

EFTA SURVEILLANCE AUTHORITY DECISION**No 167/08/COL****of 12 March 2008****concerning alleged unlawful State aid to the undertaking Troms Tre AS (Norway)**

THE EFTA SURVEILLANCE AUTHORITY ⁽¹⁾,

HAVING REGARD to the Agreement on the European Economic Area ⁽²⁾, in particular to Articles 61 to 63, and to Protocols 3 and 26 thereof,

HAVING REGARD to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ⁽³⁾, in particular to Articles 5 and 24 thereof,

Whereas:

1. Procedure

By letter dated 20 June 2005, the EFTA Surveillance Authority received a complaint from the Norwegian law firm Selmer ⁽⁴⁾ on behalf of an anonymous client concerning alleged illegal State aid to the undertaking Troms Tre AS ⁽⁵⁾, a producer of various construction products made of wood. The letter was received and registered by the Authority on 24 June 2005 (Event No 323812).

By letter dated 1 July 2005, the Authority forwarded the complaint to the Norwegian authorities (Event No 324515).

By letter dated 20 September 2005, the Norwegian authorities responded to the allegations in the complaint by claiming that the contested capital injections did not constitute State aid. The letter was received and registered by the Authority on 21 September 2005 (Event No 334843).

By letter dated 21 November 2005, the complainant informed the Authority that Troms Tre had declared itself bankrupt on 10 November 2005, and that the estate had been put into administration by the Court on 11 November 2005. The complainant claimed that the bankruptcy did not affect the assessment of the subject matter of the complaint, and upheld its complaint. The letter was received and registered by the Authority on 23 November 2005 (Event No 351088).

By letter dated 10 February 2006 (Event No 362331), the Authority sent a request for information to the Norwegian authorities for more information regarding the estate and the timing of the bankruptcy proceedings.

The Norwegian authorities replied by letter dated 17 March 2006, informing the Authority that the bankruptcy proceedings would not be finalised before the end of 2006. The letter was received and registered by the Authority on 20 March 2006 (Event No 367142).

By letter dated 18 July 2007 (Event No 424054), the Authority sent a new request for information to the Norwegian authorities to obtain information on the settlement of the bankruptcy proceedings. In addition, the Authority requested information on the purchaser of the assets of Troms Tre and any possible refinancing of the undertaking.

By letter dated 20 August 2007, the Norwegian authorities informed the Authority of the result of the bankruptcy proceedings. The letter was received and registered by the Authority on 20 August 2007 (Event No 434867).

By letter dated 4 December 2007, the complainant withdrew the complaint, inter alia on the basis of the bankruptcy of the alleged aid recipient. The letter was received and registered by the Authority on 6 December 2007 (Event No 456318).

2. The recipient of alleged aid

Troms Tre was established in 1972 under the name Troms Treforedling. In the complaint, the undertaking is described as an undertaking active in the production and sale of building materials, in particular particle boards for construction purposes. The annual turnover was NOK 55-65 million (approximately EUR 6,9-8,1 million).

The majority of the shares in the undertaking were held by public authorities on different levels. The largest shareholder was Troms County Municipality, with approximately 40 % of the shares in the company. Other shareholders included the municipality of Sørreisa, the State-owned company Statskog SF, Troms Kraft, an electricity company owned by Troms County Municipality, and two organisations for private forest owners in the area, skogeierforening Nord BA and Troms Skogsselskap.

⁽¹⁾ Hereinafter referred to as 'the Authority'.

⁽²⁾ Hereinafter referred to as 'the EEA Agreement'.

⁽³⁾ Hereinafter referred to as 'the Surveillance and Court Agreement'.

⁽⁴⁾ Hereinafter referred to as 'the complainant'.

⁽⁵⁾ Hereinafter referred to as 'Troms Tre'.

On 10 November 2005, Troms Tre declared itself bankrupt. The activities of the undertaking did not generate any profits, and it declared that it was unable to pay its debts. The estate was put into administration by the Court on 11 November 2005.

The bankruptcy proceedings were terminated and the company was wound up on 28 March 2007. According to the final report on the bankruptcy, the undertaking's property, machinery and plant was sold in December 2006 to one of three parties bidding in the procedure.

3. Description of the alleged State aid

According to the complainant, State aid was granted to Troms Tre in the form of an increase in the share capital of the undertaking. According to the information supplied by the complainant, share deposits of approximately NOK 10 million had been completed at the time of the complaint. The majority of the investment was made by public investors and they were according to the complaint not made on market terms. The complainant furthermore alleged that the company planned additional share increases in the period 2006-09.

4. Assessment

The recipient of alleged aid, Troms Tre, has ceased to exist and that its assets have been sold in the context of the bankruptcy proceedings. The bankruptcy proceedings were finalised in 2007. Furthermore, according to the information available to the Authority, the assets of the company were sold in an open bidding procedure carried through by the Court in accordance with the Norwegian legislation on bankruptcy proceedings.

Hence, the company has ceased all economic activity. Under these circumstances, a decision by the Authority on the classification as aid of the measures in question and on their compatibility with the EEA Agreement would have no practical effect ⁽¹⁾.

Furthermore, on the basis that Troms Tre's assets have been sold in an open bidding procedure, the Authority concludes that if State aid was granted to Troms Tre, this aid no longer

produces any distorting effect and has not benefited the buyer of the undertaking's assets ⁽²⁾. Hence, no recovery of any aid granted to Troms Tre would be possible ⁽³⁾.

Finally, the Authority takes note of the letter from the complainant dated 4 December 2007 (Event No 456318), by which the complaint was withdrawn.

Against this background, the Authority concludes that a decision on the classification as State aid of the measures complained about and on their compatibility with the EEA Agreement would have no practical effect. As a result, continuing the procedure provided for in Part II of Protocol 3 to the Surveillance and Court Agreement with regard to these measures serves no useful purpose.

5. Conclusion

On the basis of the above considerations, the Authority finds that the procedure against Troms Tre serves no useful purpose.

HAS ADOPTED THIS DECISION:

Article 1

The procedure initiated pursuant to Article 10 in Part II of Protocol 3 to the Surveillance and Court Agreement concerning alleged illegal State aid granted to the undertaking Troms Tre AS is hereby closed.

Article 2

This Decision is addressed to the Kingdom of Norway.

Article 3

Only the English version is authentic.

Done at Brussels, 12 March 2008.

For the EFTA Surveillance Authority

Per SANDERUD
President

Kurt JAEGER
College Member

⁽¹⁾ Commission Decision of 25 September 2007 on the aid measures implemented by Spain for IZAR, Case C-47/2003, not yet published, and Commission Decision of 9 November 2005 on the measure implemented by France for *Mines de potasse d'Alsace*, Case C 53/2000 (OJ L 86, 24.3.2006, p. 20).

⁽²⁾ See, for example Case C-390/98 *H.J. Banks & Co. Ltd v The Coal Authority and Secretary of State for Trade and Industry* [2001] ECR I-6117, paragraph 77, and Case C-277/00 *Germany v Commission* (2004) ECR I-3925, paragraph 80.

⁽³⁾ Commission Decision of 25 September 2007 on the aid measures implemented by Spain for IZAR, Case C 47/2003, not yet published in the OJ and Commission Decision of 9 November 2005 on the measure implemented by France for *Mines de potasse d'Alsace*, Case C 53/2000 (OJ L 86, 24.3.2006, p. 20).