

IV

(Other acts)

EUROPEAN ECONOMIC AREA

THE EEA JOINT COMMITTEE

EFTA SURVEILLANCE AUTHORITY DECISION

No 245/09/COL

of 27 May 2009

concerning alleged unlawful state aid to the undertaking NordBook AS (former Rotanor Bokproduksjon AS) (Norway)THE EFTA SURVEILLANCE AUTHORITY ⁽¹⁾,

By letter dated 31 January 2006 (Event No 353861), the Authority requested additional information from the Norwegian authorities.

Having regard to the Agreement on the European Economic Area ⁽²⁾, in particular to Articles 61 to 63, and to Protocol 26 thereof,

By letter dated 13 March 2006 from the Ministry of Government Administration and Reform (Event No 367150), the Norwegian authorities replied to the request for information.

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 and Protocol 3 thereof,

Whereas:

By letter dated 16 March 2007 (Event No 409639), the Authority requested further information on four additional points. The Norwegian authorities replied by letter dated 19 April 2007 (Event No 418736).

1. PROCEDURE

By letter dated 30 September 2005 (Event No 344941), Advokatfirmaet Grenland, on behalf of Bokbinderiet Johnsen AS (hereinafter referred to as 'the complainant'), filed a complaint against an alleged granting of aid from the Municipality of Skien to Rotanor Bokproduksjon AS (hereinafter referred to as 'Rotanor').

By letter dated 11 March 2008, the Ministry of Government Administration and Reform informed the Authority that NordBook AS (former Rotanor Bokproduksjon AS, hereinafter referred to as 'NordBook') had been declared bankrupt on 27 February 2008 by the District Court of Nedre Telemark, and that the estate had been put into administration by the Court on 27 February 2008 (Event No 469070).

According to the complainant, the Municipality of Skien has granted state aid through Kontorbygg AS (hereinafter referred to as 'Kontorbygg'), a limited liability company owned by the Municipality of Skien, by entering into a sale and lease-back arrangement with Rotanor.

By letter dated 4 November 2008 (Event No 496785), the Authority sent a request for information to the Norwegian authorities for more information regarding the estate and the bankruptcy proceedings. The Norwegian authorities replied by letter dated 1 December 2008 (Event No 500279).

⁽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'.

By letter dated 4 March 2009 (Event No 511286), the Authority informed the complainant about its intention to close the case. The complainant replied by letter dated 30 March 2009 (Event No 513907). Additional information from the complainant was received by letter dated 23 April 2009 (Event No 516392).

2. THE RECIPIENT OF ALLEGED AID

Rotanor was a subsidiary of the Danish company Nørhaven AS. The company dates back to the autumn of 2000, when Nørhaven purchased the company Kr. Johnsen Grafiske Senter AS and changed its name to Rotanor. The company was active in the market for printing and binding books and other publications. The company was located in Skien, Norway.

In April 2004 AiT AS, a production entity located in Gjøvik, was acquired by Nørhaven. The activities of AiT and Rotanor were then co-localised to Skien, and merged into a new company named NordBook.

NordBook was declared bankrupt on 27 February 2008 by the District Court of Nedre Telemark, and the estate was put into administration by the Court on the same day. By December 2008 the bankruptcy proceedings were close to being finalised, and all assets held by the company will be independently liquidated. There will be no dividend paid out to unsecured creditors and there is no successor company.

3. DESCRIPTION OF THE ALLEGED STATE AID

According to the complainant, the alleged state aid was granted to Rotanor in the form of a favourable sale and lease-back arrangement with Kontorbygg, a company owned by the Municipality of Skien. According to the complaint this agreement was not made on market terms.

According to the information provided by the Norwegian authorities, Nørhaven wished to centralise its production, by locating it either in Skien or in Gjøvik, and engaged in negotiations with the City Councils in both Municipalities. The Municipality of Skien (hereinafter 'the Municipality') offered to purchase the property of Rødmyrlia 40 on the condition that NordBook leased the property back for a longer period of time with the intention of further developing its business in Skien. On 4 November 2004 the City Council of the Municipality decided to grant NOK 40 million to

Kontorbygg AS (hereinafter referred to as 'Kontorbygg') in share capital for the purpose of buying the property.

In order to determine both the market price for the lease charge and the sales value of the property, the Municipality engaged a licensed property surveyor. The surveyor's report is dated 18 June 2004. According to this report the market price of Rødmyrlia 40 as a leasing object was estimated to NOK 4 333 600 per year including annual costs. The property's market price as a sales object was calculated on the basis of the annual leasing charge, and estimated to NOK 36 000 000.

The property was purchased by Kontorbygg for NOK 34 465 000, which is approximately 96 % of the price suggested by the surveyor (NOK 36 000 000). Kontorbygg, however, only charged Rotanor an annual leasing charge of NOK 2 400 000, which amounted to 54 % of the price suggested by the surveyor (NOK 4 433 600). Thus, whereas the building was purchased at a price close to the value assessment, the leasing charge was considerably lower than what followed from the value assessment requested by the Municipality.

4. ASSESSMENT

The fact that the sales price was close to the value assessment whereas the leasing charge was considerably lower than the value assessment is a strong indication that unlawful state aid was granted.

The recipient of the alleged aid, NordBook (former Rotanor), has ceased to exist and its assets will be independently liquidated during the course of the bankruptcy proceedings initiated in February 2008.

The Authority considers NordBook to be an independent undertaking for the purpose of applying the state aid rules. The alleged aid is directly related to NordBooks' activities in Norway, namely its premises in Skien.

Furthermore, as NordBook's assets will be independently liquidated and there will be no successor company, the Authority concludes that if state aid was granted to NordBook (former Rotanor), this aid no longer produces any distorting effect and has not benefited any buyer of the undertaking's assets⁽⁴⁾. Hence, even if illegal state aid were granted, recovery of any aid granted to NordBook would be impossible⁽⁵⁾.

⁽⁴⁾ See 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, summary 5.

⁽⁵⁾ Commission Decision 2008/441/EC on the aid measures implemented by Spain for IZAR, Case C 47/03, (OJ L 44, 20.2.2008, p. 33) and Commission Decision 2006/238/EC on the measure implemented by France for *Mines de potasse d'Alsace*, Case C 53/2000 (OJ L 86, 24.3.2006, p. 20).

The undertaking has ceased all economic activity and there is no successor company. 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 ⁽⁶⁾. 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 NordBook 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 NordBook AS (former Rotanor) 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, 27 May 2009.

For the EFTA Surveillance Authority

Per SANDERUD
President

Kurt JAEGER
College Member

⁽⁶⁾ See footnote 5.