies" are entrusted with the operation of a services in the general economic interest.

Necessity and proportionality of compensation payments

[34] According to the Judgment of the Court of Justice of 23 October 1997, Case C-159/94 *Commission v. France*, ECR 1997 p. I-5815, para. 65/66, and the recent Commission communication on services of general interest in Europe (COM (2000) 580 final, 20 September 2000, point 22), contracts are also regarded as a public act of entrustment.

In the absence of a tender procedure, it cannot be presumed that compensation paid to the "Hurtigruten companies" is equivalent to the price which would have been established by market forces under the same conditions. Therefore, the Authority had to verify that the compensation granted under the "Hurtigruten Agreement" does not exceed the net extra costs of the particular task entrusted to the undertaking.

As mentioned above, Article 2 (4) of the Maritime Cabotage Regulation states that "*'public service obligations' shall mean obligations which the Community shipowner in question, if he were considering his own commercial interest, would not assume or would not assume to the same extent or under the same conditions* (underlined here)".

In this respect, the Chapter 24 A of the Authority's State Aid Guidelines state that: "*the EFTA State can…award a contract… and reimburse the extra costs incurred by the operator as a result of providing the service. This should be directly related to the calculated deficit made by the operator in providing the service. It should be accounted for separately for each such service so that it can be verified that there is no overcompensation or crosssubsidy and that the system cannot be used to support inefficient management and operating methods."* It continues in saying that the State support must be *"limited to reimbursement of extra costs incurred (together with a reasonable return on capital employed)…*".

The Authority verified that the provision of services required under the "Hurtigruten Agreement" led to the "Hurtigruten companies" incurring increased costs compared to the provision of maritime transport services in purely commercial circumstances. In this context, reference is made to the analysis carried out by the external consultant. This analysis reveals that, in particular, transport services in the winter months generate substantial deficits. Under these circumstances, it would seem reasonable to conclude that, taking into account only commercial considerations, the "Hurtigruten companies" would not offer the services to the same extent as required under the new "Hurtigruten Agreement". The Authority, therefore, accepts that the provision of maritime transport services under the terms and conditions of the new "Hurtigruten Agreement" generates additional costs, for which compensation may, in principle, be granted.

The Authority examined also whether the amount of compensation was limited to the "*extra costs incurred by the operator as a result of providing the service"* and whether these extra costs are *"directly related to the calculated deficit made by the operator in providing the service*".

In the view of the Authority, this requirement does not necessarily imply that compensation may only be granted ex post, based on the actual deficit incurred in the respective period. This provision would not seem to exclude compensation granted under the contract based on expected future losses.[35]

[35] In this respect, reference is made to compensation arrangements in other transport sectors, where it is even a requirement that the amount of compensation is fixed in advance; see e.g. rules under Council Regulation (EEC) No 1191/69 of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway, Act referred to under point 4 of Annex XIII to the EEA Agreement.

The external consultant concluded that NOK 170 million p.a. was the minimum necessary for the provision of services as defined under the "Hurtigruten Agreement". This amount would cover the deficit incurred as a result of the PSOs imposed on the "Hurtigruten companies" under the "Hurtigruten Agreement", as well as a return on capital. As regards the return on capital, the external consultant pointed out that, based on the annual State payment of NOK 170 million, the companies would actually achieve a return on capital which would be below the rate regarded as appropriate in respect to the activities involved.

Having assessed the report submitted by the external consultant, the Authority has no reason to question the findings of the report and, correspondingly, takes the view that the conclusions as regards the necessity of the State payment can be accepted. The Authority's view is based on the following considerations:

The assessment carried out by Arthur Andersen was based on financial data provided by the incumbent operators regarding the provision of maritime transport services under the present contract. Given that the scope of services to be provided under the new "Hurtigruten Agreement" is identical to the scope of services to be provided under the current Agreement, the Authority considers that the data used by the external consultant can be regarded as representative.

Furthermore, the Authority observes that the figures on which the external consultant based its assessment reflect only costs and revenues related to the "Hurtigruten service". The Authority was satisfied that, based on the separation of accounts distinguishing between the "Hurtigruten service" and other business activities in which both companies are engaged, it could reasonably be excluded that the assessment of the financial performance of the "Hurtigruten service" would be distorted and the deficit inflated due to incorrect cost allocation. The Authority therefore considered the figures to give a representative picture of the financial performance regarding the "Hurtigruten service".

It can, therefore, be assumed that the deficit incurred by the incumbent operators in providing these services reflects the deficit which the "Hurtigruten companies" will incur under the new "Hurtigruten Agreement". This deficit was, however, adjusted, to take into account future developments. In this respect, the Authority takes note that, while basing its assessment primarily on figures for 1998, the external consultant took into account future events that were, at that moment in time, foreseeable, such as the investment in two new ships. This event resulted in the external consultants reducing the expected deficit.

The Authority, therefore, concluded that the State payment of NOK 170 million p.a. can be regarded as constituting the amount necessary to compensate for extra costs due to PSOs imposed on the "Hurtigruten companies" under the new "Hurtigruten Agreement".

Finally, the Authority examined whether the "Hurtigruten Agreement" contained other provisions that would ensure *"that it can be verified that there is no overcompensation or crosssubsidy and that the system cannot be used to support inefficient management and operating methods*".

In this respect, the Authority notes that, under the terms of the "Hurtigruten Agreement", the "Hurtigruten companies" are obliged to keep separate accounts distinguishing between the services provided under the Hurtigruten Agreement and its other business activities . The Authority also notes that the economic risk related to the "Hurtigruten service" remains with the companies.

Against this background, the Authority concluded that provisions of the "Hurtigruten Agreement, in particular as regards the compensation for additional costs resulting from the PSOs imposed on the "Hurtigruten companies" under this Agreement, are in accordance with the requirements set out under point 24A.9. (3) third indent of the Maritime Guidelines.

Effect on Trade (Proportionality)

Finally, the Authority had to ascertain whether the "Hurtigruten Agreement" affects trade to such an extent as to make it contrary to the interests of the Contracting Parties to the EEA Agreement.

In this respect, the Authority examined, in particular, the effects of the "Hurtigruten Agreement" on competition on the market for maritime cabotage services. To the extent the conditions laid down under point 24A.9. (3) – (5) of the Maritime Guidelines are satisfied, the Authority is of the opinion that effects on competition and trade are not contrary to the interests of the Contracting Parties.

The relevant conditions are the following:

- "*for public service contracts to be consistent with the functioning of the EEA Agreement …., the Authority expects public tenders to be made, as the development and implementation of schemes must be transparent and allow for the development of competition,*

- *adequate publicity must be given to the call for tender and all requirements concerning the level and frequency of the service, capacity, prices and standards required, etc. must be specified in a clear and transparent manner to ensure that all EEA carriers with the right of access to the route (according to EEA legislation) have had an equal chance to bid,…*"

The guidelines clarify that EFTA States may award compensation to operators not selected according to the above procedures only in exceptional circumstances, laid down in the Maritime Cabotage regulation (i.e. island cabotage which, at the time of the adoption of the guidelines, was temporarily exempted from the provisions of the Maritime Cabotage Regulation and with respect to existing contracts; cf. Article 4 (3) and Article 6 of the regulation).

As regards the reference to the tender procedure as outlined in the guidelines, it should be clarified that a tender is not only a means of establishing the necessary and proportionate amount of compensation required for the provision of certain maritime transport services. It also reflects requirements laid down in the Maritime Cabotage Regulation.

Article 4 of the Maritime Cabotage regulation stipulates that "[w]*henever a Member State concludes public service contracts or imposes public service obligations, it shall do so on a non-discriminatory basis in respect of all Community shipowners.*" It also requires that "[w]*here applicable, any compensation for public service obligations must be available to all Community shipowners.*"

Against this background, the Authority takes the view that, in principle, any new contract can only be awarded after an open, transparent and non-discriminatory procedure. Such a procedure requires a minimum degree of publicity and transparency, enabling interested maritime companies within the EEA to evaluate whether the provision of services on the routes in question is of interest for them.

In this respect, the Norwegian authorities claimed that the discussions of the Hurtigruten service after 2001 became public in 1998. Furthermore, the Norwegian authorities refer to official documents since 1998, in which the Government expressed its intention to purchase transport services on this route. Finally, the Norwegian Government refers to the report "*Veivalg etter 2001*", presented by the "Hurtigruten companies" in 1999, which was accessible on the internet.

The Authority observes, however, that the public information on this matter was focused from the outset on a continuation of the service by the incumbent operators. The Norwegian Government obviously only invited the "Hurtigruten companies" to present commercial models for the "Hurtigruten service". In *St.prp.nr. 1 Tillegg nr. 7 (1999-2000)*, reference is made to the incumbent operators, their offers and the Agreement between the Government and the "Hurtigruten companies" regarding the conclusion of a future "Hurtigruten Agreement" for a duration of 5 years and an annual compensation of NOK 170 million. The Norwegian Government did not announce its intention to continue State support for the "Hurtigruten service" eventually provided by other maritime operators. Therefore, potentially interested third parties have not been given the opportunity to submit their offers.

In light of these circumstances, the Authority is not of the opinion that the minimum degree of publicity and transparency has been given to the award of a new "Hurtigruten Agreement", including State payments related to the provision of the "Hurtigruten service". Consequently, the new "Hurtigruten Agreement" was awarded without having carried out a procedure in accordance with the Maritime Cabotage Regulation and the Maritime Guidelines.

The Norwegian authorities notified the proposed "Hurtigruten Agreement" in July 2000, based on the understanding that the only consequence of not carrying out a tender had been the requirement of notifying the new Agreement (see also *St.prp.nr. 1 91999-2000) Programkategori 21.40*). This view remained, in the course of a preliminary assessment of the notified Agreement, uncontested from the part of the Authority. However, in the course of a more thorough examination of the notification, the Authority expressed the view that when awarding State support for the "Hurtigruten service" such aid should have been granted only after having carried out an open, transparent and non-discriminatory procedure. Accordingly, the Authority requested the Norwegian Government to submit proposals as to how compliance with

the relevant provisions in the Maritime Cabotage Regulation and the Maritime Guidelines could be ensured.

The Norwegian Government submitted a proposal regarding the future award of contracts on public service routes for maritime transport services along the coast and committed itself to carrying out an open, transparent and non-discriminatory procedure on routes determined to be clearly in the public interest, based on a thorough analysis of the transport situation.

With respect to future contracts regarding the provision of services along the coast, the Authority also takes note of the Norwegian Government's commitment that it would examine whether the definition of the "Hurtigruten service", comprising transport services along the whole coastal line between Bergen and Kirkenes, was justified or whether several routes along the coast could be tendered out separately.

It was, however, pointed out that the remaining time until the expiry of the existing contract was too short to allow the Norwegian authorities to adopt the necessary measures.

Based on an estimate of the time required to carry out such a procedure (analysis of existing transport level, evaluation of findings and determination of PSOs and routes to be tendered out), the Norwegian authorities subsequently submitted an amended notification, in which the duration of the new "Hurtigruten Agreement" was limited to three years (with the new Agreement coming to an end 31 December 2004). This period was regarded as appropriate for the Norwegian authorities to take the necessary measures in accordance with the commitments given.

The Authority takes note of the arguments brought forward by the Norwegian Government as regards the need for additional time after the award of the contract in order to allow the selected carrier to prepare for the start of operations on the route(s) concerned. The Authority does not exclude that additional time between the award of the contract and the start of operations may increase the number of potential bidders and thus ensure a minimum degree of competition on a route that was served for many decades by the incumbent operators.

However, based on the information available at this stage, it is not possible to determine with exactitude whether or not the operator(s) selected will be able to offer maritime transport services as from 1 January 2005 (in particular, if the time after the award of the contract, i.e. from spring 2004 until 1 January 2005, is not regarded as sufficient by the operator(s) concerned to prepare operations).

Against this background, the Authority acknowledges that it may be necessary for the Norwegian Government to extend the new "Hurtigruten Agreement" for up to one additional year. Such an extension must be notified in advance. The notification must be supported by a demonstration that, for reasons beyond its responsibility (that is for reasons not related to delays in the process of carrying out the transport analysis and the initiation of the tender procedure) and based on verifiable information, additional time is needed by the selected carrier to start operations.

Under these circumstances, the Authority can agree to an extension possibility included in the "Hurtigruten Agreement" for up to one additional year, subject to the Authority's approval.

Based on the commitments given by the Norwegian Government, the Authority was in a position to accept the new "Hurtigruten Agreement" being concluded without having carried out an open, transparent and non-discriminatory procedure.

According to point 24A.9. (4) of the Maritime Guidelines, "*the duration of public service contracts should be limited to a reasonable and not overlong period (normally in the order of five years), since contracts for significantly longer periods could entail the danger of creating a (private) monopoly. After expiration of the contract period, such contracts should be subject to retendering in accordance with the procedure described above*."

With the contract period being limited to three years, after which an operator will be selected through an open, transparent and non-discriminatory procedure, the relevant provision of the "Hurtigruten Agreement" (§ 3) is in line with this requirement.

According to point 24A.9. (5) of the Maritime Guidelines, "*restrictions of access to route to a single operator may only be granted if, when the public service contract is awarded according to the above mentioned procedure, there is no competitor providing, or having a demonstrated intention to provide, scheduled services on the route. The terms of any restriction or exclusivity must in any case be compatible with the provision of Article 59 of the EEA Agreement*".

The licences regarding the operation of the route between Bergen and Kirkenes, granted to the "Hurtigruten companies" in 1999 for a period of 10 years do not contain any reference to exclusive rights, which the companies might enjoy on the route.

In light of all the above considerations, the Authority concluded that the "Hurtigruten Agreement" would not affect trade to an extent contrary to the interests of the Contracting Parties to the EEA Agreement.

Conclusions

The Authority concluded that the compensation for maritime transport services granted to OVDS and TFDS under the terms and conditions of the "Hurtigruten Agreement", as re-notified by the Norwegian Government and complemented by certain commitments regarding the award of future contracts for maritime services on that route by letter dated 10 December 2001, can be regarded as compatible with the functioning of the EEA Agreement.

HAS ADOPTED THIS DECISION:

The Authority has decided not to raise objections to the grant of compensation to OVDS and TFDS under the "Hurtigruten Agreement" as re-notified to the Authority by letter of the Ministry of Transport and Communications dated 11 December 2001. This means that compensation of NOK 170 million p.a., expressed in 1999-prices, may be granted for a period of 3 years, with the possibility of extension for up to one additional year, subject to the Authority's prior approval.

Done at Brussels, 19 December 2001.

For the EFTA Surveillance Authority

Knut Almestad
President

Hannes Hafstein
College Member