Invitație de a prezenta observații în temeiul articolului 1 alineatul (2) din partea I a Protocolului 3 la Acordul privind Autoritatea de Supraveghere și Curtea de Justiție cu privire la ajutorul de stat referitor la tranzacțiile imobiliare realizate de autoritățile municipale din Time cu proprietățile nr. 1/152, 1/301, 1/630, 4/165, 2/70 și 2/32 din Time

(2008/C 138/11)

Prin Decizia nr. 717/07/COL din 19 decembrie 2007, reprodusă în versiunea lingvistică autentică în paginile care urmează acestui rezumat, Autoritatea de Supraveghere a AELS a inițiat procedura prevăzută la articolul 1 alineatul (2) din partea I a Protocolului 3 la Acordul între statele AELS privind instituirea unei Autorități de Supraveghere și a unei Curți de Justiție (Acordul privind Autoritatea de Supraveghere și Curtea de Justiție). Autoritățile norvegiene au fost informate prin intermediul unei copii a deciziei respective.

Prin prezenta, Autoritatea de Supraveghere a AELS invită statele AELS, statele membre ale UE și părțile interesate să își prezinte observațiile privind măsura în cauză, în termen de o lună de la data publicării prezentei comunicări, la adresa:

EFTA Surveillance Authority
Registry
35, Rue Belliard
B-1040 Brussels

Observațiile vor fi comunicate autorităților norvegiene. Păstrarea confidențialității privind identitatea părții interesate care prezintă observațiile poate fi solicitată în scris, precizându-se motivele care stau la baza solicitării.

REZUMAT

PROCEDURĂ

La data de 3 martie 2007, Autoritatea a primit o plângere din partea unei asociații comunitare privind vânzarea proprietăților nr. 1/152, 1/301, 1/630, 4/165 din municipalitatea Time de către autoritățile municipale către două entități private diferite, precum și vânzarea proprietății nr. 2/70 (stadionul Bryne, care include de asemenea nr. 2/32), care fusese dată anterior clubului de către municipalitate, de către Bryne fotballklubb (un club de fotbal) unui investitor privat.

Prin scrisoarea din 9 mai 2007, un investitor privat a transmis o plângere Autorității cu privire la vânzarea de către autoritățile municipale din Time a uneia dintre proprietățile de mai sus, și anume cea de la numărul 4/165.

Prin scrisoarea din 19 iunie 2007, Time pensjonistparti (un partid politic) s-a plâns cu privire la dreptul exclusiv care i s-ar fi acordat Forum Jæren AS cu privire la crearea a 200 de spații de parcare subterane pe proprietatea din centrul Bryne, care va fi folosită pentru construirea unei noi școli secundare superioare (proprietățile nr. 1/125, 2/277, 2/278 și 2/284).

În urma corespondenței cu autoritățile norvegiene, Autoritatea a decis să deschidă o procedură de investigație formală cu privire la tranzacțiile imobiliare realizate de către autoritățile municipale din Time cu proprietățile nr. 1/152, 1/301, 1/630, 4/165, 2/70 și 2/32 din Time. În schimb, s-a constatat că, în prezent, tranzacțiile referitoare la proprietățile nr. 1/125, 2/277, 2/278, 2/284 din Time nu implică acordarea ajutorului de stat.

EVALUARE

Vânzarea proprietăților nr. 1/152, 1/301 și 1/630 către Grunnsteinen AS

Printr-un contract de vânzare din data de 25 august 2007, municipalitatea din Time a vândut proprietățile nr. 1/152 (1 312 m^2), 1/301 (741 m^2) și 1/630 (1 167 m^2) din centrul municipal al municipalității Time, Bryne, investitorului imobiliar Grunnsteinen AS. La momentul tranzacției, se pare că proprietatea cu nr. 1/152 era folosită ca parcare municipală cu 44 de spații de parcare.

Grunnsteinen nu a plătit niciun ban pentru proprietăți, însă s-a angajat să construiască spații de parcare *subterane* pe proprietatea nr. 1/152, din care 65 urmau să fie transferate municipalității Time. Conform autorităților municipale, obligația de a construi spațiile de parcare înlocuiește plata propriu-zisă datorată pentru proprietate; și anume, cele 44 de spații de parcare supraterane ar urma să fie înlocuite cu 44 de noi spații de parcare subterane, iar valoarea celor 21 de spații suplimentare ar corespunde valorii celorlalte două proprietăți transferate. Norvegia a prezentat calcule conform cărora valoarea celor 21 de spații de parcare suplimentare este de 2 625 000 NOK, în timp ce valoarea celorlalte două proprietăți a fost evaluată la 2 516 400 NOK. Aceste calcule au la bază evaluarea valorii proprietății cu nr. 1/630, care arăta un preț de 600 NOK pe m^2, iar calculele efectuate de către firma de construcții Skanska, care a estimat la valoarea de 150 000 NOK un spațiu de parcare într-o parcare subterană (exceptând TVA-ul și costurile de cumpărare/închiriere a terenului).

Dacă terenul aflat în proprietate publică este vândut sub prețul pieței, se consideră că au fost implicate resursele statului în sensul articolului 61 alineatul (1) SEE și că întreprinderii Grunnsteinen i-a fost oferit un avantaj selectiv. Opinia preliminară a Autorității este că acest lucru este adevărat, din următoarele motive:

În primul rând, cumpărătorul nu a plătit niciun ban pentru proprietăți. Astfel, *prima facie*, tranzacția pare să implice un ajutor, în absența unor dovezi convingătoare care să indice contrariul.

În această privință, procedurile stabilite în orientările Autorității cu privire la vânzarea de terenuri și clădiri de către autoritățile publice nu par să fi fost respectate, deoarece nu s-a organizat nicio licitație și doar una dintre proprietățile transferate a fost evaluată. În opinia Autorității, această evaluare a valorii pare, de asemenea, să fie prea superficială pentru a îndeplini cerințele prevăzute în orientări.

Autoritățile norvegiene susțin, de asemenea, că tranzacția reprezintă un schimb de bunuri imobile prin care municipalitatea dă investitorului imobiliar trei proprietăți, inclusiv o proprietate folosită în prezent ca parcare, și primește în schimb un număr mai mare de spații de parcare subterane. Acest raționament ar presupune că evaluările de valoare prezentate Autorității sunt considerate demne de încredere. Cu toate acestea, astfel cum am menționat anterior, evaluarea proprietății nr. 1/630 pare să aibă mai multe deficiențe. În mod similar, costul estimat al viitoarelor spații de parcare subterane pare să se bazeze exclusiv pe experiența generală, neluând în considerare caracteristicile specifice ale proprietății și proiectul în cauză. Astfel, tranzacția nu pare să se fi desfășurat în condițiile pieței.

Dacă aceste lucruri s-ar confirma, poziția întreprinderii Grunnsteinen ar fi de asemenea consolidată în comparație cu cea a celorlalți concurenți. În plus, terenul ar fi putut prezenta interes și pentru cumpărătorii din alte state membre ale SEE. În consecință, opinia preliminară a Autorității este că tranzacția poate denatura concurența și poate afecta comerțul din interiorul SEE.

Ajutorul de stat în sensul articolului 61 alineatul (1) pare deci să fie implicat.

Vânzarea proprietății nr. 4/165 către Bryne Industripark AS

La data de 31 august 2005, municipalitatea din Time și investitorul imobiliar privat Bryne Industripark AS au semnat un contract de vânzare-cumpărare privind proprietatea nr. 4/165 din Håland, Time. Proprietatea cuprinde 56 365 m^2 de teren industrial, iar prețul de vânzare a fost stabilit la 4,7 milioane NOK (sau aproximativ 83 NOK pe m^2).

Înainte de vânzare nu s-a organizat nicio licitație și nici nu a fost realizată o evaluare a valorii terenului. Prețul pare să fi fost calculat pe baza prețului cu care municipalitatea din Time a cumpărat proprietatea în 1999, la care s-au adăugat costurile de capital, lucrările de reglementare și costurile administrative. Cu toate acestea, în octombrie 2006, municipalitatea a hotărât ca terenul industrial să fie vândut în viitor la prețul pieței, deoarece prin metoda aplicată până în acel moment, terenul era vândut la un preț prea mic.

În acest context, opinia Autorității este că terenul a fost vândut sub valoarea de piață, că resursele de stat, în sensul articolului 61 alineatul (1) SEE, trebuie să fi fost implicate și că Bryne Industripark a beneficiat de un avantaj selectiv. Dacă acestea se confirmă, poziția societății Bryne Industripark ar fi, de asemenea, consolidată în comparație cu cea a concurenților. În plus, terenul ar fi putut prezenta interes și pentru cumpărători din alte state membre ale SEE. În consecință, opinia preliminară a Autorității este că tranzacția poate denatura concurența și poate afecta comerțul din interiorul SEE.

Ajutorul de stat în sensul articolului 61 alineatul (1) SEE pare deci să fie implicat.

Vânzarea proprietăților nr. 2/70 și 2/32 către Bryne fotballklubb

Prin contractul din data de 8 august 2003, municipalitatea din Time a transferat dreptul de proprietate asupra stadionului Bryne, proprietățile nr. 2/32 și 2/70, o suprafață de aproximativ 53 000 m², către Bryne fotballklubb (Bryne FK), un club de fotbal local care joacă în prezent în divizia I (etapă inferioară Premier League).

Întrucât clubul nu a plătit nimic pentru teren, opinia Autorității este că resursele statului în sensul articolului 61 alineatul (1) SEE trebuie să fi fost implicate și că Bryne FK a beneficiat de un avantaj selectiv. Autoritățile norvegiene au argumentat că Bryne FK nu este o întreprindere în sensul prevăzut de Acordul SEE. Cu toate acestea, pagina de start a Bryne FK arată că, printre altele, clubul este activ în vânzarea și cumpărarea de jucători profesioniști, oferă divertisment sub forma meciurilor de fotbal și oferă spațiu publicitar în schimbul unei plăți. Aceste activități par să intre în categoria furnizării de servicii pe o piață și, deci, să aibă un caracter economic. În consecință, opinia preliminară a Autorității este că Bryne FK reprezintă o întreprindere în sensul articolului 61 alineatul (1) SEE.

Tranzacția consolidează poziția clubului Bryne PK în comparație cu cea a concurenților săi. În plus, terenul ar fi putut prezenta interes și pentru cumpărătorii stabiliți în alte state membre SEE. În consecință, opinia preliminară a Autorității este că tranzacția poate denatura concurența și poate afecta comerțul din interiorul SEE.

Ajutorul de stat în sensul articolului 61 alineatul (1) SEE pare deci să fie implicat.

COMPATIBILITATEA

Se pare că informațiile de care dispune Autoritatea nu dovedesc că s-a acordat ajutor pentru promovarea dezvoltării economice a zonelor în care nivelul de trai este anormal de scăzut sau în care gradul de ocupare a forței de muncă este extrem de scăzut, pentru promovarea unui proiect de interes european comun sau pentru facilitarea dezvoltării anumitor activități economice. În plus, ajutorul acordat clubului sportiv nu pare să promoveze dezvoltarea culturală. În acest context, prevederile articolului 61 alineatul (3) literele (a)-(c) SEE par să fie inaplicabile.

CERINȚE PROCEDURALE ȘI RECUPERAREA AJUTORULUI ILEGAL

Prevederile articolului (1) alineatul (3) din partea I a Protocolului 3 la Acordul privind Autoritatea de Supraveghere și Curtea de Justiție reprezintă o obligație suspensivă. Articolul 14 din partea a II-a a Protocolului în cauză prevede ca, în cazul unei decizii negative, întregul ajutor ilegal să poată fi recuperat de la beneficiar.

CONCLUZIE

În lumina considerațiilor anterioare, Autoritatea a hotărât să deschidă o procedură de investigație formală în temeiul articolului 1 alineatul (2) din partea I a Protocolului 3 la Acordul privind Autoritatea de Supraveghere și Curtea de Justiție cu privire la tranzacțiile imobiliare realizate de către municipalitatea din Time cu proprietățile nr. 1/152, 1/301, 1/630, 4/165, 2/70 și 2/32 din Time.

EFTA SURVEILLANCE AUTHORITY DECISION

No 717/07/COL

of 19 December 2007

on the property transactions engaged in by the municipality of Time concerning property numbers 1/152, 1/301, 1/630, 4/165, 2/70, 2/32, 1/125, 2/277, 2/278, 2/284 in Time

(NORWAY)

THE EFTA SURVEILLANCE AUTHORITY,

HAVING REGARD TO the Agreement on the European Economic Area [1], in particular to Articles 61 to 63 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 [2], in particular to Article 24 thereof and Article 1(2) and (3) in Part I and Articles 4(4) and 6(1) in Part II of Protocol 3 thereof,

HAVING REGARD TO the Authority's Guidelines [3] on the application and interpretation of Articles 61 and 62 of the EEA Agreement, and in particular the Chapter relating to the Sale of Land and Buildings by public authorities,

Whereas:

I. FACTS

1. **PROCEDURE**

On 3 March 2007, the Authority received a complaint from an association named Aksjonsgruppa 'Ta vare på trivelige Bryne' (hereinafter referred to as 'Aksjonsgruppa'), concerning the sales of property numbers 1/152, 1/301, 1/630, 4/165 in Time municipality by the municipal authorities to two different private entities, as well as the sale of title number 2/70 (Bryne stadium which also includes title No 2/32) by Bryne fotballklubb, previously given to the club by the municipality, to a private investor (Event No 414270).

By letter dated 9 May 2007, the private investor Mr Gunnar Oma sent a complaint to the Authority concerning the sale by Time municipality of one of the abovementioned properties, i.e. number 4/165. Mr Oma claimed that the sale had taken place without prior value assessment and without an unconditional tendering procedure (Event No 421805).

By letter dated 25 May 2007 (Event No 1080978), the Authority invited the Norwegian authorities to comment on the complaints and requested additional information. In addition to the property numbers mentioned above, the Authority also asked questions concerning the purchase by Time Municipality of a property to be used for the construction of a new high school (title numbers 1/125, 2/277, 2/278 and 2/284), next to Bryne stadium. The sale had been the subject of articles in the local press which were enclosed with the complaint.

By letter dated 19 June 2007 (received by the Authority on 22 June 2007, Event No 426448), Time pensjonistparti complained about the exclusive right granted to Forum Jæren AS with respect to the development of 200 underground parking spaces at the property in the centre of the Bryne to be used for the construction of a new upper secondary school (title numbers 1/125, 2/277, 2/278 and 2/284) [4]. According to the complainant, 180 of the parking spaces were to be used by Forum Jæren.

By letter dated 3 July 2007 (Event No 427879) from the Norwegian Government, received and registered by the Authority on 3 July 2007, Norway replied to the information request.

By letter of 28 July 2007, Aksjonsgruppa submitted comments to the Norwegian authorities' reply, received and registered by the Authority on 30 July 2007 (Event No 437440).

By e-mail dated 7 September 2007 (Event No 439975), Aksjonsgruppa submitted an agreement between Rogaland county municipality and Time municipality regarding the development and use of the property to be used as a new upper secondary school (title numbers 1/125, 2/277, 2/278, and 2/284) (Event No 439974), which included a clause whereby the County Municipality agreed to grant Forum Jæren the right to develop 200 parking spaces under the new secondary school, as well as the exclusive right to use 180 thereof.

By e-mails dated 19 September 2007 (Event Nos 442381, 442382 and 442383), the complainant submitted press reports regarding the land sales. Finally, by e-mail dated 2 October 2007 (Event No 445092), the complainant submitted an audit carried out by external auditors (Deloitte) of Time municipality's sales of land and buildings over the last years (Event No 445091).

By letter of 23 October 2007 (Event No 448109), the Authority invited the Norwegian authorities to comment on the third complaint in the case (from Time Pensjonistparti) and requested additional information with respect to the agreements concerning the construction of a new upper secondary school and the rights conferred on Forum Jæren in that respect.

([1]) Hereinafter referred to as the EEA Agreement.

([2]) Hereinafter referred to as the Surveillance and Court Agreement.

([3]) Procedural and Substantive Rules in the Field of State Aid — 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 L 231, 3.9.1994, EEA Supplement No 32, 3 September 1994, last amended by the Authority's Decision No 154/07/COL, hereinafter referred to as the State Aid Guidelines.

([4]) The property numbers referred to in the complaint are 1/125, 2/25, 2/274, 2/277, 2/278 and 2/288. Attempts have been made to check this with the complainant, but a clear answer could not be obtained (e-mails from the case handler of 19 October 2007 and Reply from Time Pensjonistparti of 22 October 2007, Event Nos 447785, 447999 and 448000). Based on the description of the properties in the complaint, the Authority, nevertheless, takes the view that the property referred to must be the property on which a new upper secondary school is to be constructed, i.e. title numbers 1/125, 2/277, 2/278 and 2/284.

By letters of 21 and 22 November (Event Nos 453220 and 453452), the Norwegian authorities replied to the Authority's request.

2. DESCRIPTION OF THE TRANSACTIONS

2.1. The sale of title numbers 1/152, 1/301 and 1/630 to Grunnsteinen AS

By a sales agreement dated 25 August 2007, Time municipality sold title numbers 1/152 (1 312 square metres), 1/301 (741 square metres) and 1/630 (1 167 square metres) in the centre of Bryne, the municipal centre of Time municipality, to the private property developer Grunnsteinen AS. Clause 1 of the contract ([1]) states that the properties, at the time of entering into the contract, were zoned for residential and public road/parking purposes. On title number 1/152, there were 44 municipal parking spaces belonging to Time municipality.

Under Clause 1 of the contract, Grunnsteinen AS undertakes to build *underground* parking spaces on title number 1/152, of which 65 are to be transferred to Time municipality upon completion (clauses 1 and 5 of the agreement). Grunnsteinen did not pay anything for the property; however, according to the municipal authorities, the obligation to build the parking spaces replaces ordinary payment for the property ([2]). At present, none of the titles have been transferred to Grunnsteinen AS; however, Clause 7 of the agreement foresees that the titles should be transferred upon completion of the parking spaces, at the latest by the end of 2008. Furthermore, Clause 1 foresees that the underground car park will be registered as a separate title in the land register when re-transferred to Time Municipality.

The initiative to enter into the agreement appears to have been taken by the buyers, and no public bidding round was organised prior to the sale ([3]). According to the municipal authorities, the payment for title No 1/152 consisted of the 44 parking spaces on the property being compensated for in the underground car park. As for title numbers 1/301 and 1/630, the municipality had commissioned a value assessment of one of the properties, title No 1/630, which the municipality claims were assessed by Eiendomsmegler 1. Only the assessment of title No 1/630, which concluded that the market value was NOK 600 per square metre, has been presented to the Authority ([4]). However, reservations were expressed with respect to the size of the area, to any encumbrance on the title in the property register and to zoning regulations, as none of these had been checked. The Norwegian authorities have also presented calculations made by the construction firm Skanska Norge AS, showing that the price for a parking space in an underground car park would be approximately NOK 150 000, excluding VAT and costs of buying/renting the land ([5]). On the basis of these estimates, the Norwegian authorities claim that the market price for title numbers 1/301 and 1/630, based on the value assessment, would be NOK 2 516 400 ([6]), whereas the value of the additional 21 parking spaces which Grunnsteinen will build for the municipality is estimated to 2 625 000 ([7]). Thus, the municipality claims that the value of these two properties is fully compensated by Grunnsteinen through the construction of 21 additional parking spaces.

2.2. The sale of title number 4/165 to Bryne Industripark AS

On 31 August 2005, Time Municipality and the private property developer Bryne Industripark AS signed a sales agreement concerning title No 4/165 at Håland in Time ([8]). The title comprises 56 365 square metres of industrial land, and the sales price was set at NOK 4,7 million (or approximately NOK 83 per square metre). At the time of the signing of the agreement, the area was zoned for industrial purposes but the detailed zoning plan was not adopted due to objections from the public road administration. According to the municipal authorities, the new detailed zoning regulations are expected to be adopted in autumn 2007. The contract contains a claw-back clause (Clause 7) for Time municipality in the event that the property has not been built on or put to use 5 years after the date of taking possession.

At the time of entering into the agreement, the property consisted of undeveloped land. In the memorandum for the municipal council which approved the agreement, the municipal administration states that the conclusion of a development agreement should be a condition for selling the land. However, for the time being, no such agreement has yet been entered into, since detailed zoning regulations for the area have not yet been adopted.

The municipality confirms that no public bidding round was organised prior to the sale, which came about following an initiative from the buyer. However, it claims that the availability of industrial land in the area in question was advertised on its web page in 2003-2004. A value assessment was not carried out prior to the sale. It follows from the administrative memorandum made in relation to the sale that the price charged was based on the price at which Time municipality bought the property in 1999, to which capital costs, regulatory work and administrative costs were added. The price was, thus, established in accordance with the municipality's general principle for the sale of industrial properties, i.e. selling at cost ([9]).

According to the complainant, the price per square metre for this type of property should be in the range of NOK 400. This is based on a claim that an independent asset valuer assessed the property in January 2007 ([10]). However, no documentation has been submitted to this effect. In contrast, the municipal authorities claim that other industrial properties were sold, in the same period, for prices ranging between NOK 80 and 115

([1]) Norway's reply to the Authority's first request for information (Event No 427879, Annex 1).
([2]) Norway's reply to the Authority's first request for information (Event No 427879), Question 1(e).
([3]) Norway's reply to the Authority's first request for information (Event No 427879), reply to question 1(e).
([4]) Norway's reply to the Authority's first request for information (Event No 427879, Annex 2). In Norway's reply, it is claimed that the value assessment concerned title numbers 1/301 *and* 1/630. However, this is not reflected in the actual assessment, neither does the number of square metres stated therein indicate that both properties have been taken into account.
([5]) Norway's reply to the Authority's first request for information (Event No 427879, Annex 5).
([6]) This appears to be based on a value of NOK 600 per square metre plus the value of a building on title No 1/301. The Authority has not been presented with a valuation of the building.
([7]) This is based on the Municipality's original cost estimate of NOK 125 000, set out in the background papers for the deliberations in the municipal council (Event No 413558, pp. 16-17). The estimate by Skanska appears to have been obtained at a later stage.
([8]) Event No 413558, p. 19 *et seq*.
([9]) Event No 413558, pp. 16-17.
([10]) See Event No 413558 (original complaint), repeated in Aksjonsgruppa's comments to Norway's reply, Event No 477440.

per square metre in the area, and enclose contracts concerning such properties ([1]). It also claims that Bryne Industripark, by verbal agreement, sold a major part of the property (50 000 square metres) to Jæren Arena for the purpose of building a new football stadium in March 2007, at a price of NOK 100 per square metre ([2]). No documentation of the actual price has been provided. Moreover, according to the complainants, the same investors hold financial interests both in Bryne Industripark AS and Jæren Arena, and a possible transaction therefore cannot be assumed to have taken place on normal commercial terms.

2.3. **The sale of title numbers 2/70 and 2/32 to Bryne fotballklubb and the subsequent transfer of the property to Forum Jæren AS**

By agreement dated 8 August 2003, Time municipality transferred the title to Bryne stadium, title numbers 2/32 and 2/70, an area of approximately 53 000 square metres, to Bryne fotballklubb (Bryne FK) ([3]). From the background papers from the sale, it appears that the municipality had, in turn, bought the land from the football club for NOK 1 million in 1996. The Authority has no further information on this sale.

Bryne FK is a local football club, currently playing in the so-called 'Adecco League' (1st division). In addition to Bryne FK, which is registered in the company register as a non-profit organisation ([4]), the football club has also set up a limited company, Bryne Fotball AS. The information provided by the Norwegian authorities with respect to the organisational relationship between Bryne FK and Bryne Fotball AS is not very extensive; however, from the annual report of Bryne FK, it appears that the company was created to take care of the club's aim of promotion to the Norwegian Premier League. It also seems that Bryne FK is the main shareholder in the company and paid its debts in 2006. It appears that the sports activities, including those of the elite team aiming for promotion to the Premier League take place within Bryne FK ([5]).

Before the transfer of the title to the land, the football club had a ground lease agreements with the municipality for its buildings on title numbers 2/70 and 2/32, which included the stadium, a club house and a sports hall ([6]). Thus, the agreement of 8 August 2003 only concerns ownership of the land, not to the buildings. One building not belonging to Bryne fotballklubb appears to remain on the land, and it was foreseen that the club would take over the municipality's rights under the lease agreement with the owner of the building ([7]). Under Clause 2 of the agreement, title numbers 2/32 and 2/70 are transferred to Bryne FK without remuneration. It is also provided in the agreement that the municipality covers all costs connected to the transfer of the property, such as parcelling, measuring etc. The titles comprise approximately 53 000 square metres, and it is expressly provided that it shall, primarily, be used for sports purposes.

It follows from Clause 1 of the agreement that the background for the transfer of the titles was that the football club had asked for such transfer due to the fact that it needed to increase its assets in order to comply with requirements laid down by the Norwegian football association for football pitches to be used for matches in Tippeligaen (the Norwegian Premier League). From the background memos, it seems to have been essential that the property may be used as security for debts, and it is mentioned that the provision that it may only be used for sports purposes may somewhat reduce its accounting value.

The complainant claims that, in 2007, Bryne FK plans to sell the stadium to Forum Jæren for NOK 50 million. This appears to have taken place at the same time as the football club bought a property for the construction of a new stadium at Håland from Bryne Industripark AS (a sale referred to above). In reply to the Authority's request for information, the Norwegian authorities have confirmed that a letter of intent has been signed between Bryne FK and Forum Jæren concerning title No 2/70. However, the municipal authorities were unable to produce a copy thereof and the Authority therefore has had no confirmation of either the price mentioned or the possible existence of a binding agreement.

2.4. **The purchase by Time municipality of title numbers 1/125, 2/277, 2/278 and 2/284 for the purpose of building a new upper secondary school and the right to underground parking facilities granted to Forum Jæren**

On 4 January 2007, Time Municipality and Forum Jæren entered into an agreement ([8]) whereby Time Municipality bought title numbers 1/125, 2/277, 2/278 and 2/284 in Time, in total approximately 17 990 square metres, for NOK 59,5 million (i.e. NOK 3 307 per square metre). The municipality has confirmed that no value assessment was carried out of the property prior to the conclusion of the contract. It is claimed that the price had been based on Forum Jæren's purchasing costs ([9]). The contract also stipulates that it is Forum Jæren's responsibility to prepare the land for construction, i.e. to demolish existing buildings and foundations, etc.

In Norway, the county municipalities are responsible for running upper secondary schools ([10]); however, it is common practice that the land on which the buildings are to be constructed is offered by the municipalities free of charge. As stated in Clause 2 of the agreement, the property is to be used for the construction of a new upper secondary school. On 13 August 2007, the municipality effectively entered into an agreement with Rogaland County Municipality concerning the construction of the upper secondary school ([11]). Clause 3 of the

([1]) Norway's reply to the Authority's first request for information (Event No 427879, Annexes 13-17).
([2]) See Article from the local newspaper Jærbladet of 28 March 2007, referring to this price.
([3]) Event No 413558, p. 29 and Norway's reply to the Authority's first request for information (Event No 427879, Annex 29).
([4]) Norway's reply to the Authority's first request for information (Event No 427879, Annex 21).
([5]) Norway's reply to the Authority's first request for information (Event No 427879, Annex 22).
([6]) The ground lease agreements provided by Norway, Annexes 18 and 19 to Norway's reply to the Authority's first request for information (Event No 427879).
([7]) See Annex 24 to Norway's reply to the Authority's first request for information (Event No 427879).
([8]) Norway's reply to the Authority's first request for information (Event No 427879, Annex 26).
([9]) Norway's reply to the Authority's first request for information (Event No 427879).
([10]) See the Act relating to Education of 17 July 1998, No 61, Section 13-3.
([11]) Agreement between Time Municipality and Rogaland County Municipality relating to the construction of a new upper secondary school, Event No 439974.

agreement provides that, on the condition that the county municipality will not need more parking spaces than expected at the time of conclusion of the agreement, the county municipality accepts that Forum Jæren may cover its need for parking spaces in an underground car park comprising 200 spaces in total, to be constructed under the school buildings. The county municipality will be entitled to 10 per cent of the surface of the underground car park.

However, since Forum Jæren has been granted an extension of its deadline for compliance with the zoning requirements for parking spaces (1 parking space per 100 square metres) until 31 December 2008, no agreement has yet been entered into between Forum Jæren and Rogaland County municipality governing Forum Jæren's rights on the property. According to the Norwegian authorities, neither does the agreement between the municipality and the county municipality confer a legally enforceable right on Forum Jæren. The Norwegian authorities underline, in this context, that Forum Jæren did not take part in the negotiations prior to the conclusion of the agreement. Finally, Norway also takes the view that a separate agreement lying down, in detail, the conditions for Forum Jæren's right to use the property for parking purposes would be necessary at a later point ([1]).

3. COMMENTS BY NORWAY

Norway was invited to comment on the complaints in the Authority's requests for information, and did so in its replies. The replies were drafted by Time municipality and the Government did not provide additional comments.

Concerning the first of the transactions mentioned above, the Norwegian authorities claim, in essence, that the transfer of title numbers 1/152, 1/301 and 1/630 without remuneration does not amount to aid since it should be considered as an exchange of real property. In fact, the municipality's 44 parking spaces above ground will be exchanged for parking spaces in an underground car park. With respect to title No 1/301 and 1/630, it is claimed that, based on the value of these two properties in comparison with the cost estimates of parking spaces in underground car parks in similar projects, the value of the increase in the number of parking spaces (21) which the municipality will get as a result of the deal more than covers the value of the properties transferred. Against this background, the Norwegian authorities take the view that no aid is granted, irrespective of the fact that title No 1/152 was not valued. It is also claimed that, in the event that aid is present, it would be *de minimis* aid.

As for the sale of title No 4/165 to Bryne Industripark AS, Time municipality claims that, irrespective of the fact that no value assessment was made and that the property in question appears to have a very attractive location, the price per square metre corresponds to the market price. This is due to specific difficulties pertaining to the property: there were, *inter alia*, objections to the zoning plan, which, therefore, had not yet been adopted, and the property was difficult to exploit efficiently due to the construction prohibition in proximity to the railway. Furthermore, it is claimed that equivalent industrial properties in the municipality were recently sold at prices which, per square metre, roughly correspond to the price paid by Bryne Industripark.

With respect to the sale of Bryne stadium to Bryne FK, the Norwegian authorities argue that the buyer, Bryne FK, is not an undertaking within the meaning of the EEA Agreement, but a non-profit organisation and a sports club. Consequently, the Norwegian authorities take the view that Article 61 EEA does not apply to the transaction regardless of whether or not it confers an economic advantage on the buyer.

With respect to the titles which are to be used for the construction of an upper secondary school and Forum Jæren's right to build parking spaces under the school buildings, Time municipality claims that no legally binding agreement has yet been entered into with Forum Jæren. It was always the municipality's intention that such a right could only be granted on market conditions, but it would now be up to the County Municipality to negotiate an agreement with Forum Jæren governing the conditions for the construction of parking spaces.

II. ASSESSMENT

1. THE PRESENCE OF STATE AID

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

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

> *'Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement'.*

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

— the aid must be granted through *State resources*,

— the aid must favour certain undertakings or the production of certain goods, i.e. the measure must confer an *economic advantage* upon the recipient(s), which must be *selective*,

— the beneficiary must be an *undertaking* within the meaning of the EEA Agreement,

— the aid must be capable of *distorting competition* and *affect trade* between contracting parties.

Whether these conditions are met must be assessed individually with respect to each of the transactions described above.

1.1. The sale of title numbers 1/152, 1/301 and 1/630 to Grunnsteinen AS

The presence of State resources

The term 'State resources' covers all aid granted from public sources, including municipalities. Aid granted by Time municipality would thus fall within the definition. If public land is sold below market value, State resources are present ([2]).

In the case at hand, the buyer did not pay any money for the properties. Thus, *prima facie*, the transaction would seem to involve aid, and it would be for the Norwegian authorities to rebut that presumption.

([1]) Norway's reply to the Authority's second request for information (Event Nos 453220 and 453452).

([2]) Case T-274/01, *Valmont Nederland BV* v *Commission*, [2004] ECR II-3145, paragraphs 44-45.

The Norwegian authorities argue that the buyer did pay a 'price' for the properties by taking on the obligation to build an underground car park in which the municipality would be entitled to 65 parking spaces. Thus, what remains to be considered is whether it can established, either in application of the procedures described in the State aid guidelines or by other methods, that the transaction therefore took place on market terms.

The Norwegian authorities have confirmed that the sale of the properties was not announced publicly, but came about following an initiative from Grunnsteinen. Thus, no unconditional bidding procedure (which could, theoretically, have led to a very low, or even no value being paid, given the obligation to provide parking spaces) within the meaning of the Guidelines took place.

Concerning sales without an unconditional bidding procedure, the Guidelines require, for the presence of State aid to be excluded on this basis, that '*an independent evaluation should be carried out by one or more independent asset valuers prior to the sales negotiations in order to establish the market value on the basis of generally accepted market indicators and valuation standards. The market price thus established is the minimum purchase price that can be agreed without granting State aid*'.

In the case at hand, since the payment consists of the construction of 65 underground parking spaces for public use, in order for State aid to be excluded on the basis of the guidelines, a value assessment of the properties would have to be undertaken, and the market price of the parking spaces would have to be established in a reliable manner.

As for the properties sold, it is clear that at least title number 1/152 was not assessed at all. The Norwegian authorities claim that both title numbers 1/301 and 1/630 were valued; however, only the assessment of title number 1/630 has been forwarded to the Authority on request. Thus, the procedure laid down for establishing the market price through independent value assessment cannot, under any circumstances, be considered to have been complied with. Moreover, since the properties were transferred *en bloc*, a value assessment should cover all three properties taken together. With respect to the title(s) which w(as)(ere) actually valued, the Authority has not been assured that it took place in accordance with the guidelines, which require that the market value should be established on the basis of generally accepted indicators and valuation standards. In the valuation by Eiendomsmegler 1, it is merely stated that the valuation is '*carried out in accordance with our best judgement and conviction, on the basis of a visit of the property and information provided by the seller*'. However, the valuation does neither set out the characteristics of the property which were decisive for the conclusion, nor the method applied, for example one of the methods recommended by the Norwegian Valuers And Surveyours Association ('*Norges Takseringsforbund (NTF)*') for commercial property ([1]). In the view of the Authority, the valuation carried out by Eiendomsmegler 1 does not give sufficient information for the Authority to ascertain that it was carried out in accordance with generally accepted indicators and valuation standards.

Concerning the value of the parking spaces which the municipality will receive in remuneration for the properties, the Norwegian authorities have enclosed estimates made by the construction firm Skanska Norge AS, arriving at NOK 150 000 per parking space. The Authority also notes that the estimates are subject to the reservation that building costs will vary, depending on a range of factors such as size, location, proximity to roads, lifts, fire security, etc., and also that '*price will further depend on working methods, timing and market situation*'. Although the guidelines on expert evaluation are not directly applicable to the valuation of the future car park, the Authority is not convinced that the evaluation by Skanska was carried out in a reliable manner. In particular, the calculations presented seem to have be carried out exclusively on the basis of experience from other projects and, thus, do not seem to take sufficient account of the characteristics of the specific property in question in order to be suitable for establishing the market price.

Against this background, the presence of aid cannot be excluded on the basis of, or by analogy to, the guidelines.

The Norwegian authorities also seem to argue that the presence of aid can be excluded on other grounds. In particular, they claim that the transaction is in fact an exchange of property, and that the fact that title No 1/152 was not valued is therefore irrelevant. The argument seems to be based on the idea that, since the 44 public parking spaces currently occupying title number 1/152 will be replaced by *underground* parking spaces, the municipality keeps what it had before entering into the contract. Concerning exploitation of title No 1/152 above ground, this area will now be regulated as a green area and thus will have no independent market value.

It must be assessed whether these arguments are capable of excluding the presence of State aid. In that regard, what remains to be considered is the *market value* of the property transferred at the time of the conclusion of the contract ([2]). Thus, the subjective value of the land for the municipality when used as a car park does not establish the market price as long as the land could also be exploited for different purposes. At the time of the contract, this seems to have been the case, and the possibility for alternative (and more profitable) uses must, therefore, be the basis for the calculation of the market price. The Authority takes the view that, even if parts of title number 1/152 might, more than two years later, be zoned as a green area, what must be assessed is what use of the properties (if sold together) potential buyers could expect at the time of the transaction.

Secondly, this argument seems to presuppose that the valuations of the two other titles and the parking spaces are acceptable, so that the value of the parking spaces equals or exceeds the value of the two additional titles. As shown above, the Authority has not found the calculations presented to it convincing.

Against this background, the Authority has serious doubts that the 'price' paid for the property reflected its market value.

Favouring certain undertakings or the production of certain goods

Firstly, the measures must confer on Grunnsteinen AS advantages that relieve it of a financial burden that it would normally have to cover from its budget (in this case, any additional price payable for the land in question). Secondly, the measure must be selective in that it favours '*certain undertakings or the production of certain goods*'.

([1]) The Authority has previously held that these standards fulfil the requirements of the Guidelines, ref. Decision No 170/05/COL on the sale of the University Library Building and Part of Adjacent Property in Oslo.

([2]) See Case T-366/00, *Scott SA* v *Commission*, judgment of 29 March 2007 (not yet reported), paragraph 106.

If, and to the extent that, the price paid for the properties does not reflect their market value, Grunnsteinen obtains an advantage in the form of a lower purchase price which it would normally have to pay out of its own budget. Equally, the measure would be selective since it only benefits the buyer.

The measures must distort competition and affect trade between the Contracting Parties

Under settled case law, the mere fact that an aid strengthens a firm's position compared with that of other firms competing in intra-EEA trade, is enough to conclude that the measure is likely to affect trade between the contracting parties and distort competition between undertakings established in other EEA States ([1]). If, and to the extent that, the transaction confers an economic advantage on Grunnsteinen, its position is strengthened in comparison with that of its competitors. Since the property in question appears to be centrally located commercial land which is, consequently, attractive, it might be of interest not only to Norwegian firms, to the effect that firms established in other EEA States may have been affected by the transaction. Moreover, the Norwegian buyers might be professional property investors who are active in Norway and other EEA States alike. Thus, it appears that the transaction may threaten to distort competition and affect trade within the EEA.

The Authority considers it possible that the economic advantage conferred on Grunnsteinen through the transaction could be *de minimis* (i.e. EUR 100 000 over a three-year period at the material time ([2])) and as such not distort competition and affect trade within the EEA. However, in the absence of reliable value assessments, the Authority cannot establish with certainty that such is the case.

1.2. **The sale of title number 4/165 to Bryne Industripark AS**

The presence of State resources

As described above, the land in question consists of more than 56 000 square metres of industrial land outside Bryne. No value assessment was carried out prior to the sale. The municipality states that the land was offered on its web page for some time, but it is unable to retrieve the announcement from its system, and the Authority therefore cannot verify its content. In any event, it is doubtful that a notice on a web page would qualify as a sufficiently well publicised offer within the meaning of the Guidelines. Against this background, the procedures described in the Authority's State aid Guidelines on the sale of land and buildings do not seem to have been followed and the presumption that aid is not present therefore does not apply.

The municipality has explained that property was sold *at cost*, i.e. at a price calculated by adding regulatory and administrative costs, capital costs and fees to the price for which the property was bought in 1999. As a preliminary point, the Authority notes that sales of public land at cost cannot exclude the presence of State aid, as this price calculation method does not take sufficient account of all the various factors which may influence a property's market value, in particular the supply and demand on the market at the time of the sale ([3]). Moreover, in this case, there seems to have been no adjustment for inflation.

In the case at hand, sales at cost was the general policy of the municipality at the time. However, by decision of 18 October 2006 ([4]), the municipality decided that land at Bryne, including Håland, should for the future be sold at market price. In the background memo for the decision, the municipality stated that industrial land at Bryne had become scarce and that land at Håland would be '*cheap if we sell at cost*'. The memo also states that one of the reasons for the transition to the market price principle was to ensure that '*[i]ndustries which require large areas but are not labour intensive will find the land too expensive and establish themselves elsewhere*'. Thus, it seems to have been expected that the market price would be higher than the cost price which was applied in the sale to Bryne Industripark.

The Norwegian authorities have argued that the price is comparable to the sales price of similar land sold in the area in the same period ([5]). The Authority accepts that such comparisons might give an indication of the appropriate price for the land ([6]). However, the Authority has doubts as to the relevance of the prices presented as it has not been presented with facts which demonstrate that the land plots in question are sufficiently comparable to the land sold to Bryne Industripark. All areas in question are, *inter alia*, considerably smaller than title No 4/165 and the Norwegian authorities have not provided details of their location showing that they are as attractive as title No 4/165. Moreover, all the properties referred to are stated to be unregulated in the sales contracts. By contrast, at the time of the sale, a zoning plan for the area sold to Bryne Industripark had been adopted on 5 June 2004. The Norwegian authorities state that objections from the Public Roads Administration seemed to make adjustments necessary. It is unclear to the Authority whether these objections were received before or after the sale to Bryne Industripark. In any event, the agreement refers to the detailed zoning plan adopted in 2004 and the property, therefore, does not seem to have been sold as unregulated. The relevance of comparing the land to areas which were unregulated can thus be questioned ([7]).

Against this background, the Authority has serious doubts that the cost price at which title No 4/165 in Time was sold corresponded to the property's market value at the time of the sale.

Favouring certain undertakings or the production of certain goods

If, and to the extent that, the price paid for the title No 4/165 does not reflect its market value, Bryne Industripark obtains an advantage in the form of a lower purchase price, thus avoiding costs which it would normally have to pay out of its own budget. Equally, the measure would be selective since it only benefits the buyer.

([1]) See Case 730/79, *Philip Morris Holland BV* v *Commission*, [1980] ECR p. 2671, paragraphs 11-12 and Joined Cases E-5/04, E-6/04 and E-7/04, *FESIL, Finnfjord, PIL and Others, and the Kingdom of Norway* v *the Authority*, paragraph 94.

([2]) See Article 2(2) of Commission Regulation (EC) No 69/2001, incorporated into the EEA Agreement by Joint Committee Decision No 88/2002 (OJ L 266, 3.10.2002, p. 56 and EEA Supplement No 49, 3 October 2002, p. 42), e.i.f. 1 February 2003.

([3]) Case T-366/00, *Scott* (cited above), paragraph 106.

([4]) Decision No KS-075/06, forwarded by the complainant (Annex 3 to Event No 437440).

([5]) Land sale agreements attached as Annexes 13-17 to Norway's reply to the Authority's first request for information, (Event No 427879).

([6]) Case T-366/00, *Scott* (cited above), paragraph 116.

([7]) It may also be noted that it follows from the sales agreements that it was considered to be highly likely that the areas were of archaeological interest and that the ground would, therefore, have to be explored before any development could take place, see Norway's reply to the Authority's first request for information (Event No 427879, Annexes 13, 14 and 15. This does not seem to be the case with respect to the title No 4/165, see Norway's reply to the Authority's first request for information (Event No 427879, Annex 8).

The measures must distort competition and affect trade between the Contracting Parties

As set out above, the mere fact that an aid strengthens a firm's position compared with that of other firms, which are competitors in EEA trade, is enough to conclude that competition is distorted and intra-EEA trade is affected. If, and to the extent that, Bryne Industripark bought the land below market price, its position is strengthened compared with that of its competitors. In the case at hand, the property in question appears to be industrial land of potential interest to a variety of activities. Accordingly, it may well be of interest not only to Norwegian firms. Moreover, the Norwegian buyers might be professional property investors who are active both in Norway and other EEA States.

Thus, the transaction may threaten to distort competition and affect trade within the EEA.

1.3. **The sale of title numbers 2/70 and 2/32 to Bryne FK**

The presence of State resources

As described above, the stadium was transferred to Bryne football club in 2003 for NOK 0. At the time, Bryne FK had two lease agreements with the municipality on title numbers 2/70 and 2/32, concerning, respectively, a grandstand for football and a clubhouse, and a sports hall ([1]). Furthermore, a company called Stadion Trim & Bowling AS had a lease contract for a sports building for 99 years from 1997. It also appears that Bryne Friidrettsklubb (Bryne Athletics) had certain rights of use to the stadium prior to the transfer of the ground to Bryne FK, and that these rights had to be waived before the transfer could be implemented.

The existence of long term lease agreements and special rights of use may lead to the value of the land being reduced if sold to a third party. However, it is implausible that the property would have no market value at all, *inter alia* because such special rights might be waived at a later stage. This would seem to be demonstrated by recent events: In fact, the sports club has now decided to move its stadium and, thus, to sell the property in question. Norwegian authorities have confirmed that no value assessment was carried out of the property prior to the sale.

Against this background, the Authority has strong doubts that the property was transferred at market price and, thus, that no State resources were involved.

Favouring certain undertakings or the production of certain goods

If the presence of State resources were to be proven, the transaction must be held to confer an advantage on Bryne FK. The measure would, thus, be selective within the meaning of Article 61(1) EEA.

The Norwegian authorities have claimed that Bryne FK does not constitute an undertaking within the meaning of the EEA Agreement because it is a sports club and a private consumer-oriented organisation with no profit-making purposes. According to the Norwegian Government, the club is not active in commercial activities. To substantiate its position, the Norwegian authorities have enclosed the club's annual report, focussing on its activities for adolescents and children.

As a starting point, the Authority notes that the concept of an undertaking encompasses every entity engaged in an economic activity ([2]). Any activity consisting in offering goods and services on a given market is an economic activity ([3]). Therefore, it is not decisive that the football club is not organised as a limited company or that it is registered as a non-profit organisation in the company register. The Court of Justice of the European Communities has held that where a sporting activity takes the form of gainful employment or the provision of services for remuneration, which is true of the activities of semi-professional or professional sportsmen, it constitutes an economic activity for the purposes of Community law. Therefore, it is subject, *inter alia*, to the rules on competition ([4]).

Bryne FK currently plays in the so-called *Adecco* league, i.e. the 1st division in Norwegian football (i.e. the division below the Premier League). From Bryne FK's homepage, it appears that the club is, *inter alia*, active in selling and buying professional players ([5]), providing entertainment in the form of football matches and in offering advertising space in return for payment ([6]). In light of the practice of the European Commission, such activities would seem to qualify as the provision of services on a market and therefore to be economic in nature ([7]). The club's annual accounts, forwarded by the Norwegian authorities, show that it had an annual turnover in the range of NOK 28 million in 2006, of which approximately 11,6 million was generated through sponsorship. Other major sources of revenue include income from matches, non-sports activities, rent income/public contributions and miscellaneous revenues. In addition, about NOK 400 000 stemmed from membership fees. In the view of the Authority, all these items, with the possible exception of a part of the membership fees, seem to have been generated through economic activity.

In light of the above, the Authority takes the preliminary view that Bryne FK must be held to be an undertaking for the purposes of the State aid rules of the EEA Agreement.

The measures must distort competition and affect trade between the Contracting Parties

Provided that it is established that Bryne FK got the property without paying the market price, it receives an advantage which strengthens its position compared with that of its competitors, thus threatening to distort competition. As demonstrated above,

([1]) See Norway's reply to the Authority's first request for information (Event No 427879, Annexes 18 and 19).

([2]) Case C-41/90, *Höfner and Elser* [1991] ECR I-1979, paragraph 21.

([3]) Case 218/00, *Cisal* [2002] ECR I-691, paragraph 23.

([4]) Case Case C-519/04 P, *Meca-Medina and Majcen* vs *Commission*, [2006] ECR I-6991, paragraphs 22, 23 and 30.

([5]) For example, the news archive of the club features headlines like 'Striker on trial' (18 March 2004), 'Frenchman for trial' (30 March 2004), 'Serbian trial player at Bryne' (2 August 2007) and 'Icelandic U21 player ready for Bryne' (31 August 2007): http://www.brynefk.no/Brynefk/index.nsf/DESIGNARKIV?openform

([6]) For example, in a news item of 13 April 2007, the club states that '*For the first time Bryne FK has received more than 12 million in mere sponsorship money. The capacity [for advertisements] at Bryne stadium is exhausted and in order to exceed the 12 million threshold the club has invested in advertising rolls. The VIP stand has also been nearly sold out*'. See: http://www.brynefk.no/brynefk/index.nsf/DESIGNUNIK/SFUS-76RJ37?OpenDocument

([7]) See paragraph 17 of the Commission's opening Decision in Case C-49/03 (NN 51/03), *Sale of land to AZ and AZ Vastgoed BV* (OJ C 266, 5.11.2003, p. 8).

Bryne FK's commercial activities appear to include, *inter alia*, the selling and buying of players from clubs in other EEA States, the offering of advertising space and the provision of entertainment in the form of football matches. In doing so, the club competes with undertakings established in other EEA States. Insofar as the measure is deemed to distort competition, it will, therefore, also be capable of affecting trade between the Contracting Parties.

1.4. The purchase by Time municipality of title numbers 1/125, 2/277, 2/278 and 2/284 for the purpose of building a new upper secondary school and the right to underground parking facilities granted to Forum Jæren

With respect to the right to build parking spaces under title numbers 1/125, 2/277, 2/278 and 2/284, allegedly granted to Forum Jæren by Time Municipality, it appears to the Authority that Forum Jæren has not yet obtained a legally enforceable right of use of the property. As long as the contractual conditions governing Forum Jæren's future right of use, and thus the commercial balance of the contract, have not yet been determined, it is not possible to assess whether a potential future agreement would involve the granting of State aid. Thus, even if the possible future granting of such a right were to constitute State aid, the aid has not yet been put into effect. As the Authority only has the power to assess aid which has already been put into effect ([1]) or plans to grant aid notified to it by the national authorities ([2]), it cannot, at this stage, take a decision on the possible aid involved in granting Forum Jæren the right to construct parking spaces under the foreseen school buildings. Thus, the Authority finds that no State aid has been granted at this stage.

This finding does not preclude the Authority from adopting a decision if, at a later stage, a measure possibly involving aid should be put into effect or notified to the Authority pursuant to Article 1 of Section I of Protocol 3 to the Surveillance and Court Agreement.

2. PROCEDURAL REQUIREMENTS

Pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement, '*the 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*'.

Title number 4/165 and title numbers 2/70 and 2/32 have been sold under legally binding sales contracts and the titles have been transferred in the land register. The measures must therefore be deemed to have been put into effect.

As for the sale of title numbers 1/152, 1/301 and 1/630 to Grunnsteinen, the titles have not yet been transferred in the land register. However, a legally binding contract has been entered into, from which the municipal authorities cannot withdraw without incurring financial consequences. Thus, no further formal measures are required for the buyer to receive the economic benefit of the transaction, and it must therefore be deemed to have been put into effect.

These transactions have not been notified to the Authority. To the extent that these transactions involve State aid, it can be concluded that the Norwegian Government has not respected its obligations pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement.

3. COMPATIBILITY OF THE AID

The Norwegian authorities have argued that the transactions do not contain aid, and have not put forward arguments concerning compatibility. However, after assessing the likelihood that State aid may be involved in the transactions described above, it has to be considered whether any aid involved in the transactions could be compatible with the EEA Agreement under Article 61(3)(a)-(c) EEA.

In the case of the sale of title numbers 1/152, 1/301 and 1/630 to Grunnsteinen, the information available to the Authority does not seem to indicate that any aid was granted to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, to promote a project of common European interest or to facilitate the development of certain economic activities. Moreover, any aid granted to the sports club would not seem to promote cultural development. Against that background, Article 61(3)(a)-(c) appears to be inapplicable.

For the same reasons, any possible aid involved in the sale of title number 4/165 to Bryne Industripark and the sale of title numbers 2/70 and 2/32 to Bryne FK does not seem to be compatible with the functioning of the EEA Agreement by virtue of Article 61(3)(a)-(c).

4. CONCLUSION

Based on the information available to the Authority, including the information submitted by the Norwegian Government, the Authority cannot exclude that the sales of title numbers 1/152, 1/301, 1/630 (to Grunnsteinen AS), 4/165 (to Bryne Industripark AS), 2/70, 2/32 (to Bryne FK) constitute aid within the meaning of Article 61(1) of the EEA Agreement. Furthermore, the Authority has doubts, to the extent that State aid is involved, that they can be regarded as complying with Article 61(3)(c) of the EEA Agreement. Consequently, the Authority has doubts that the transactions referred to above do not constitute State aid or are compatible with the functioning of the EEA Agreement.

Consequently, and in accordance with Article 4(4) in Part II of Protocol 3 to the Surveillance and Court Agreement, the Authority is obliged to open the procedure provided for in Article 1 (2) in Part I of Protocol 3 of the Surveillance and Court Agreement. The decision to open proceedings is without prejudice to the final decision of the Authority, which may conclude that the measures in question do not constitute State aid or are compatible with the functioning of the EEA Agreement.

The Authority also draws the attention of the Norwegian authorities to the fact that Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement constitutes a standstill obligation and that Article 14 in Part III of that Protocol provides that, in the event of a negative decision, all unlawful aid may be recovered from the beneficiary, save in exceptional circumstances. At this stage, the Authority has not been presented with any facts indicating the existence of exceptional circumstances on the basis of which the beneficiary may legitimately have assumed the aid to be lawful.

([1]) Unlawful aid or existing aid, under, respectively, Section III and V of Part II of Protocol 3 to the Surveillance and Court Agreement.
([2]) Section II of Protocol 3 to the Surveillance and Court Agreement.

In light of the foregoing considerations, the Authority, acting under the procedure laid down in Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement, requests Norway to submit its comments and to provide all such information as may help to assess the transactions described above, within *one month* of the date of receipt of this decision. It requests your authorities to forward a copy of this letter to the potential aid recipient of the aid immediately.

In the light of the foregoing consideration, the Authority requires, within one month of receipt of this decision, to provide all documents, information and data needed for assessment of the compatibility of the property transactions engaged in by the Municipality of Time and, in particular, value assessments stating the value of title numbers 1/152, 1/301, 1/630, 4/165, 2/70 and 2/32 at the time of the sale, carried out by an independent asset valuer in accordance with the procedure described in the Authority's Guidelines relating to Sales of Land and Buildings by Public Authorities,

HAS ADOPTED THIS DECISION:

1. The Authority has decided to open the formal investigation procedure provided for in Article 1 (2) in Part I of Protocol 3 to the Surveillance and Court Agreement against Norway in relation to the sale by the Municipality of Time of the properties registered under title numbers 1/152, 1/301, 1/630 (to Grunnsteinen AS); title number 4/165 (to Bryne Industripark AS) and title numbers 2/70 and 2/32 (to Bryne FK) in Time.

2. At present, the transactions relating to title numbers 1/125, 2/277, 2/278, 2/284 in Time do not involve the granting of State aid, within the meaning of Article 61(1) of the EEA Agreement, to Forum Jæren AS.

3. The Norwegian Government is requested, pursuant to Article 6(1) in Part II of Protocol 3 to the Surveillance and Court Agreement, to submit its comments on the opening of the formal investigation procedure within one month from the notification of this decision.

4. The Norwegian Government is required to provide within one month from notification of this decision all documents, information and data needed for assessment of the compatibility of the aid measure, in particular value assessments stating the value of title numbers 1/152, 1/301, 1/630, 4/165, 2/70 and 2/32 at the time of the sale, carried out by an independent asset valuer in accordance with the procedure described in the Authority's Guidelines relating to Sales of Land and Buildings by Public Authorities.

5. The Norwegian Government is requested to forward a copy of this Decision to the potential recipients of aid immediately.

6. This Decision is addressed to the Kingdom of Norway.

Done at Brussels, 19 December 2007.

For the EFTA Surveillance Authority

Per SANDERUD	Kristján Andri STEFÁNSSON
President	*College Member*