

English edition

Information and Notices

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Notice to readers (see page 3 of the cover)

I

(Information)

COMMISSION

Ecu ⁽¹⁾

12 February 1997

(97/C 45/01)

Currency amount for one unit:

Belgian and Luxembourg franc	40,3607	Finnish markka	5,75237
Danish krone	7,45241	Swedish krona	8,65237
German mark	1,95618	Pound sterling	0,712304
Greek drachma	305,264	United States dollar	1,16163
Spanish peseta	165,566	Canadian dollar	1,57447
French franc	6,60384	Japanese yen	143,867
Irish pound	0,733257	Swiss franc	1,67704
Italian lira	1916,74	Norwegian krone	7,68067
Dutch guilder	2,19547	Icelandic krona	81,7900
Austrian schilling	13,7653	Australian dollar	1,53512
Portuguese escudo	196,501	New Zealand dollar	1,69333
		South African rand	5,11812

The Commission has installed a telex with an automatic answering device which gives the conversion rates in a number of currencies. This service is available every day from 3.30 p.m. until 1 p.m. the following day. Users of the service should do as follows:

- call telex number Brussels 23789,
- give their own telex code,
- type the code 'cccc' which puts the automatic system into operation resulting in the transmission of the conversion rates of the ecu,
- the transmission should not be interrupted until the end of the message, which is marked by the code 'ffff'.

Note: The Commission also has an automatic fax answering service (No 296 10 97/296 60 11) providing daily data concerning calculation of the conversion rates applicable for the purposes of the common agricultural policy.

⁽¹⁾ Council Regulation (EEC) No 3180/78 of 18 December 1978 (OJ No L 379, 30. 12. 1978, p. 1), as last amended by Regulation (EEC) No 1971/89 (OJ No L 189, 4. 7. 1989, p. 1).

Council Decision 80/1184/EEC of 18 December 1980 (Convention of Lomé) (OJ No L 349, 23. 12. 1980, p. 34).

Commission Decision No 3334/80/ECSC of 19 December 1980 (OJ No L 349, 23. 12. 1980, p. 27).

Financial Regulation of 16 December 1980 concerning the general budget of the European Communities (OJ No L 345, 20. 12. 1980, p. 23).

Council Regulation (EEC) No 3308/80 of 16 December 1980 (OJ No L 345, 20. 12. 1980, p. 1).

Decision of the Council of Governors of the European Investment Bank of 13 May 1981 (OJ No L 311, 30. 10. 1981, p. 1).

Average prices and representative prices for table wines at the various marketing centres

(97/C 45/02)

(Established on 11 February 1997 for the application of Article 30 (1) of Regulation (EEC) No 822/87)

Type of wine and the various marketing centres	ECU per % vol/hl	% of GP ^o	Type of wine and the various marketing centres	ECU per % vol/hl	% of GP ^o
<i>R I Guide price*</i>	3,828		<i>A I Guide price*</i>	3,828	
Heraklion	No quotation		Athens	No quotation	
Patras	No quotation		Heraklion	No quotation	
Requena	3,935	103 %	Patras	No quotation	
Reus	No quotation		Alcázar de San Juan	2,231	58 %
Villafranca del Bierzo	No quotation ⁽¹⁾		Almendralejo	2,067	54 %
Bastia	4,015	105 %	Medina del Campo	No quotation ⁽¹⁾	
Béziers	3,971	104 %	Ribadavia	No quotation	
Montpellier	4,032	105 %	Villafranca del Penedés	No quotation	
Narbonne	4,085	107 %	Villar del Arzobispo	No quotation ⁽¹⁾	
Nîmes	4,009	105 %	Villarrobledo	No quotation ⁽¹⁾	
Perpignan	3,912	102 %	Bordeaux	No quotation	
Asti	No quotation		Nantes	No quotation	
Florence	No quotation ⁽¹⁾		Narbonne	No quotation	
Lecce	No quotation		Bari	2,888	75 %
Pescara	3,952	103 %	Cagliari	3,040	79 %
Reggio Emilia	5,015	131 %	Chieti	2,280	60 %
Treviso	3,800	99 %	Ravenna (Lugo, Faenze)	2,786	73 %
Verona (for local wines)	4,433	116 %	Trapani (Alcamo)	2,077	54 %
Representative price	3,982	104 %	Treviso	3,673	96 %
<i>R II Guide price*</i>	3,828		Representative price	2,559	67 %
Heraklion	No quotation				
Patras	No quotation				
Calatayud	No quotation				
Falset	4,030	105 %			
Jumilla	3,982	104 %			
Navalcarnero	No quotation ⁽¹⁾				
Requena	No quotation				
Toro	No quotation				
Villena	No quotation ⁽¹⁾				
Bastia	3,874	101 %	<i>A II Guide price*</i>	82,810	
Brignoles	No quotation		Rheinpfalz (Oberhaardt)	71,558	86 %
Bari	3,394	89 %	Rheinhessen (Hügelland)	No quotation ⁽¹⁾	
Barletta	3,293	86 %	The wine-growing region of the Luxembourg Moselle	No quotation	
Cagliari	4,559	119 %	Representative price	71,558	86 %
Lecce	No quotation				
Taranto	No quotation				
Representative price	3,822	100 %			
			<i>A III Guide price*</i>	94,57	
	ECU/hl		Mosel-Rheingau	No quotation	
<i>R III Guide price*</i>	62,15		The wine-growing region of the Luxembourg Moselle	No quotation	
Rheinpfalz-Rheinhessen (Hügelland)	128,849	207 %	Representative price	No quotation	

⁽¹⁾ Quotation not taken into account in accordance with Article 10 of Regulation (EEC) No 2682/77.

* Applicable from 1. 2. 1995.

^o GP = Guide price.

Commission notice updating the list of parties under examination pursuant to Commission Regulation (EC) No 88/97 of 20 January 1997 on the authorization of the exemption of imports of certain bicycle parts originating in the People's Republic of China from the extension imposed by Council Regulation 71/97 of the anti-dumping duty imposed by Regulation (EEC) No 2474/93 ⁽¹⁾

(97/C 45/03)

Annex I to Regulation (EC) No 88/97 comprises a list of parties whose requests for authorization for exemption from the extended anti-dumping duty imposed by Regulation (EC) No 71/97 ⁽²⁾ are under examination.

Interested parties are hereby informed of the receipt of further requests for exemptions pursuant to Article 3 of Regulation (EC) No 88/97. Provided such requests reached the Commission before the date of entry into force of the Regulation, they are considered to have been made on that date. The date of effect of these requests is shown in the following updated list of parties under examination.

⁽¹⁾ OJ No L 17, 21. 1. 1997, p. 17.

⁽²⁾ OJ No L 16, 18. 1. 1997, p. 55.

Parties under examination
(Taric additional code: 8962)

Name	City	Country	Suspension pursuant to Regulation (EC) No 88/97	Date of effect
Dangre Cycles	F-59583 Marly	France	Article 11	19. 1. 1997
Derby Cyclewerke GmbH	D-49661 Cloppenburg	Germany	Article 11	19. 1. 1997
Engelbert Meyer GmbH	D-49692 Sevelten	Germany	Article 11	19. 1. 1997
Fa. Alfred Fischer	D-76229 Karlsruhe	Germany	Article 11	19. 1. 1997
Falter Fahrzeug-Werke GmbH & Co. KG	D-33609 Bielefeld	Germany	Article 11	19. 1. 1997
Kynast AG	D-49692 Quakenbrück	Germany	Article 11	19. 1. 1997
Monark Crescent	S-432 82 Varberg	Sweden	Article 11	19. 1. 1997
Muddy Fox	Middlesex UB6 7RH	United Kingdom	Article 11	19. 1. 1997
Quantum Cycles	F-59770 Marly	France	Article 11	19. 1. 1997
Pantherwerke	D-34537 Bad Wildungen	Germany	Article 11	19. 1. 1997
PRO-FIT Sportartikel	D-74076 Heilbronn	Germany	Article 11	19. 1. 1997
Prophete GmbH	D-33378 Rheda-Wiedenbrück	Germany	Article 11	19. 1. 1997
Tekno Cycles	F-93102 Montreuil Cedex	France	Article 11	19. 1. 1997
TNT Cycles	E-17180 Vilablareix (Girona)	Spain	Article 11	19. 1. 1997

Name	City	Country	Suspension pursuant to Regulation (EC) No 88/97	Date of effect
Winora — TME Bike Company	D-97526 Sennfeld	Germany	Article 11	19. 1. 1997
Biria	D-68535 Edingen	Germany	Article 5	22. 1. 1997
Brennabor	D-32105 Bad Salzuflen	Germany	Article 5	22. 1. 1997
Cinzia srl	I-40060 Osteria Grande Bologna	Italy	Article 5	28. 1. 1997
Enik GmbH	D-57473 Wenden	Germany	Article 5	28. 1. 1997
Esmaltina	P-3782 Sangalhos Codex	Portugal	Article 5	27. 1. 1997
Esperia SpA	I-35028 Piove di Sacco	Italy	Article 5	30. 1. 1997
Eurocycles	F-46460 Montreuil-Juigné	France	Article 5	22. 1. 1997
Intercycles	F-85000 La-Rochesur-Yon	France	Article 5	27. 1. 1997
Kastle Bikes	I-31040 Trevignano	Italy	Article 5	22. 1. 1997
Lapierre SA	F-21005 Dijon Cedex	France	Article 5	28. 1. 1997
Flli Masciaghi	I-20060 Basiano	Italy	Article 5	29. 1. 1997
MBM	I-47023 Cesena	Italy	Article 5	29. 1. 1997
Montana srl	I-12060 Magliano Alpi	Italy	Article 5	30. 1. 1997
Nikos Maniatopoulos	GR-Patras	Greece	Article 5	22. 1. 1997
Peripoli	I-36075 Montecchio Maggiore (VI)	Italy	Article 5	30. 1. 1997
Professional Cycle Manufacturing	B64 5AL Cradley Heath	United Kingdom	Article 5	24. 1. 1997
Rizzato & C. (Cesare Rizzato)	I-35131 Padova	Italy	Article 5	29. 1. 1997
Schauff	D-53424 Remagen	Germany	Article 5	24. 1. 1997
Sprick Fahrräder GmbH	D-59302 Oelde Stromberg	Germany	Article 5	22. 1. 1997
Vaterland Werk	D-58805 Neuenrade	Germany	Article 5	23. 1. 1997

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

STATE AID

(95-021 Norway)

(97/C 45/04)

EFTA Surveillance Authority notice pursuant to to Article 1 (2) of Protocol 3 of the Surveillance and Court Agreement, to other EFTA States, EC Member States and interested parties concerning aid related to the Norwegian Government's financing of the Arcus group.

By means of Decision 194/96/COL of 30 October 1996, the gist of which is reproduced below, the EFTA Surveillance Authority initiated proceedings pursuant to Article 1 (2) of Protocol 3 of the Surveillance and Court Agreement. The Norwegian Government has been informed by a copy of the decision.

I. FACTS

The complaint

By letter dated 22 December 1995 (ref. 95-7344 A), the EFTA Surveillance Authority received a complaint on the valuation of assets transferred from A/S Vinmonopolet to the Arcus Group (¹).

The complainant considers that the assets are likely to have been undervalued by Nkr 1,5 billion in the Arcus Group's opening balance. That amount is found to be comparable to an economic advantage of NOK 150 million per annum. The complainant fears that this alleged advantage may be used to undercut prices set by foreign producers in the Norwegian market, in export markets and likewise in competition with wholesalers in the Norwegian market. This may lead to a situation where the Arcus Group's competitors in the future will be precluded from fair competition and thereby from access to the Norwegian market for distribution of alcoholic beverages.

The Arcus Group will be engaged in other economic activities, *inter alia*, distribution of pharmaceuticals. The economic effects are therefore, according to the complainant, not limited to the production and distribution of alcoholic beverages.

The complainant submits that the Arcus Group's competitors (both foreign producers and wholesalers established in Norway) are obliged to pay a price equal to the market value for all their funding — thereunder properties and production equipment, while the Arcus Group will not, since the company would not be required to obtain a normal return on the real value of the assets employed. The complainant considers therefore that State aid in the meaning of Article 61 (1) of the EEA Agreement is involved in the Norwegian Government's financing of the Arcus Group.

Background

The Norwegian Parliament decided on 13 June 1995 in response to the Authority's Reasoned Opinion of 30 December 1994, *inter alia*, to separate the production and distribution activities of A/S Vinmonopolet from the retail monopoly and abolish the exclusive rights as regards import, export and wholesale of alcoholic beverages. The corrective actions *vis-à-vis* infringements addressed in the Reasoned Opinion were foreseen to be completed by the end of 1995.

However, through 1995, the Authority was contacted by economic operators expressing their concerns on new legislation and market organization. The Authority requested the Norwegian Government by letter of 23 November 1995 (ref. 95-6773 D) to submit full information on legislative matters and administrative changes. The letter also expressed concerns about the corrective actions under preparation, and drew in particular the Norwegian authorities' attention to the rules on competition set out in Article 53 to 64 of the EEA Agreement.

(¹) The Arcus Group consists of the holding company Arcus AS and its two wholly-owned subsidiaries, Arcus Produkter AS and Arcus Distribusjon AS.

By letter of 6 December 1995 (ref. 95-6989 D) the Authority informed the Norwegian Government that it had received information indicating that the Arcus Group might be in the process of receiving public assistance. The letter reminded the Norwegian Government of the EFTA States' obligation to inform the Authority in sufficient time to enable it to submit its comments on any plans to grant or alter aid, and that failing this, any aid would be deemed unlawful, which, might then necessitate the Authority demanding its recovery. The letter also indicated the type of information the Authority would consider relevant in order to enable it to examine whether or not State aid was involved.

The Norwegian authorities replied by letter dated 4 January 1996 (ref. 96-11 A) that they did not consider that assets transferred to the Arcus Group to be undervalued, and that they therefore were not under any obligation to notify the Authority. The Norwegian authorities committed themselves, however, to provide the Authority with more detailed information.

The commitment referred to above was followed up by letter dated 11 March 1996 (ref. 96-1362 A), whereby the Authority was supplied with, amongst other things, a copy of a restricted report prepared by Deloitte & Touche (hereinafter referred to as the "D&T report") on valuations and establishment of opening balances for separation of A/S Vinmonopolet⁽¹⁾.

The Authority informed the Norwegian authorities by letter of 1 April 1996 (ref. 96-1374 D) of the complaint

referred to in this decision by means of a copy of the complaint, inviting them to comment on the complainant's allegations. The Authority, by the same letter, requested Norway to provide certain additional information. The letter of reply from the Norwegian authorities was received on 22 May 1995 (ref. 96-2662 A).

The Arcus Group

The Arcus Group of companies was established in September 1995 by A/S Vinmonopolet.

A valuation of A/S Vinmonopolet was carried out taking into account the foreseen separation and transfer of what mainly consisted of A/S Vinmonopolet's Operations Division to the Arcus Group. A/S Vinmonopolet's share capital and other equity capital was divided in proportion to the value of the assets that were to remain in the retail monopoly and those that were to be separated. The valuation of the assets that were to be transferred to the Arcus Group, led to a decision to write down A/S Vinmonopolet's share capital by Nkr 700 million. The above assets were transferred to the Arcus companies in exchange of shares. The book value of the Arcus Group was set at Nkr 357 million. The formal separation from A/S Vinmonopolet took place on 2 January 1996 when Arcus AS' share capital was transferred from A/S Vinmonopolet to the Ministry of Industry and Energy. The opening balances (in million Nkr) of the Arcus Group are presented below⁽¹⁾.

⁽¹⁾ "Verdsettelse og fastsettelse av åpningsbalanser for A/S Vinmonopolet" (Sosialdepartementet) Utført av Deloitte & Touche Oslo, 25 September 1995.

⁽¹⁾ St. prp. nr. 11 1995-96, page 7.

	Arcus Produkter AS	Arcus Distribusjon AS	Arcus AS	(Elimination of shares)	Arcus AS concern accounts
— <i>Assets:</i>					
Current assets	318	168	154	0	640
Fixed assets	65	101	212	(203)	175
Total assets	383	269	366	(203)	815
— <i>Liabilities:</i>					
Current liabilities	78	93	4	0	175
Long-term liabilities	34	23	0	0	57
Restructuring costs	104	117	5	0	226
— <i>Equity:</i>					
Shareholders capital	67	14	203	(81)	203
Other equity capital	100	22	154	(122)	154
Total liabilities and equity:	383	269	366	(203)	815

It was recognized (*) by the Norwegian Government that the new companies would have a need to restructure after 70 years in a monopoly situation. Their business plans foresee therefore, amongst other things, a reduction in the manning table of 250 man years. Certain restructuring costs were accounted for in A/S Vinmonopolet's accounts for 1995 and the Arcus companies received financing from A/S Vinmonopolet amounting to Nkr 226 million to cover restructuring costs.

The Arcus Group of companies are independent joint-stock companies; each with its separate Board of Directors. Internal cost sharing methods cover, according to the Norwegian authorities, rent for offices and production facilities and all other types of costs.

No licenses for distribution, exportation and importation of alcoholic beverages had yet been issued by 1 January 1996. Arcus Distribusjon AS started therefore its activities in 1996 in a *de facto* monopoly situation for an interim period (†). Other operators have obtained rights to carry out importation, exportation and distribution of alcoholic beverages in the course of 1996. Arcus Distribusjon AS is, however, still by far the largest operator in the Norwegian market with respect to wine and liquor distribution. Arcus Produkter AS holds the exclusive right to produce liquor in Norway.

Comments and other information from Norway

The Norwegian authorities have in their correspondence with the Authority provided further explanations and information on the valuation and transactions referred to above.

The demerger of the Arcus Group from A/S Vinmonopolet was administered by the Ministry of Health and Social Affairs advised by a steering group comprising representatives from three other ministries.

The services of Deloitte & Touche were contracted in connection with the valuation of A/S Vinmonopolet by the Ministry of Health and Social Affairs, which was then the responsible authority. The Norwegian authorities state that the company won the contract in competitive tendering with a number of other independent accounting and consultancy firms.

The method chosen for valuation of A/S Vinmonopolet is what is known as the discounted cash-flow method. The Norwegian authorities say that all tenderers intended to use this method. They add to this point that the Ministry of Health and Social Affairs was not in a position to assess the outcome of a discounted cash flow calculation beforehand and that the method was therefore not chosen to establish specific values in the opening balance.

The premises for the discounted cash-flow value calculation were also discussed in the steering group.

The Norwegian authorities say that in selecting the method of valuation, the use of realization values was considered. It is pointed out by the Norwegian authorities that using realization values is not the same as a valuation by the replacement method. The latter is considered not applicable as a basis for establishing a company's opening balance, see Section 2-4 of the Companies Act which requires allotment of shares otherwise than for cash to be valued at "real value".

Even though the demerger was from the beginning conditional on a continuation of operations, the Norwegian authorities would consider a valuation of the company in which certain activities were wound up. Fixtures and fittings no longer necessary could for example be valued in terms of realization value. However, no decision to close down parts of the company had been made, and they consider that it was therefore not possible to include a possible restructuring in the opening balance.

They further consider that, in any case, a valuation of the company based solely on the realization value would constitute a misrepresentation of the economic realities. Any sale of parts of A/S Vinmonopolet would have involved considerable costs and financial obligations. Reference is made to costs in connection with redundancies, cancellation of contracts, etc., which must be included in an assessment of the realization value of an ongoing business.

The Norwegian authorities argue that a valuation will involve major elements of uncertainty as to the correct value of Arcus AS, whether it is based on realization values or the discounted cash-flow method.

The discounted cash-flow method was chosen because the opening balance sheets were approved on the basis of a continuation of operations and, consequently, future earnings. The Norwegian authorities consider that methods based on accounting results can only be used if

(*) St. prp. nr. 11 1995-96, page 6, point 3.1.2 Omstillingsbehov.

(†) Ot. prp. nr. 51 1994-95, Forslag til lov om endringer i alkolloven (ny bevillingsordning for engrossalg av alkoholholdig drikk mv) part II.

the companies in question have been traded, and can be considered comparable in relation to both risk and expected growth. For obvious reasons, comparable information was not available and the discounted cash-flow method was therefore the natural choice.

The Norwegian authorities explain that the calculations on which the valuation is based show that the market value (Nkr 357 million) is considerably lower than the book value in A/S Vinmonopolet's accounts; in other words the future cash flow cannot be expected to give a satisfactory return on the entire book value in the case of commercial activities in the new market situation the Arcus Group is facing. The opening balance sheets of the Arcus companies reflect therefore the drop in value (Nkr 700 million) as a result of lost market shares compared to a monopoly situation and adaptation to new operating conditions.

Reference is also made to the Norwegian Government's expressed intention of keeping the consumption of alcohol in Norway at a low level so as to minimize the damaging effects of high alcohol consumption levels. Due to these factors of uncertainty the Norwegian authorities consider that the estimation of the company's value has to be done conservatively.

The Norwegian authorities consider in general that the calculation of value requires an objective valuation; that

Current assets:	Nkr 640 million
Properties:	Nkr 355 million
Net sales value production equipment:	Nkr 70 million
Total assets:	Nkr 1 065 million
Short term liabilities:	Nkr (175) million
Environmental obligations:	Nkr (30) million
Mortgage loans:	Nkr (27) million
Total assets less liabilities:	Nkr 833 million
Dismissals, etc.	Nkr (406) million
Other liquidation costs:	Nkr (40) million
Liquidation value:	Nkr 387 million

The Norwegian authorities find that the liquidation value of Nkr 387 million does not differ significantly from the opening balance of Arcus, Nkr 357 million. Taking into account the uncertainty involved in calculations of this nature and what they refer to as the minor difference between these two estimates, the Norwegian authorities regard their transfer of assets to the Arcus

is to say what a third party might be willing to pay for an undertaking. However, in the present case, they consider this alternative not to apply. The result of this being that in calculating real value, caution had to be shown in the calculation and the use of the assets in the opening balance. The transactions, in this case the allotment of shares otherwise than for cash, have taken place between close parties. They consider therefore that there is no reliable estimate of what a third party might be willing to pay for the companies. Reference is made to Section 2-4 of the Joint Stock Companies Act, the basic accounting concept of prudence, which is referred to in Article 31 of the Fourth Council Directive, and the auditor's independent statement in accordance with Section 2-9, second paragraph, of the Companies Act.

The Norwegian authorities conclude that on the basis of estimates from independent advisors, the valuation of the Arcus Group of companies was carried out in good faith, in accordance with the manner in which a market investor would have carried out an equivalent investment.

The Norwegian authorities have however upon request from the Authority provided an estimate of the liquidation value of the undertakings and assets amounting to Nkr 387 million. The reference figures on which the liquidation value is based are reproduced below:

Group as equivalent to the behaviour of a commercial vendor in a similar situation.

The above valuation of the properties, Nkr 355 million, refers to an estimate of their net sales value provided by an independent appraiser. The appraiser also estimated the potential annual rent income from properties at Nkr

75 million. It is mentioned in the D&T report that the companies' estimated income shows that they would not be able to service such rents.

The most modern production facilities, located in Oslo, have the capacity to replace production activities in Bergen and Trondheim⁽⁶⁾. Centralization of production activities to Oslo would therefore allow significant cost savings to be realized. Arcus would in such a case also benefit from proceeds from sales, or alternatively from rent income from the properties in Bergen and Trondheim. Their combined sales value is estimated to Nkr 155 million.

The Norwegian authorities state that the Arcus companies' fixed assets are needed to continue production and distribution activities, and that there are no plans to sell off important fixed assets at present. They have on the other hand informed the Authority that the sale of any of the Arcus Group's fixed assets, such as land and buildings, would require a decision by the Board of Directors and the Corporate Assembly, see Sections 8-7 and 8-20 of the Joint Stock Companies Act, that Arcus AS does not need government approval in this matter and that the proceeds from any such sales are at the disposal of Arcus AS.

II. APPRECIATION

Applicability of Article 61 (1) of the EEA Agreement

Article 61 (1) of the EEA Agreement provides that 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 the EEA Agreement.

Arcus Produkter AS faces competition from other EEA enterprises engaged in the production and bottling of alcoholic beverages, such as wine and liquor, i.e. products which are widely traded throughout the territory covered by the EEA Agreement.

Arcus Distribusjon AS is engaged in the distribution of alcoholic beverages, and to some extent pharmaceuticals. The products involved are widely traded and there are competitors providing similar services both domestically and in other parts of the territory covered by the EEA Agreement.

Any aid involved in the financing of the Arcus Group will therefore threaten to distort competition and affect

trade within the territory covered by the EEA Agreement, and thereby constitute aid in the meaning of Article 61 (1) of the EEA Agreement.

Both public and private enterprises in similar sectors and in comparable economic and financial situations must in accordance with paragraph 20.3 (1) of the Procedural and Substantive Rules in the Field of State Aid adopted by the Authority on 19 January 1994⁽⁷⁾ (State Aid Guidelines), be treated equally with respect to financing. However, if any public funds are provided on terms more favourable (i.e. in economic terms more cheaply) than a private owner would provide them to a private enterprise in a comparable financial and competitive position, then the public enterprise would be receiving an advantage from their proprietors not available to private enterprises. Unless a more favourable provision of public funds is treated as aid, and evaluated with respect to one of the derogations of the Agreement, then the principle of neutrality of treatment between public and private enterprises is infringed.

In accordance with paragraph 20.3 (3) of the State Aid Guidelines it is not important whether the capital injected into a public enterprise comes directly from the State or indirectly from State holding companies or other public enterprises, in order to be covered by Article 61 (1). The transactions involved in the financing of the Arcus Group may therefore be covered by the notion of State resources.

The test to be applied by the Authority is, in accordance with paragraph 20.3 (4) of the State Aid Guidelines, based on the "market economy investor principle". The Authority must therefore examine "in particular, whether in similar circumstances a private shareholder, having regard to the foreseeability of obtaining a return and leaving aside all social, regional policy and sectoral considerations, would have subscribed the capital in question⁽⁸⁾."

The Authority is, in accordance with paragraph 20.3 (2) of the State Aid Guidelines, obliged to apply the "market economy investor principle" "as a benchmark to determine both whether aid is involved and if so to quantify it."

Valuation of assets transferred from A/S Vinmonopolet

Any undervaluation of the assets transferred from A/S Vinmonopolet will represent aid to the Arcus

⁽⁶⁾ D&T report, page 59.

⁽⁷⁾ OJ No L 240, 15. 9. 1994 and EEA Supplement to the OJ No 34, 15. 9. 1995.

⁽⁸⁾ Case 40/85 Belgium v. Commission [1986] ECR, p. 2321.

Group in the event it is found that these companies benefit from not having to bear the full cost of an asset acquired from the State.

The complainant's estimate of the alleged undervaluation, Nkr 1 500 million, refers, *inter alia*, to investments carried out by A/S Vinmonopolet in recent years, and the size and favourable location of the Arcus Group's properties and buildings in Oslo, Bergen and Trondheim.

The Authority does not dispute the relevance of certain observations referred to by the complainant. The complainant's estimate, however, is based on too scanty information to be accepted as a proxy for the real value of the assets transferred to the Arcus Group.

The Authority has examined the explanations and information supplied by the Norwegian authorities.

The Authority does not dispute the relevance of, *inter alia*, applying the discounted cash-flow method for estimating the value of the Arcus group's cash flow as a going concern.

The Authority has noted that although recognized accounting and consultancy firms were involved in the valuation of A/S Vinmonopolet, the calculations were, nevertheless, carried out under the supervision of a steering group with representatives from four ministries. The steering group was ultimately responsible for the report. The results from calculations based on the discounted cash flow method presented in the D&T report may therefore not be considered as independent estimates.

The D&T report shows that centralization of production activities to Oslo will potentially allow the Arcus Group to benefit from significant cost savings and proceeds from sales or, alternatively from rent income from the properties in Bergen and Trondheim. This indicates clearly that the estimated value of Nkr 357 million refers to a calculation based on what must be considered as a suboptimal structure for the Arcus group. The Authority can not, at this stage, accept that a rational market economy investor would have subscribed to a valuation not based on the economically most favourable alternative.

Furthermore, the Authority can not, at this stage accept that a valuation based solely on the discounted cash-flow method would be sufficient in determining the open market value of the assets transferred to the Arcus Group. Although the method may, in individual circum-

stances, produce a reasonably correct value of a company, it must be acknowledged that it only estimates a company's present value with reference to an estimated cash flow from operations. The method therefore produces a nominal amount which may not necessarily be taken to represent the open market value of certain specific assets, such as the properties and buildings that were transferred to the Arcus Group.

The Authority has made certain other observations which strengthen its doubts on whether the opening balance of the Arcus Group was set at an appropriate level:

- an independent appraiser has estimated the value of property and buildings at Nkr 355 million. The value of equipment is, in addition, estimated at Nkr 70 million. On the other hand, the combined value of fixed assets are set at only Nkr 175 million in the opening balance of Arcus AS,
- it is recognized in the D&T report, that the Arcus companies' profits are not likely to be sufficient to cover the market rents for the properties in Oslo, Bergen and Trondheim (*),
- the liquidation value is normally considered to be the minimum value of a company. However, the liquidation value provided by Norway is Nkr 30 million higher than the book value of the Arcus Group. Although the Authority has noted that the Norwegian authorities' argue that the difference is minor, it has also noted that the Norwegian authorities have, amongst other things, not provided convincing background information on their estimate of eventual costs related to dismissals, etc. (Nkr 406 million). It can therefore not be excluded that a closer examination may show that the difference is bigger than Nkr 30 million.

The establishment of a market value for a company will always contain subjective and difficult elements. The Authority must therefore accept that any method of valuation of assets traded between close parties will involve an element of uncertainty.

However, the Authority is at present not convinced that the estimates presented by the Norwegian Government represent what a knowledgeable willing buyer would consider as the real value and be willing to pay for the assets transferred to the Arcus Group. It

(*) D&T report, point 5 (page 36).

therefore finds that a further examination of the Arcus Group's realization value and the companies' value as a going concern is needed for the Authority to establish their correct value.

Financing provided to cover restructuring costs

The Authority accepts that the change from a monopoly situation to a market exposed to competition, in the case of distribution of alcoholic beverages may have warranted a revaluation of A/S Vinmonopolet's assets. The Authority also accepts that the demerger may have imposed certain restructuring costs on A/S Vinmonopolet which Arcus AS may have to meet, i.e. costs related to certain legal obligations *vis-à-vis* former employees of A/S Vinmonopolet.

Redundancy benefits and early retirement pensions paid directly to redundant employees are not regarded as State aid falling within Article 61 (1) in so far as the company is not involved. On the other hand, if State resources are used to support restructuring in particular industries or enterprises, it may well involve State aid because of the selective way in which it is used.

The obligations a company itself has under employment legislation or collective agreements with trade unions to provide redundancy benefits and/or early retirement pensions are part of the normal costs which a firm has to meet from its own resources. This being so, any contribution by the State to these costs must be counted as aid. This is true regardless of how payments are made to the firm. To the extent that a part of the financing provided from A/S Vinmonopolet to Arcus AS to cover restructuring costs is only used to meet costs related to A/S Vinmonopolet's contractual obligations to its former employees, then that part should not be considered as State aid.

However, should it be necessary to consider whether State aid is involved in favour of individual former employees of A/S Vinmonopolet, the Authority would take a positive approach in circumstances when it can be shown that the aid brings economic benefits above and beyond the interests of the firm concerned, by facilitating structural change and reducing hardship.

As well as to meet the cost of redundancy payments and early retirement, aid is commonly provided in connection with particular restructuring cases for training, counselling and practical help in finding employment, assistance with relocation, and professional training and assistance for employees starting new businesses. The Authority consistently takes a favourable view of such aid.

On the other hand, the Authority has in principle reservations towards aid of an operating character. That would be considered to be the case if part of the financing may be used for strengthening the financial position of the Arcus Group or otherwise, to the detriment of its competitors. The same considerations would apply if the financing provided for restructuring may be used to meet new obligations on behalf of the Arcus Group *vis-à-vis* its employees, as the costs involved would be normal costs which a business would have to meet from its own resources.

However, the Authority has not, as the file stands, received any information showing that the Norwegian authorities have imposed restrictions on the Arcus Group's use of the Nkr 226 million provided by A/S Vinmonopolet. In the absence of information on any binding restrictions on the Arcus Group's use of this money, it appears that it may be used to cover operating costs.

The Authority must therefore conclude that, on the basis of the information available, the amount of Nkr 226 million provided by A/S Vinmonopolet to cover restructuring costs must be regarded as State aid in the meaning of Article 61 (1) of the EEA Agreement.

Derogations

As regards the applicability of the individual exemption clauses to the general prohibition against State Aid according to Article 61 (1) of the EEA Agreement, the Authority submits that it has not received any information from the Norwegian authorities indicating that they consider any of the exemption clauses under Article 61 (2) or (3) to be applicable.

Article 61 (2) (a) provides that aid having a social character, granted to individual consumers, shall be compatible with the functioning of the EEA Agreement, provided that such aid is granted without discrimination concerning the origin of the products or services in question. As the Arcus Group does not have a social objective and eventual aid would not favour individual consumers but rather a particular enterprise, this provision is not applicable. Article 61 (2) (b), which relates to remedies for damage caused by natural disasters or exceptional occurrences, is clearly irrelevant in the case at hand, and the same is true for Article 61 (2) (c), which concerns aid for certain areas of the Federal Republic of Germany.

Article 61 (3) provides four distinct exemption clauses (a to d) under which aid may be considered compatible with the functioning of the Agreement. Of these Article

61 (3) (b) relates to "aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of an EC Member State or an EFTA State", and Article 61 (3) (d) concerns "such other categories of aid as may be specified by the EEA Joint Committee in accordance with Part VII" of the EEA Agreement. Neither of these provisions are relevant in the present case. This leaves Article 61 (3) (a) and (c) as the only possible exemption clauses.

It is clear from the examination carried out by the Authority in relation to its Decision of 16 November 1994⁽¹⁰⁾ on the map of assisted areas in Norway, that Oslo, Bergen and Trondheim where enterprises in the Arcus Group are located, neither qualify for regional aid under Article 61 (3) (a) as "an area where the standard of living is abnormally low or where there is serious underemployment", nor are they included in the map of assisted areas eligible for regional aid under Article 61 (3) (c). Hence, it is not relevant to apply the derogation under Article 61 (3) (c) as aid to "facilitate the development ... of certain economic areas, where such aid does not affect trading conditions to an extent contrary to the common interest".

The Arcus Group is not facing financial difficulties through its own resources or in raising funds. The Authority does, therefore, not find the derogation under Article 61 (3) (c) as aid to "facilitate the development of certain economic activities ... where such aid does not affect trading conditions to an extent contrary to the common interest" with reference to the rules on aid for rescue and restructuring firms in difficulty set out in Chapter 16 of the State Aid Guidelines to be applicable *vis-à-vis* the Arcus Group of companies. In the light of further information it cannot be excluded, however, that a certain part of the financing provided to cover restructuring costs may be regarded as aid to cover the social costs of restructuring in accordance with paragraph 16.3.2.5 of the State Aid Guidelines.

The rules on aid to employment as set out in Chapter 18 of the State Aid Guidelines do not appear to be applicable as the Authority does not have any information on, *inter alia*, plans for net job creation in favour of certain groups facing particular difficulties in the labour market or similar objectives.

The Arcus Group's number of employees and its financial indicators show that it can not be regarded as a small or medium-sized enterprise according to the definition of small and medium-sized enterprises (SMEs) in Section 10.2 of the State Aid Guidelines. The rules on aid to SMEs as set out in Chapter 10 of the State Aid Guidelines are therefore not applicable.

It appears therefore, that to the extent aid is involved in the transactions under consideration, it would primarily improve the financial situation of the Arcus Group and/or allow the company to hold a higher market share than otherwise possible. Possible aid would not be linked to initial investment, job creation or any other project limited in time, and it would thus constitute operating aid.

Notification

The Norwegian authorities dispute that aid was involved in the transfer of assets to the Arcus Group and have declared, on that basis, not to be under the obligation to notify the Authority of the financial transactions involved. The transactions have been carried out without initial approval by the Authority.

Any aid involved in the transactions referred to in this decision will therefore, eventually, have to be regarded as unnotified aid, i.e. aid which is unlawful on procedural grounds. In negative decisions on cases of unlawful aid the Authority orders, as a rule, the EFTA State to reclaim the aid from the recipient.

Conclusions

Based on the information at hand, the Authority must conclude that it, at present, is not convinced that the estimates presented by the Norwegian Government represent what may be considered as the real value of the assets transferred to the Arcus Group. A further examination is therefore needed. Furthermore, the Nkr 226 million provided by A/S Vinmonopolet to cover restructuring costs, must at this stage be regarded as State aid in the meaning of Article 61 (1) of the EEA Agreement.

The Authority must therefore conclude that the procedure provided for in Article 1 (2) of Protocol 3 to the Surveillance and Court Agreement should be opened.

⁽¹⁰⁾ OJ No C 14, 19. 1. 1995, p. 4, and EEA Supplement to the OJ No 1, 19. 1. 1995.

The decision to open proceedings is without prejudice to the final decision, which may still be to find that aid was not involved, or that possible aid elements may be compatible with the functioning of the EEA Agreement. The purpose of proceedings under Article 1 (2) of Protocol 3 to the Surveillance and Court Agreement is to ensure a comprehensive examination of the case giving all parties concerned the right to be heard.'

The EFTA Surveillance Authority hereby gives the EFTA States, EU Member States and interested parties notice

to submit their comments on the measures in question within one month of the date of publication of this notice to:

EFTA Surveillance Authority,
Rue de Trèves/Trierstraat 74,
B-1040 Brussels.

The comments will be communicated to the Norwegian Government.

EFTA-COURT

Action brought on 5 December 1996 by Paul Inge Hansen against the EFTA Surveillance Authority

(Case E-7/96)

(97/C 45/05)

An action against the EFTA Surveillance Authority was brought before the EFTA Court on 5 December 1996 by Paul Inge Hansen, represented by Jan E. Strand, lawyer, Olav Trygvassonsgt. 40, N-7011 Trondheim, Norway.

The applicant claims that:

‘1. The EFTA Surveillance Authority is obliged to make the following decision:

I.

- (a) The employment exchange in Norway as it functions today contravenes the EEA Agreement.
- (b) The Norwegian Government is obliged to make it possible for physically disabled and occupationally handicapped — if they so wish — to join the labour market as genuine job-seekers on the same lines as the able-bodied unemployed.
- (c) The Norwegian Government is ordered to reduce the employment exchange monopoly.
- (d) The Norwegian Government is ordered to make it possible for the Rebecca Foundation to participate in the EU's programmes for the physically and occupationally handicapped.
- (e) The Norwegian Government is obliged to give the Rebecca Foundation the necessary approval
 - (x) to run a business activity,
 - (y) to run private recruitment of personnel

for people in Norway who fall within, or may fall within the provisions of the National Insurance Act:

- (i) 3 — illness
- (ii) 5 — rehabilitation
- (iii) 8 — disability
- (iv) 11 — occupational injury

or who are a part of a physically disabled and occupationally handicapped group.

- (f) The Norwegian Government is obliged to ensure that the Rebecca Foundation may be established and run its activities under the same framework conditions and with the same means as the Norwegian Government.

- (g) The Norwegian Government is obliged to ensure that the necessary changes in the law are made so that the Norwegian law agrees with provisions in the EEA Agreement.

II.

To ensure implementation of item I, the Norwegian Government shall be ordered to allow the following:

- (a) The employment exchange in Norway to be open to the Rebecca Foundation's members with
- (x) minimum 13 % of the estimated 100 000 eligible physically disabled in Norway, i.e. for 13 000 people,
 - (y) minimum 12 % of the estimated 100 000 eligible occupationally handicapped in Norway, i.e. for 12 000 people.
- (b) The Norwegian Government shall be obliged to provide the Rebecca Foundation with adequate funds, limited to Nkr 25 000 000 — towards establishment and operation of the activity.
- (c) The Norwegian Government to be ordered to pay compensation to the Rebecca Foundation and/or Paul Inge Hansen, limited to Nkr 4 000 000 — to cover loss suffered until a verdict has been reached.
- (d) The Norwegian Government to be ordered to cover the plaintiff's costs in connection with the handling of the complaint by the EFTA Surveillance Authority, limited to Nkr 250 000.
2. The EFTA Surveillance Authority to pay up to Nkr 300 000 in compensation to the Foundation and/or Paul Inge Hansen.
3. The EFTA Surveillance Authority covers the plaintiff's costs for this right.'

In the alternative the applicant claims that:

- '1. The EFTA Surveillance Authority is obliged to make the following decision:
- (a) as under the principal claim;
 - (b) as under the principal claim;
 - (c) the Norwegian Government is ordered to end the employment exchange monopoly in Norway;
 - (d) as under the principal claim;
 - (e) the Norwegian Government is ordered to pay compensation to the Rebecca Foundation and/or Paul Inge Hansen amounting to Nkr 29 250 000;
 - (f) as under the principal claim, item I (g).
2. The EFTA Surveillance Authority pays Nkr 300 000 in compensation to the Rebecca Foundation and/or Paul Inge Hansen.
3. The EFTA Surveillance Authority covers the plaintiff's costs for this right.'

Also in the alternative:

- '1. The Norwegian Government is judged in accordance with items I and II in the principal claim.
2. The EFTA Surveillance Authority pays Nkr 300 000 in compensation to the Rebecca Foundation and/or Paul Inge Hansen.
3. The Norwegian Government and the EFTA Surveillance Authority jointly cover the costs for this right.'

Pleas in law and main arguments adduced in support:

- On 1 January 1996 Paul Inge Hansen, a founder of the Rebecca Foundation, a Norwegian foundation supporting handicapped people in particular in relation to employment opportunities, lodged a complaint with the EFTA Surveillance Authority alleging a contravention by Norwegian authorities of Articles 53 and 54, together with Articles 58 and 59 of the EEA Agreement, through illegal business refusal by a State monopoly. The applicant submits that the EFTA Surveillance Authority has omitted to deal with his complaint.

 - The applicant refers to Article 37 (3) of the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice, signed on 17 May 1993. The applicant further submits, that the EFTA Surveillance Authority has omitted to put an end to the refusal to set up business.

 - On 8 August 1996 the applicant called on the EFTA Surveillance Authority to act, with reference to Article 37 (2) of the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice.
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NOTICE TO READERS

Since 1 January 1997, the public contract notices of the Commission will no longer be published in the 'C' series of the Official Journal, but in the *Supplement to the Official Journal* ('S' series) only.

It must also be noted that the publication of the summary table of calls for competitive bidding under the European Development Fund (EDF) is hereby cancelled.

A CD-ROM version of the *Supplement to the Official Journal* is on sale at the various points of sale indicated on page 4 of the cover.

The information contained in the *Supplement to the Official Journal* may also be accessed in real time (TED database).

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