EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

EFTA SURVEILLANCE AUTHORITY DECISION

No 55/05/COL

of 11 March 2005

to close the formal investigation procedure provided for in Article 1(2) in part I of Protocol 3 to the Surveillance and Court Agreement with regard to the sale of 1 744 rental apartments in Oslo (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 and Article 1 in Part I 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, in particular to Chapter 18B thereof,

HAVING CALLED ON interested parties to submit their comments pursuant to the provisions cited above (4) and having regard to their comments,

WHEREAS:

I. FACTS

1. Background

In March 2001, the Municipality of Oslo decided to sell a portfolio of 1 744 rental apartments before the end of May 2001. The 1 744 apartments were mainly let to employees of municipal hospitals. The decision to sell was taken after the Norwegian Government presented plans for the implementation of a hospital reform whereby i.a. the ownership of the county hospitals was to be transferred to the State (5).

(1) Hereinafter referred to as the EEA Agreement.
(2) Hereinafter referred to as the Surveillance and Court Agreement.
(4) Dec. No. 113/03/COL. The decision to open the formal investigation procedure was published in OJ C 294, 4.12.2003, p. 13, and in the EEA Supplement No 61, on the same date, p. l.
By letter dated 18 May 2001 (Doc. No: 01-3792-D), the Authority requested the Norwegian authorities to submit all relevant information regarding the sale of the apartments so that the Authority could assess whether the sale was in accordance with Article 61 of the EEA Agreement and Chapter 18B, State aid elements in sales of land and buildings by public Authorities, of the Authority's State Aid Guidelines.

On 30 May 2001, the Oslo City Council ('Bystyret') decided to sell the apartments, and on 31 May 2001 the Municipality signed a contract with Fredensborg Boligutleie ANS (hereinafter Fredensborg) on the sale of the apartments. The sales price was NOK 715 Million (approximately EUR 89 Million (6)).

By letter dated 31 May 2001 (Doc. No: 01-4004-D), the Authority reminded the Norwegian authorities of the 'standstill-clause' in Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement and the injunction provisions ('interim measures') contained in Chapter 6, Specificities regarding aid unlawful on procedural grounds, of the State Aid Guidelines.

By letter dated 26 June 2001 from the Mission of Norway to the European Union, forwarding a letter dated 15 June 2001 from the Ministry of Trade and Industry containing 17 annexes from the Municipality of Oslo, received and registered by the Authority on 26 June 2001 (Doc. No: 01-5730-A), the Norwegian authorities submitted the documents that they, in agreement with the Municipality of Oslo, regarded as containing the most relevant available information in order to assess whether the sale was in accordance with Article 61 of the EEA Agreement.

In the documentation from the Municipality of Oslo (7), the Municipality argued firstly that the sale was within the requirements set by the Authority's State Aid Guidelines (8). The Municipality claimed that an independent expert evaluation was carried out in accordance with Chapter 18B.2.2 of the State Aid Guidelines and that the divergence of 3,4% between the sales price and the value assessment was in line with market conditions as described in Chapter 18B.2.2(b) of the State Aid Guidelines (9).

Secondly, the Municipality pointed out that the sales process had to be seen in light of the time constraints. The Government, implementing a hospital reform, was the cause of the time constraint that the Municipality was subject to. According to the Municipality, this might have resulted in a smaller number of bidders than desirable, and the buyers might have submitted bids lower than those submitted if they had had more time at their disposal (10). The Municipality argued, however, that the Municipality conducted the sale with a bidding process in the same way as a private seller would have done.

By letter dated 20 July 2001 to the Norwegian authorities (Doc. No: 01-5673-D), the Authority stated that it had doubts regarding whether the procedure provided for in Chapter 18B.2.2 of the State Aid Guidelines was followed. The Authority furthermore expressed doubts whether the assessments of the market value of the apartments were carried out prior to the sales negotiations, whether the evaluations were carried out on the basis of generally accepted market indicators and valuation standards and whether a sales price 3,4% below the evaluation was in accordance with the State Aid Guidelines. The Authority invited the Norwegian authorities to submit comments on this matter, which the Authority would take into consideration before taking a decision on whether to open a formal investigation procedure.

(6) NOK/EUR = 7,9952 per May 2001 according to the Norwegian Central Bank.
http://www.norges-bank.no/stat/valutakurser/kurs_mn1.html


(8) The relevant sentence reads as follows in Norwegian: 'Oslo Kommune er av den oppfatning at salget er innenfor rammen av de krav som stilles i ESAs retningslinjer'.

(9) More detailed descriptions of the sales process and the value assessments are given in point 2 below.

(10) The relevant sentence reads as follows in Norwegian: 'Dette tidspresset kan ha ført til at kretsen av interesserte ble mindre em kondelige, og/eller at kjøperne la inn lavere bud enn de ville gjort i en situasjon med bedre tid.'
The Ministry of Trade and Industry submitted its comments by telefax dated 27 July 2001, received and registered by the Authority on the same date (Doc. No: 01-6026-A). The Ministry stated that it did not disagree with the Authority that there might be doubts as to whether the sale is in accordance with Article 61 of the EEA Agreement and that further proceedings ‘will be carried out with the purpose to ensure that Norway's obligations under Article 61 of the EEA Agreement are respected’. The Ministry informed the Authority that on 25 July 2001 the County Governor of Oslo and Akershus had decided that the Municipality of Oslo can not lawfully transfer the right of ownership before the County Governor had made his final decision. A new expert evaluation of the value of the buildings would also be carried out.

By letter dated 31 July 2001 (Doc. No: 03-829-A), the Authority stated that it was awaiting a formal notification of the sale in accordance with its State Aid Guidelines.

2. The notification

2.1. Introduction

By letter from the Mission of Norway to the European Union dated 10 February 2003 (Doc. No: 03-829-A), forwarding a letter from the Ministry of Trade and Industry dated 7 February 2003 and a letter without date from the Municipality of Oslo (containing 31 annexes), all received and registered by the Authority on 11 February 2003, the Norwegian authorities submitted a notification pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement, of the Municipality of Oslo’s decision to sell the apartments. The letter dated 7 February 2003 from the Ministry of Trade and Industry and the letter from the Municipality of Oslo (without annexes) were also sent by telefax, received and registered by the Authority on 7 February 2003 (Doc. No: 03-768-A).

The letter from the Municipality of Oslo contained i.a. a description of the apartments, information about the sales process, descriptions of the different value assessments as well as an assessment of potential cross border impact.

Concerning the apartments, the Municipality provided certain comments. Firstly, the size of the portfolio implied that there were not many actors in the market who could be expected to be potential buyers. That would influence the possibility of carrying out the sale and also the terms of any transaction. Secondly, the price was dependent on when and how fast existing rents could be increased, which was highly uncertain. Thirdly, the uncertain circumstances with the existing contracts, an unfamiliarity with Norwegian mandatory tenant law, made an investment less attractive for undertakings not already established in the rental market in Norway. Fourthly, the apartments were of a varying age, standard and location which influenced the renovation costs.

Concerning the sales process (see point 2.2 below), the Municipality stated that: ‘It is not disputed that the procedural requirements of the State aid Guidelines have not been fully observed in the present case.’

The Municipality concluded that: 'The sale was conducted through a well-publicized, open and unconditional bidding process, albeit the period in which the apartments were marketed was shorter than the period required according to the State Aid Guidelines. There is, however, no reason to assume that the sale was conducted in a manner not likely to achieve market value for the apartments sold, or likely to exclude foreign investors. Even if the Authority should be of the opinion that the sale comprises an element of aid, we submit that it should be concluded that the transaction does not fall within the ambit of Article 61(1) EEA, as intra-EEA trade is not affected.'

2.2. The sales process

The sales process was described in the notification received by the Authority on 11 February 2003, i.e. in Annex 1 and 10 to the notification. The Authority understands that the sales process took place as follows:
On 16 March 2001, the independent real estate agency, Akershus Eiendom AS (hereinafter Akershus), was given the task of selling the apartments *en bloc* on behalf of the Municipality of Oslo.

Akershus launched the sale on 2 April 2001, with a value assessment from Catella Eiendoms-Consult AS (hereinafter Catella), which estimated the value at NOK 1 143 Million (see point 2.3 below for a description of the assessment). The following six companies were contacted directly by Akershus:

- OBOS
- Selvaag Eiendom AS
- Olav Thon Gruppen AS
- KLP Eiendom AS
- Gjensidige Nor Næringsseiendom AS
- Eiendomsspar AS

Another nine companies contacted Akershus on their own initiative. These were:

- Sunndal Collier & Co ASA
- Haugen & Damsund AS
- Catella Eiendoms-Consult AS
- Optimo AS
- Investra ASA
- The inhabitants, represented by Ole Løken, attorney at law
- Fredensborg eiendomsselskap AS
- DTZ Real Consult Eiendomsmegling AS
- Studentsamskipnaden i Oslo

An offer for the sale of the apartments was made public by a press release dated 19 April 2001.

A prospectus covering the apartments was distributed to the 15 companies mentioned above on 23 April 2001.

On 26 April 2001, OPAK AS (hereinafter OPAK) submitted a value assessment concluding that the market value was NOK 795 Million, which was also distributed (see point 2.3 below for a description of the assessment).

Investors were asked to submit their bids by 2 May 2001, and the bidding contest was brought to an end on 3 May 2001. Five companies submitted the following offers in the first round on 2 May 2001. These were:

- The inhabitants, represented by Ole Løken, attorney at law: NOK 300 Million
- Eiendomsspar AS: NOK 500 Million
- Olav Thon Gruppen AS: NOK 505 Million
- Haugen & Damsund AS: NOK 690 Million
- Sunndal Collier & Co ASA: NOK 725 Million
On 3 May 2001, the five companies could change or increase their offers after having been informed about the highest offer submitted on 2 May 2001. The following new offers were received:

— The inhabitants, represented by Ole Løken, attorney at law: NOK 690 Million
— Sunndal Collier & Co ASA: NOK 735 Million

The Municipality of Oslo chose to accept the offer from Sunndal Collier & Co ASA and on 8 May 2001, Sundal Collier & Co ASA, Fredensborg being its successor, signed the contract.

After the offer was accepted, it was discovered that two buildings (Internat A og B) in connection with one of the hospitals (Ullevål Sykehus) was being used by Oslo og Akerhus høgskolenes studentsamspinskippnad (OAS) without any rent being paid (based on a contract not signed by the Municipality, but adhered to by Ullevål Sykehus and OAS, according to which OAS would only cover operating costs). As a consequence of this, the contract between the Municipality and Fredensborg was amended on several points. By letter dated 11 May 2001, the Municipality asked OPAK to assess the consequence of this for their value assessment.

On 14 May 2001, OPAK submitted a corrected value assessment of NOK 740 Million (see point 2.3 below).

By signing the contract on 31 May 2001, the Municipality of Oslo sold the 1 744 apartments en bloc at a price of NOK 715 Million to Fredensborg.

2.3. The value assessments submitted as part of the notification

The notification contained three appraisals: one from Catella (Annex 16 to the notification), one from OPAK (Annex 18 to the notification) and one from FIGA/Nortakst (Annex 21 to the notification).

— The valuation from Catella

Catella was engaged by the Municipality of Oslo on 14 March 2003 with a mandate to assess the market value of the apartments as a portfolio (all apartments sold at the same time to one buyer). The report was originally made in order to set up an opening balance sheet relating to the hospitals. The appraisal was to be finished by 30 March 2001. Catella stated that the appraisal was not in accordance with the rules of the Norwegian Appraisers Association (’Norges Takseringsforbund’) and was conducted in a superficial way. Catella came to the conclusion that the market value was NOK 1 143 Million.

The Municipality of Oslo referred to the fact that Akershus considered that the value calculated by Catella did not reflect market value. One reason for this was that Akershus considered that the stipulated rentals were too high and the estimated initial costs too low. In addition, the appraisal done by Catella had several other shortcomings, according to the Municipality of Oslo. These were:

— the report included real estate not included in the sale (Trondheimsveien 235, estimated value NOK 61 million),
— the valuation was based on the assumption that maximum rental was obtainable from the first day,

(11) The sentences read as follows in Norwegian: ‘Denne ”portøfaljefakt” følger ikke Norges Takseringsforbunds instruks for boligtaksering. Den er gjort på et generelt og relativt overfladisk grunnlag.’
— the impact of the ‘as-is’ clause in the sales contract was not assessed. An ‘as-is’ clause implies that the
buyer takes the entire risk as to the peculiarities of the apartments bought, and that he must rely on his
own examinations.

A second company, OPAK, was therefore asked to make a new appraisal.

— The valuation from OPAK

OPAK was engaged by the Municipality of Oslo to assess the apartments as a portfolio. The (first) appraisal
was dated 26 April 2001 and concluded that the market value was NOK 795 Million.

The estimated sales value was calculated as follows:

Net yearly rental income in net present value terms = NOK 835 Million
– Cost of upgrading the apartments = NOK 150 Million
+ Net present value of ‘up-side’ (sale after 10 years) = NOK 110 Million
= Sales value NOK 795 Million

An adjustment of the OPAK appraisal was requested by the Municipality of Oslo in order to reflect a
correction of the value of certain leases due to factual circumstances not considered in the original appraisal.
These factual corrections led OPAK to reduce the value of the assets to NOK 740 Million. The adjustments
were presented to the Municipality of Oslo on 14 May 2001.

— The valuation from FIGA and Nortakst DA

By letter dated 12 July 2001 from the Ministry of Trade and Industry to the Municipality of Oslo, the
Ministry requested the Municipality to initiate a new value assessment. The Ministry also stated that the
value assessment from OPAK did not fulfil the requirements of the State Aid Guidelines. The two firms
FIGA and Nortakst DA, forming a committee (hereinafter FIGA/Nortakst), were engaged by the Munici-
pality to carry out a new value assessment. The mandate for the assessment was agreed upon with the
Ministry of Trade and Industry. FIGA/Nortakst submitted its report on 26 April 2002 with the conclusion
that the market value of the apartments was NOK 1 055 Million.

FIGA/Nortakst used three different methods to assess the value of the portfolio as of 30 May 2001:
technical value, cash flow method and net capitalisation method. The results of the calculations based on
these three methods were:

Technical value: NOK 1 448 Million
Cash flow method: NOK 1 055 Million
Net capitalisation method: NOK 1 005 Million

FIGA/Nortakst concluded that the cash flow method reflected best what a potential investor would
be willing to pay for the portfolio. The conclusion was thus that the market value of the apartments was
NOK 1 055 Million.

In the letter from the Municipality of Oslo attached to the letter dated 7 February 2003 from the Ministry of
Trade and Industry, the Municipality contested whether this appraisal reflected the value of the apartments
and concluded that the appraisal from OPAK best reflected the market value.

(12) Sale of 40 000 m² (sectioning) after 10 years in net present value terms.
(13) The letter is enclosed as Annex 20 to the notification dated 7 February 2003.
(14) The sentence reads as follows in Norwegian: Verdivurderingen foretatt av OPAK kan slik vi ser det ikke sies å tilfredsstille de
krav som stilles til taket i ESA:s reningstiljer.
(15) The word ‘takstnemd’ is used in Norwegian.
2.4. Request for further information

By letter dated 9 April 2003 (Doc. No: 03-2133-D), the Authority requested further information. In this letter, the Competition and State Aid Directorate also expressed doubts about the compatibility of the sale with the State aid provisions of the EEA Agreement.

By letter from the Norwegian Mission to the European Union dated 5 June 2003, forwarding two letters dated 14 May 2003 from the Ministry of Trade and Industry and the Municipality of Oslo, respectively, received and registered by the Authority on 10 June 2003 (Doc. No: 03-3630-A), the Norwegian authorities submitted additional information. The same documents were sent by telefax dated 14 May 2003 from the Ministry of Trade and Industry, received and registered by the Authority on the same date (Doc. No: 03-3127-A).

The Ministry of Trade and Industry did not express any views in its letter dated 14 May 2003, but simply forwarded the letter from the Municipality of Oslo.

In the letter dated 14 May 2003 from the Municipality of Oslo, the Municipality referred to the unconditional bidding procedure (cf. Chapter 18B.2.1 of the State Aid Guidelines) and stated that: The Municipality will not argue that the procedure followed when the apartments were sold were in full compliance with the requirements set out in the Guidelines. The sale of the apartments was not made public in the way prescribed in clause 18B.2.1(a) of the Guidelines. However, the Municipality considered that the sale was carried out in a way that ensured attainment of the objective behind the provision.

As to Chapter 18B.2.2 of the State Aid Guidelines, sale without an unconditional bidding procedure (value assessment by independent expert), the Municipality maintained that the sale was conducted in compliance with this provision. Furthermore, the Municipality considered that the valuation carried out by OPAK (the value assessment used by the Municipality) was obtained prior to the sale negotiations and according to generally accepted market indicators and valuation standards.

Finally, ‘the Municipality cannot from the arguments presented by the Authority, see that the time pressure caused by the hospital reform is not relevant when assessing whether the price obtained for the apartments are below market value’.

3. The Decision to open the formal investigation procedure

On 11 July 2003, the Authority 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 (hereinafter ‘the formal investigation procedure’) with regard to the sale of the 1 744 rental apartments in Oslo (16). In the opening Decision, the Authority described the notification, the background of the case and the correspondence with the Norwegian authorities.

As to the reasons for opening the formal investigation, the Authority expressed doubts on several points as to whether the sale was in compliance with Article 61(1) of the EEA Agreement. Firstly, the Authority referred to the sales process and, taking into account that the sale was not advertised in accordance with the State Aid Guidelines, expressed doubts as to whether the Municipality of Oslo complied with the objectives behind the provisions of Chapter 18B.2.1 of the State Aid Guidelines (sale with an unconditional bidding procedure).

Secondly, concerning the valuations (Chapter 18B.2.2 of the State Aid Guidelines), the Authority expressed doubts as to whether the evaluation by OPAK (the evaluation used by the Municipality) was carried out prior to the sales negotiations, whether the evaluation was carried out on the basis of generally accepted market indicators and valuation standards and, taking into account the time constraint, whether a reasonable effort to sell the apartments at market value took place. Furthermore, the sales price agreed (and notified) was NOK 715 Million, while the result of a new value appraisal, as requested by the Ministry of Trade and Industry, was NOK 1 055 Million (FIGA/Nortakst). Taking into account the huge discrepancy between the two appraisals, the Authority expressed doubts as to whether the agreed sales price (NOK 715 Million) reflected the market value.

(16) See footnote 4.
Thirdly, the Authority referred to the fact that the Municipality argued that even if the price obtained were found to be below market value, the sale fell outside the scope of Article 61(1) of the EEA Agreement because the market in which Fredensborg was involved did not contain elements of cross-border trade. The Authority considered that the real estate market in Oslo was not limited to local undertakings and that Fredensborg was actually, or potentially, in competition with similar undertakings in Norway and other EEA States.

Fourthly, the Authority expressed doubts as to whether a sales price below market value could be justified on the basis of the market economy investor principle, i.e. that the Municipality behaved as any other private investor, taking into account the time constraint and the hospital reform initiated by the Government.

4. Comments to the opening decision from the Norwegian authorities

By letter dated 12 September 2003 from the Mission of Norway to the European Union, forwarding two letters dated 11 September 2003 from the Ministry of Trade and Industry and the Municipality of Oslo, respectively, all received and registered by the Authority on 15 September 2003 (Doc. No: 03-6307-A), the Norwegian authorities submitted their comments to the opening decision. The same letters were sent by telefax dated 11 September 2003 from the Ministry of Trade and Industry, received and registered by the Authority on the same date (Doc. No: 03-6201-A).

The letter from the Ministry of Trade and Industry dated 11 September 2003 did not express any views on the case, but only referred to the letter from the Municipality of Oslo.

The Municipality of Oslo referred to its previous arguments and maintained, firstly, that the objectives behind the provisions of Chapter 18B.2.1, Sale through an unconditional bidding procedure, of the State aid Guidelines, were obtained despite that the sale was not made public in the way prescribed in the Guidelines. The Municipality argued that all potential buyers established in Norway had been informed of the forthcoming sale and that there was little interest in investing in the Norwegian housing rental market among investors not already established in Norway.

Secondly, the Municipality argued that the value assessment by OPAK complied with the procedural requirements of Chapter 18B.2.2, Sale without an unconditional bidding procedure, of the State Aid Guidelines. That implied i.a. that the Municipality considered that the evaluation by OPAK was carried out 'in order to establish the market value on the basis of generally accepted market indicators and valuation standards' and that the evaluation was carried out 'prior to the sale negotiations'. The Municipality furthermore argued that the difference between the sales price (NOK 715 Million) and the OPAK evaluation (NOK 740 Million) was in line with Chapter 18B.2.2(b), 'Margin', of the State Aid Guidelines (17).

Thirdly, the Municipality considered that there were grounds for being very sceptical about the new value appraisal from FIGA/Nortakst, which concluded that the value was NOK 1 055 Million. The Municipality stated that FIGA/Nortakst based its appraisal on an annual price increase for the property over the next 10 years of 4 %, while the prices fell by 5.2 % from the 2nd quarter 2002 to the 2nd quarter 2003. The Municipality considered that the FIGA/Nortakst assessment could not be relied upon.

Fourthly, the Municipality could ‘not see that the Authority has defined the relevant market for rental homes and how this leads the Authority to their conclusion that Fredensborg Boligutleie ANS is actually or potentially in competition with similar undertakings in Norway or other EEA States’.

(17) Chapter 18B.2.2(b) states i.a. that: ‘If, after a reasonable effort to sell the land and buildings at the market value, it is clear that the value set by the valuer cannot be obtained, a divergence of up to 5 % from that value can be deemed to be in line with market conditions’. 

5. Comments from third parties

The Decision to open the formal investigation procedure was published on 4 December 2003. The Authority received one comment from third parties to the opening decision. By letter dated 19 December 2003, received and registered by the Authority on 5 January 2004 (Doc No: 03-8980 A), Fredensborg (the buyer) submitted comments. Fredensborg referred to a previous letter dated 18 February 2003, received and registered by the Authority on 20 February 2003 (Doc. No: 03-1040 A), whereby two new value assessments were submitted. These were:

— The report by BER, Bygg og eiendomsrevisjon AS

BER, Bygg og eiendomsrevisjon AS (hereinafter BER), represented by Mr. Arnt K. Svendsen, was asked by Fredensborg to give their assessment of the value of the portfolio, and to comment upon the valuations from Catella, OPAK and FIGA. The report from BER was submitted on 13 January 2003.

BER’s assessment was based on three different scenarios:

- Return on investment value based on rental housing: NOK 630.0 Million
- Return on investment based on rental for 10 years, thereafter individual sales over a three year period: NOK 796.5 Million
- Same as above, but sale of all apartments individually in year 11: NOK 851.5 Million

Average: NOK 759.3 Million

BER concluded that the market value was in the range between NOK 700-800 Million.

BER also assessed the three previous assessments by Catella, OPAK and FIGA. The assessment by Catella was, according to BER, a theoretic value based on the assumption that the apartments were let out at market price from day one. The OPAK assessment did not take into account that rentals were half of the regular market price at the time of the bid, according to BER. Furthermore, the future loss due to current contracts below market price was not taken into account in the calculations. Neither were rental losses during rehabilitation phase calculated. No project risks or gains had been incorporated in the estimates. According to BER, the FIGA/Nortakst appraisal was also a theoretic ‘going concern’ value assessment. No project risks or gains had been taken into account. This did not reflect the way bidders normally act in this type of market. The technical standard of the objects, rental losses during the rehabilitation phase, etc. had not been calculated.

— The report by Agdestein Takst & Eiendomsrådgivning AS

Agdestein Takst & Eiendomsrådgivning AS (hereinafter Agdestein), represented by Mr. Pål Agdestein, was asked, in November 2002, by Fredensborg to analyse and comment on the three valuations mentioned above and to give his view on the market value of the portfolio. Mr. Agdestein was previously employed by Catella, and responsible for the report submitted by that firm. Agdestein submitted his report to Fredensborg on 17 February 2003.

Agdestein commented in detail on the three previous reports and found several assumptions that, in his view, should be corrected. Based on new ‘corrected’ assumptions, Agdestein found that the adjusted value in the Catella report was NOK 744 Million, in the OPAK report NOK 560 Million and in the FIGA/Nortakst report NOK 560 Million (or 760 NOK Million if the value of the sectioning was kept at NOK 200 Million) (18).

Agdestein concluded that the market value of the portfolio (in May 2001) was between NOK 670 Million and NOK 800 Million.

(18) Sectioning means that the apartments are put up for sale instead of letting them.
As the price paid by Fredensborg was in the mid-range of all the value assessments, Fredensborg considered that this supported the view that Fredensborg had paid the market price. Fredensborg considered it important ‘to stress the difference between a theoretic best case “value” considering the successful implementation and carrying out of a real-estate project and an investor’s willingness to enter into a specific project that to a large extent involves a project risk.’ Fredensborg considered that this project risk was not taken into account in the FIGA/Nortakst or Catella appraisals.

6. Comments from the Norwegian authorities to the third party comments

By letter dated 5 March 2004 (Event No: 258313), the Authority submitted the comments from Fredensborg to the Norwegian authorities, and invited them to reply within one month.

By letter dated 23 March 2004 from the Mission of Norway to the European Union, forwarding a letter dated 22 March 2004 from the Ministry of Trade and Industry, both received and registered on 24 March 2004 (Event No: 260564), the Norwegian authorities asked the Authority to accept that the Norwegian comments will be submitted by 10 May 2004’. The Norwegian authorities referred to a pending conciliation between the Ministry of Health and the Municipality of Oslo regarding the ownership of the apartments. The letter dated 22 March 2004 from the Ministry of Trade and Industry was also sent by telefax dated 22 March 2004, received and registered on the same date (Event No: 260191).

By letter dated 25 March 2004, the Authority agreed to extend the deadline until 10 May 2004 (Event No: 260732).

By telefax dated 23 April 2004 from the Ministry of Trade and Industry, received and registered on the same date (Event No: 279122), the Ministry submitted a copy of the agreement (Protokoll) between the Municipality of Oslo and the Norwegian State concerning the ownership of the hospital apartments.

By letter dated 13 May 2004 from the Mission of Norway to the European Union, forwarding a letter dated 10 May 2004 from the Ministry of Trade and Industry, both received and registered on 15 May 2004 (Event No: 281488), the Norwegian authorities stated that they did ‘not have any comments to the third party comment received by the Authority’. The letter dated 10 May 2004 from the Ministry of Trade and Industry was also sent by telefax dated 10 May 2004, received and registered on 11 May 2004 (Event No: 281014).

7. Expert report from Eirik Holm AS

In 2004, the Authority engaged Eirik Holm AS (hereinafter Holm) with the purpose of carrying out a study regarding the market value of the 1 744 apartments sold by the Municipality of Oslo. The contract referred to the fact that the Authority in the course of the proceedings had received 5 valuations/reports, but that the conclusions in these reports deviated from each other to such an extent that the Authority was still in doubt as to whether the sales price of NOK 715 Million reflected the market value. The Authority therefore wanted to clarify whether or not the previous valuations/estimates of value were based on generally accepted principles for the valuation of fixed property and the degree to which the presumptions and discretion used in the calculations were reasonable. The Authority also wanted an assessment on the question as to whether the manner in which the sales process was executed had influenced the sales price.

Holm is an independent Chartered Engineer with long experience of the real estate market in Oslo. In the execution of the contract, Holm engaged the services of Chartered Engineer Trygve Fossen and Engineer Sven P. Meyer, both of whom are experienced assessors with long practice. In addition, Lawyer Johan Hveding of the law company Grette DA, assisted in connection with questions concerning the rental contracts.
The report from Holm dated 24 February 2005 was received and registered by the Authority on 1 March 2005 (Event No: 311859).

7.1. The previous value assessments/reports

Holm's study of the five earlier assessments/reports showed i.a. partially deviating methods of calculation, differing estimates of both market rent rates, refurbishing costs/requirements, and the potential gains from sectioning. Holm also found direct factual errors, omissions of information and generally superficial examinations/surveys of the properties. After making corrections for obvious factual errors, there were still wide gaps between the valuations, that were attributed to differing in assessments and applied opinions. Holm expressed that this is not in itself unusual in cases where there is more than one valuation. He expressed that the deviations could be expected to be more pronounced in the case at hand than in other cases as there was a particularly unique portfolio put up for sale with no historic reference material anywhere in the country. Holm therefore concluded that: ‘The result of this is that the useful application of the valuations in the context in which they are envisaged to be applied is limited’. His conclusions concerning the different appraisals in relation to his own findings and assumptions are as follows:

— The Catella appraisal
Catella has carried out a superficial inspection in connection with an earlier valuation (1999-2000). The new valuation must be seen as an updating of the earlier valuation. An external inspection was carried out with random sampling of inside areas. A thorough inspection/assessment should in Holm's opinion have been carried out in order to provide a better basis for the valuation. Holm concluded that the result of the valuation was much too high. That was due i.a. to the fact that: the assumed market level for letting, in his view, was about 10 % too high; that Catella has ignored current rent contracts and has not taken into account that actual rents would be well below the market rates for a number of years; that Catella has been over-optimistic in relation to the number of apartments let out at anytime (there would always be vacancies due to change of tenants etc.); that initial refurbishment costs were too low (approximately NOK 60 Million). Holm also refers to a property which was included but later withdrawn from the portfolio and that Catella has not taken into account worth-reducing limitations of the ‘as-is’ clause in the contract.

— The OPAK appraisal
OPAK has inspected the majority of the buildings externally, but has only inspected ten flats/bed-sitters. This was in Holm's view insufficient to estimate the correct figures for refurbishments and maintenance. It is Holm's opinion that all the properties should have been inspected, and a more thorough inspection of the internal areas should have been carried out to attain a better basis on which to calculate the estimate. Holm concluded i.a. that the market rents were underestimated. On the contrary, OPAK did not take into account that there were limitations as to how fast rents could be brought up to market level. Assessment of value potential because of sectioning was based on too small a saleable area with added worth too low as a result, and initial refurbishment costs were approximately NOK 30 million too low. Holm concludes that these items influenced the valuation both positively and negatively and it was thus difficult to estimate the net effect.

— The FIGA/Nortakst appraisal
Holm referred to the fact that it was stated that FIGA/Nortakst had carried out inspections/surveys of a sufficient number of flats to be able to complete their commission. However, no information has been provided as to the extent and scope of the inspections/surveys. Holm holds forth, in particular, that the estimates of potential gains from sectioning were largely overestimated as the method of calculation of the sectioning value was unacceptable, among other things, based on technical value and due to assumptions on high annual rise in sales worth. Holm states that he finds ‘these calculations to be irrelevant for the sales value and the sectioning potential.’ Furthermore he points out that rent revenues from two buildings were wrongly included up to 2008; market rent rates that were a little too high have been used in the calculations without taking necessary refurbishment costs into consideration. (Holm has estimated these costs to be considerably higher than FIGA/Nortakst); it was unrealistic to calculate with the sale of all the dwellings (flats) in a single year; and the ‘as- is’ clause in the contracts has not been afforded any value-reducing influence. The sum of these factors indicates a stipulation of market value that was far too high.
BER

BER has not inspected or surveyed the properties, but bases its conclusions on the assessments and valuations already presented by Catella, OPAK and FIGA/Nortakst together with the application of own expertise. Holm’s conclusions on the BER report are as follows: owner's operating costs were too high; BER has not carried out own inspections/surveys of the properties which can have an effect on both the cost estimate of initial refurbishing and for stipulating the market rent rate; BER has used wrong figures for current rent revenues (NOK 56 Million instead of NOK 42.5 Million per annum); insufficient time has been allowed for increasing current rent rates to market levels. The sum of these discrepancies resulted in a worth estimate that was too high, mainly due to the rent revenue flow being too high.

Agdestein

Mr. Agdestein, who was previously in the employ of Catella and responsible for valuations/assessments at that time, has in Holm’s view provided a comprehensive report on the valuations/assessments provided by Catella, OPAK and FIGA/Nortakst. In his comments on the various valuations/assessments Agdestein has provided an estimate of corrections he feels should be made in order to arrive at a more correct result that those given in the submitted valuations/assessments. These corrections reflected both factual errors that may be due to information not available at the time of valuation, insufficient regard taken of the actual situation, direct errors and mistakes etc. and larger and smaller deviations in comparison to Agdestein's own estimates. Holm considered this to be a blend of objective and concrete corrections and more subjective stipulations and estimates.

7.2. Holm's own assessment of the market value of the portfolio

Holm's assessment has been based on all the documents that have been submitted to the Authority by the Norwegian authorities. The Municipality's tabular overview of the properties, which forms part of the sales prospectus and the sales contract, has been the main basis for data about the properties. In addition, Holm has received information about the rental contracts for buildings related to two of the hospitals (Ullevål and Aker), in particular the number of non time-limited contracts.

In order to be able to stipulate the technical condition of the buildings and the need for rehabilitation as precisely as possible, external and internal inspections/surveys have been carried out on all buildings together with hospital staff. Approximately 70 flats of all types and in varying condition have been inspected. Further, rental statistics and sales statistics have been obtained for 2001, which have formed the basis for the assessment of market rent levels and the calculation of the potential for sectioning. All assessments, calculations and estimates have, to the degree this was possible, been based on the 1st quarter of 2001 without taking later price and market developments into consideration.

Holm's assessment of the portfolio showed a resulting valuation of NOK 752 772 286. The result was arrived at as follows (all amounts are discounted to 2001 values):

Worth created through rent revenues mid 2001 to mid 2011: NOK 465 882 460
+ Net worth of sectioning and rent revenues in 2001: NOK 470 676 826
− Deductions for liens and contractual limitations: NOK 30 000 000
− Deductions for initial refurbishments during the period 2001-2005: NOK 153 787 000
= Total value of the portfolio: NOK 752 772 286

Holm's calculations are i.a. based on that the Municipality's pre-emptive rights to rent means that the portfolio must be considered to be a letting object throughout the whole of the ten-year period from 2001 onwards, while the portfolio will be sold (sectioning) over a three-year period after 2011.
The worth created through rent revenues from mid 2001 to mid 2011 is the capitalised worth of the estimated real net revenues for each year up to 2011. These revenues are foreseen to increase year-by-year and to achieve market rents for all leases in 2011. The increase is a combination of an increase in the percentage of letting to 95% (defined as fully let), an increase to the market rate in 2005 for time-limited contracts, an increase in mean average level rents in 2006, and market rents in 2011 for non time-limited contracts. Allowance has been made for some non-lets in connection with refurbishment of the dwellings.

The net worth of sectioning and rent revenues in 2001 is made up of three components: a) sectioning/sales value in 2011. This worth arises in the years 2011-2014 and is written back to 2001, b) the capitalised worth of the further rent revenue flow from the non-sectioned areas, written back to 2001 and c) deductions for refurbishment/upgrading costs necessary to achieve the required standard for sectioning, carried out in the years 2011-2013 and written back to 2001.

Deductions for liens and contractual limitations are related to paragraph 8 — the 'as-is' clause — in the contract between the Municipality of Oslo and Fredensborg. Holm considered that this represented a risk to the buyer. This applies, in particular, in connection with information that is found in the municipal system concerning the properties, but has not come to the knowledge of the buyer, such as rent contracts, rent revenues and area specifications, and not least the technical condition of the buildings. Holm found it reasonable to assume that the 'as-is' clause has a certain financial influence. Seen in relationship to the size of the portfolio, Holm stipulated the worth deduction in this connection at NOK 30 Million, i.e. in the region of 4% of the estimated value of the portfolio.

Deductions for initial refurbishment costs during the period 2001-2005 were costs for work necessary to undertake to be able to let out the dwellings at market rents. The costs arose in the years 2001-2005 and were discounted to 2001 values.

Holm has also conducted a 'sensitivity analysis' to see how different assumptions would influence the price. The analysis i.a. shows that if the estimated price per m² of flats to be sold in ten years time after acquisition was NOK 24 000 and not NOK 26 000 as assumed for the purpose of calculating the value, this 'adjustment' alone would result in a portfolio worth 720 million instead of 753 million. A further downrating of for example 2% of the rent revenues, would result in a worth under that of the achieved sales price. Holm's conclusion is therefore that the achieved sales price of NOK 715 Million is so close to his evaluation of worth that in the light of the margins of uncertainty it can be said to represent the 'correct price' i.e. the market price.

Holm has also studied the sales process and how the way it was conducted influenced the sales price. Holm i.a. considered that the Authority's guidelines had not been strictly adhered to, and it is in particular the short implementation period and the limited initial market exposure that is in question. However, Holm concluded i.a. that: 'All things considered, we are of the opinion that the seller has had a sufficient number of interested parties on the playing field to achieve genuine bidding and a "correct and fair" price. There are however no absolute truths in this matter. A sale executed two months prior to or after the fact could have produced a totally different result. The individual buyer's interest in and will to acquire the object is the final decider where price is concerned, but motivation can, as is well known, vary.

It must be said that a higher price could in all likelihood been achieved by selling the properties as individual units. In this scenario, the seller would have been forced to pace the release of the properties in accordance with what the market could absorb of residential blocks, and would thus have had a totally different horizon regarding revenues. We consider this to be purely theoretical, and have thus not delved deeper into the option.

In conclusion we would say that the seller has in all probability achieved the sales price in a real bidding competition in the Norwegian market, i.e. close to what one can call a correct and fair price. There is per definition no definable market price for a portfolio of this type in that there is no previous history of sales to refer to. The price achieved must therefore to all intents and purposes be deemed to be the market price.'
8. Final correspondence with the Norwegian authorities

By letter dated 22 December 2004 (Event No: 303758), the Authority requested additional information from the Norwegian authorities concerning the conciliation process between the State and the Municipality of Oslo, the views of the Norwegian authorities regarding whether the sale contained state aid and more detailed information concerning the sales process. The Authority also informed the Norwegian authorities that it had engaged an independent expert, Eirik Holm AS, to assess i.a. the previous value assessments. The Authority also asked the Norwegian authorities to agree to an extension of the deadline for taking a final decision until the end of February 2005.

By letter from the Mission of Norway to the EU dated 13 January 2005, forwarding two letters dated 10 January 2005 from the Ministry of Modernisation and the Ministry of Health and Care Services, respectively, received and registered by the Authority on 14 January 2005 (Event No: 305352), the Norwegian authorities submitted additional information. The Norwegian authorities agreed to an extension of the deadline for taking a final decision until the end of February 2005. The letters from the Ministry of Modernisation and the Ministry of Health and Care Services were also sent by telefax dated 10 January 2005 (Event No: 304852).

By letter dated 25 February 2005 to the Norwegian authorities (Event No: 311394), the Authority asked for an extension of the deadline for taking a final decision until 11 March 2005.

By telefax dated 7 March 2005 from the Ministry of Modernisation (Event No: 312289), the Norwegian authorities agreed to an extension of the deadline for taking a final decision until 11 March 2005.

II. APPRECIATION

1. Introduction

As mentioned above, the Norwegian authorities notified to the Authority the sale of 1,744 rental apartments from the Municipality of Oslo to Fredensborg at a price of NOK 715 Million (approximately EUR 89 Million). The Authority decided to open the formal investigation procedure with regard to the sale and called on interested parties to submit their comments.

By reference to Chapter 18B of the State Aid Guidelines, the Authority doubted that the sale had taken place in such a way that the existence of state aid automatically could be excluded. Furthermore, assessed values of the properties diverged to a substantial degree and gave reasons to doubt that the agreed sales price reflected the market price.

2. The sales process

Chapter 18B, ‘State aid elements on sales of land and buildings by public Authorities’, of the State Aid Guidelines, describes two sales procedures that allow EFTA States to handle sales of land and buildings in a way that automatically precludes the existence of state aid. The two procedures are described, respectively, in Chapter 18B.2.1 (unconditional bidding procedure) and Chapter 18B.2.2 (independent expert evaluation).

2.1. Unconditional bidding procedure

In Chapter 18B.2.1(1) of the Guidelines, it is stated that ‘A sale of land and buildings following a sufficiently well-publicized, open and unconditional bidding procedure, comparable to an auction, accepting the best or only bid, is by definition at market value and consequently does not contain State aid. The fact that a different valuation of the land and buildings existed prior to the bidding procedure, e.g. for accounting purposes or to provide a proposed initial minimum bid, is irrelevant’. 
An offer is “sufficiently well-publicized” when it is repeatedly advertised over a reasonably long period (two months or more) in the national press, estate gazettes or other appropriate publications and through real-estate agents addressing a broad range of potential buyers, so that it can come to the notice of all potential buyers. The intended sale of land and buildings, which in view of their high value or other features may attract investors operating on a Europe-wide or international scale, should be announced in publications which have a regular international circulation. Such offers should also be made known through agents addressing clients on a Europe-wide or international scale.

The sales process of the apartments did not comply with the above cited provisions on the unconditional bidding procedure. The offer was not “repeatedly advertised for a reasonably long period (two months or more).” Furthermore, it cannot be excluded that a sale of the size as in the case at hand could attract investors operating on a Europe-wide or international scale. No announcements were made in publications with a regular international circulation and no offer was made known through agents addressing clients on a Europe-wide or international scale.

The Municipality of Oslo has itself stated (letter of 14 May 2003) that: ‘The Municipality will not argue that the procedure followed when the apartments were sold were in full compliance with the requirements set out in the Guidelines. The sale of the apartments was not made public in the way prescribed in clause 18B.2.1(a) of the Guidelines, and in an earlier correspondence (see point I.1 and footnote 10 above; see also similar statements of the Municipality under point 2.1 above), that the time constraint under which the sales procedure was conducted might have resulted in a smaller number of bidders than desirable and that the bidders submitted lower bids than they might have done with more time at their disposal.

On the basis of these various factors, the Authority concludes that the sales process was not conducted according to the principles laid down in Chapter 18B.2.1 of the State Aid Guidelines.

2.2. Sale without an unconditional bidding procedure (independent expert evaluation)

Concerning sale without an unconditional bidding procedure, Chapter 18B.2.2, of the State Aid Guidelines provides that ‘an independent evaluation should be carried out by one or more independent asset valuers prior to the sale 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 upon without granting state aid’, and furthermore:

‘“Market value means the price at which land and buildings could be sold under private contract between a willing seller and an arm’s length buyer on the date of valuation, it being assumed that the property is publicly exposed to the market, that market conditions permit orderly disposal and that a normal period, having regard to the nature of the property, is available for the negotiations of the sale.”

Finally, Chapter 18B.2.2, provides that: ‘If, after a reasonable effort to sell the land and buildings at the market value, it is clear that the value set by the valuer cannot be obtained, a divergence of up to 5 % from that value can be deemed to be in line with market conditions’.

It seems that the Municipality of Oslo claims that the sale was conducted in compliance with the above cited provisions.

The Authority disagrees with this view, for the following reasons: First, none of the expert evaluations, which were carried out prior to the final sale (i.e. the Catella and the OPAK reports), were based on generally accepted market indicators and valuation standards or were made in sufficient time prior to the sales negotiations (on these points see below under point 3.1). Second, none of the established market values in the Catella and OPAK reports were taken as the minimum purchase price for the final sale. Third, the Norwegian authorities have not substantiated the claim that they had undertaken reasonable efforts to sell the apartments at the values established in these reports, which would have justified a reduction in the sales price of 5 %.
Hence, the sale was not carried out in accordance with the provisions of Chapter 18B.2.2. of the State Aid Guidelines.

2.3. Procedure when aid cannot automatically be excluded

The conclusion is thus that neither the unconditional bidding procedure nor the procedure based on an independent expert evaluation were complied with. Therefore, the existence of state aid cannot be excluded. However, one cannot draw the opposite conclusion that state aid is necessarily involved if the prescribed procedures were not followed. It could still be that the sales price would be considered to reflect a true market value.

The Guidelines provide that when the prescribed procedures are not followed, the state concerned should notify the sale to the Authority to allow it to establish whether state aid exists. The Norwegian authorities have notified the sale. It is up to the Authority to conclude whether the sale of the 1,744 hospital apartments in Oslo contained any state aid. In other words, the Authority has to assess whether the sales price of NOK 715 Million can be considered to reflect the market value of the properties or not.

3. Article 61(1) of the EEA Agreement

For a measure to be state aid in the meaning of the EEA Agreement it has to fulfil the conditions of Article 61(1) of the Agreement which 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.’

This implies that the following conditions have to be fulfilled cumulatively:

1. the aid is granted by 'EC Member States, EFTA States or through State resources in any form whatsoever';

2. the aid ‘distorts or threatens to distort competition’;

3. the aid ‘favours certain undertakings or the production of certain goods’ (i.e. the measure confers an advantage on a specific recipient); and

4. the aid ‘affects trade between the Contracting Parties’.

Condition 1 above is directed at all aid financed from public resources, including aid granted by regional or local bodies. The notion of state resources is very broad and includes i.a. financial assistance granted by regional and local authorities (19). It is thus clear that any aid from the Municipality of Oslo would fall within the notion of ‘State resources’. A sale by the Municipality of publicly owned land and buildings below market value, presuming that the other three conditions of Article 61(1) are also fulfilled, implies that state aid would be granted to the buyer.

In the case at hand, any aid granted to Fredensborg would favour that undertaking and would thereby be specific. Furthermore, in order to be classified as state aid, the sale of the apartments must have conferred an advantage on Fredensborg. The sale would entail an advantage and thereby imply state aid if the apartments were sold under market value. Only to the extent the sale to Fredensborg was carried out below market value, would it also be necessary to establish that competition was distorted and that trade between Contracting parties was affected.

3.1. Did the final purchase price reflect market value?

Several value assessments exist, which arrive at different results, concerning the market value of the apartments. The lowest indicated price is NOK 670 Million and the highest is NOK 1 143 Million. In light of these diverging results, the Authority considers it necessary to assess these evaluations in some detail, in order to establish, which one of these evaluations best reflects the market value of the apartments.

**Catella**

The first appraisal by Catella delivered on 30 March 2001, established a value of NOK 1 143 Million. According to the Municipality, this appraisal included real estate which was not covered by the sale. This aspect inflated the final value. As far as the Catella evaluation is concerned, the Authority also notes that inspection of the properties appears to have been rather superficial in relation to an earlier evaluation which, amongst others, may have lead to an underestimation of costs for renovation. Furthermore, contractual obligations that limit the possibilities for rent increases have not been sufficiently taken into consideration with the result that revenues are under-estimated. Catella itself stated that the valuation was not in accordance with established valuation standards. According to the sales agent, Akershus Eiendom, as well as the Municipality of Oslo, the estimated value could not be considered to reflect the market value. The Authority concurs with this. Furthermore, the impact of the ‘as-is’ clause was not assessed in the Catella appraisal. In light of these shortcomings, the Authority concludes that the Catella appraisal cannot be used as a sufficiently sound basis to establish the market value.

**OPAK**

The second appraisal carried out by OPAK and delivered on 26 April 2001, estimated the value at NOK 795 Million. It is important to note that although OPAK inspected the majority of the buildings externally, not all buildings were inspected. Furthermore, OPAK only inspected 10 out of 1 744 apartments. With respect to OPAK’s evaluation, it has already been pointed out above that an inadequate inspection of the properties, not all the buildings and only 10 out of 1 744 apartments were inspected, cannot be considered to represent a proper basis for a value assessment. This is insufficient to estimate the correct figures for refurbishment and maintenance. Moreover, certain contractual limitations on obligations have not been taken sufficiently into account. While some of these elements may offset each other, the Authority cannot conclude that OPAK’s evaluation is based on sufficiently accurate assumptions. Finally, the revised OPAK appraisal was concluded at the time when the contract was already signed.

**FIGA/Nortakst**

With respect to the FIGA/Nortakst assessment, it appears that inspection of properties has been adequate, although it is not apparent when reading the report. The estimation of the gain by a later sectioning of the apartments appears to be largely overestimated for several reasons. Sales prices are based on so-called technical values (costs of new buildings with deductions for age and usage) and not on established market rent. It is unreasonable to assume that prices on second hand apartments will be as high as those based on calculations of technical value. Furthermore, technical values are inflated in the sense that they are assumed to increase faster than reasonable assumptions for inflation. No reduction has been made with respect to the ‘as is’ clause in the contract. In addition, certain current rents are overestimated according to what current lease contracts provide for. Refurbishing costs appear to be substantially under-estimated and it seems also unrealistic to expect that all apartments can be sold in a single year. On this basis, the Authority questions to what extent the FIGA/Nortakst appraisal reflects the market value.

**BER**

In the Authority’s view, BER has, like some of the other assessors, not taken sufficiently into account that it will take time to adjust rents up to market rents and it has overestimated the actual rent for 2001. This factor may, however, be partially offset by a relatively high estimate for owners’ operating costs. BER has not undertaken any inspections of the properties. Therefore, this report also casts doubts as to whether the concluded market value is sufficiently reliable.
Agdestein

Agdestein did not carry out any inspections of the properties but studied the other valuations carried out by Catella (where he was engaged in the value appraisal), OPAK and FIGA/Nortakst. In his comments to these reports, he has pointed to various weaknesses, like direct mistakes but also to information which was not available at the time of the other valuations.

Holm

Holm estimates the market value of the apartments to be approximately NOK 753 Million. Holm has inspected all properties both externally and internally. Some 70 flats throughout the portfolio were inspected together with staff from the hospitals and information was obtained from operational staff. As minimum maintenance had been carried out in the period from 2001 until the inspection took place in early January 2005, Holm deems the information gathered to be representative for the situation in 2001. Detailed cost estimations have been undertaken in relation to upgrading (windows, balconies, bathrooms, etc.). Assumptions on rent developments and economic potential for sectioning and sale of part of the portfolio in the future appear reasonable amongst others in relation to contractual factors related to leases and future developments of the housing market. The method for calculating present value of future income and expenditure flows are based on well established principles and on use of a discount factor close to what has been used in the other value appraisals. The Authority sees no reason to question the methodology applied by Holm nor the assumptions used to establish the market value, keeping in mind that there are always uncertainties attached to such assumptions.

3.2. Can it be established that the final sales price was under market value?

In light of the above, it cannot be concluded that one single estimate by definition represents the market value a buyer would be ready to accept. An acceptable market value, after testing the market, may rather be found within a reasonable margin. In the Authority’s view, there is no evident answer to how wide such a margin should be. That would possibly be different from case to case. It needs to be borne in mind that the transaction at hand implied certain particularities with respect to the size of the sales object, contractual obligations, future sectioning and sale of apartments.

As shown above, value assessments as in the case at hand are based on a number of uncertain parameters. This is illustrated, amongst others, by a sensitivity analysis to which Holm referred to. This sensitivity analysis demonstrates how different assumptions can substantially influence the price.

The sensitivity analysis shows that if the estimated price per m² of flats to be sold in ten years time after acquisition was NOK 24 000 and not NOK 26 000 as assumed for the purpose of calculating the value, this ‘adjustment’ alone would result in a portfolio worth of 720 Millions instead of 753 Millions. A change of 50 basis points in the required yield, would be of the same magnitude. A further down rating of for example 2 % of the rent revenues, would result in a worth under that of the achieved sales price.

In light of these uncertainties, it is not possible to pinpoint with a sufficient degree of reliance an aid element in the transaction. That the final sales price could be within a reasonable margin is further demonstrated by the bidding procedure that was organised by the Municipality of Oslo and conducted by Akershus. Six companies were contacted and another nine companies contacted Akershus on their own initiatives. Six offers were submitted. Among the bidders were professional investors and real estate companies. The two final offers were made at NOK 690 Million and NOK 735 Million. Although the bidding procedure was not in compliance with the State Aid Guidelines (see above), it still provides certain guidance as to what the Norwegian market would be willing to offer for such a real estate object. This ‘market test’ and its outcome demonstrate to a certain degree the reasonable margin in which the market price can be placed.

Hence, the Authority considers that the sales price of NOK 715 million for the sales object at hand is within a reasonable range in relation to Holm’s assessed value of NOK 753 Million.
4. Conclusion

The Authority cannot establish that the sale of 1,744 hospital apartments from the Municipality of Oslo to Fredensborg involved state aid within the meaning of Article 61(1) of the EEA Agreement.

The Municipality of Oslo has argued that even if the price obtained was found to be below market value, the sale would not constitute aid within the meaning of Article 61(1) of the EEA Agreement as the market in which Fredensborg operates does not contain elements of cross-border trade. Given the Authority’s conclusion that it cannot be established that market value was not obtained in the sale at hand, the Authority sees no reason to discuss effects on trade and competition,

HAS ADOPTED THIS DECISION:

1. The conditions of the proposed sale of 1,744 rental apartments from the Municipality of Oslo to Fredensborg Boligutleie ÅNS do not constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

2. The formal investigation is hereby closed.

3. This Decision is addressed to Norway.

4. This Decision is authentic in the English language.


For the EFTA Surveillance Authority

Hannes HAFSTEIN  Einar M. BULL
President  College Member