

COURT PROCEEDINGS

EFTA COURT

Action brought on 16 August 2013 by Konkurrenten.no AS against the EFTA Surveillance Authority

(Case E-19/13)

(2013/C 347/13)

An action against the EFTA Surveillance Authority was brought before the EFTA Court on 16 August 2013 by Konkurrenten.no AS, represented by Jon Midthjell, advokat, Advokatfirmaet Midthjell AS, Grev Wedels plass 5, 0151 Oslo, Norway.

The applicants request the EFTA Court to:

1. annul ESA Decision No 519/12/COL of 19 December 2012 (AS Oslo Sporveier and AS Sporveisbussene), and order the defendant and any intervener to pay the costs;
2. annul ESA Decision No 181/13/COL of 8 May 2013 (Kollektivtransportproduksjon AS, Oslo Vognselskap AS and Unibuss AS), and order the defendant and any intervener to pay the costs;
3. order ESA (and any intervener) to bear the costs.

Legal and factual background and pleas in law adduced in support:

- The applicant, Konkurrenten.no AS, is a privately owned operator in the express bus market between the central and southern regions of Norway.
- The applicant filed a State aid complaint with ESA on 11 August 2006 and a second complaint on 8 September 2011 concerning aid to AS Oslo Sporveier.
- The EFTA Surveillance Authority closed the case concerning the first complaint without a formal investigation on 21 June 2010. This decision was annulled by the EFTA Court on 22 August 2011 in Case E-14/10 Konkurrenten.no AS v ESA [2011] EFTA Ct. Rep. 266.
- The EFTA Surveillance Authority's decision of 28 March 2012 to open the formal investigation into potential aid to AS Oslo Sporveier and AS Sporveisbussene was published in the *Official Journal of the European Union*, and the EEA Supplement thereto, on 5 July 2012.
- By a decision of 19 December 2012, the EFTA Surveillance Authority closed the formal investigation into potential aid to AS Oslo Sporveier and AS Sporveisbussene. On 8 May 2013, the EFTA Surveillance Authority made a decision on alleged aid to Kollektivtransportproduksjon AS, Oslo Vognselskap AS and Unibuss AS. Neither decision has yet been published in the Official Journal or the EEA Supplement.
- By this present action the applicant seeks to annul both decisions.

The applicant claims, inter alia, that the EFTA Surveillance Authority has:

in relation to the first decision (of 19 December 2012):

- unlawfully classified a capital injection as in part existing aid and in part no aid and classified an annual lump-sum compensation as existing aid, and
- infringed Article 61 EEA in relation to the use of accumulated negative tax positions against group contributions;

in relation to the second decision (of 8 May 2013):

- infringed its duty to open a formal investigation by unlawfully classifying transaction as existing aid and unlawfully classifying short-term liquidity loans and contracts awarded without competition as no aid, and
 - infringed its duty to open a formal investigation into guarantees granted without charging premiums, and long-term public infrastructure loans granted to AS Oslo Sporveier on the terms available to the municipality itself, by unlawfully classifying the measures as existing aid.
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