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### Information and Notices

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<sup>(1)</sup> Text with EEA relevance

## II

*(Information)*

## INFORMATION FROM EUROPEAN UNION INSTITUTIONS AND BODIES

## COMMISSION

**Non-opposition to a notified concentration  
(Case COMP/M.4834 — ALSTOM/ECOTÈCNIA)****(Text with EEA relevance)**

(2007/C 250/01)

On 19 September 2007, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

- from the Europa competition website (<http://ec.europa.eu/comm/competition/mergers/cases/>). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,
  - in electronic form on the EUR-Lex website under document number 32007M4834. EUR-Lex is the on-line access to European law (<http://eur-lex.europa.eu>).
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## IV

(Notices)

## NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

## COMMISSION

Euro exchange rates <sup>(1)</sup>

24 October 2007

(2007/C 250/02)

## 1 euro =

| Currency | Exchange rate    | Currency | Exchange rate |                       |           |
|----------|------------------|----------|---------------|-----------------------|-----------|
| USD      | US dollar        | 1,4230   | RON           | Romanian leu          | 3,3674    |
| JPY      | Japanese yen     | 162,67   | SKK           | Slovak koruna         | 33,437    |
| DKK      | Danish krone     | 7,4542   | TRY           | Turkish lira          | 1,7254    |
| GBP      | Pound sterling   | 0,69550  | AUD           | Australian dollar     | 1,5833    |
| SEK      | Swedish krona    | 9,2127   | CAD           | Canadian dollar       | 1,3797    |
| CHF      | Swiss franc      | 1,6706   | HKD           | Hong Kong dollar      | 11,0306   |
| ISK      | Iceland króna    | 86,67    | NZD           | New Zealand dollar    | 1,8941    |
| NOK      | Norwegian krone  | 7,7455   | SGD           | Singapore dollar      | 2,0801    |
| BGN      | Bulgarian lev    | 1,9558   | KRW           | South Korean won      | 1 306,60  |
| CYP      | Cyprus pound     | 0,5842   | ZAR           | South African rand    | 9,4715    |
| CZK      | Czech koruna     | 27,178   | CNY           | Chinese yuan renminbi | 10,6620   |
| EEK      | Estonian kroon   | 15,6466  | HRK           | Croatian kuna         | 7,3370    |
| HUF      | Hungarian forint | 251,32   | IDR           | Indonesian rupiah     | 13 059,58 |
| LTL      | Lithuanian litas | 3,4528   | MYR           | Malaysian ringgit     | 4,7948    |
| LVL      | Latvian lats     | 0,7023   | PHP           | Philippine peso       | 62,790    |
| MTL      | Maltese lira     | 0,4293   | RUB           | Russian rouble        | 35,4170   |
| PLN      | Polish zloty     | 3,6549   | THB           | Thai baht             | 44,974    |

<sup>(1)</sup> Source: reference exchange rate published by the ECB.

## NOTICES FROM MEMBER STATES

**Information communicated by Member States regarding State aid granted under Commission Regulation (EC) No 70/2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises**

(Text with EEA relevance)

(2007/C 250/03)

|   |  |
|---|--|
| Aid No  | XS 205/07  |
| Member State  | Spain  |
| Region  | Galicia  |
| Title of aid scheme or name of company receiving individual aid | IG119: Elaboración de planes estratégicos, de innovación y competitividad, o de internacionalización, cooperativos (planes cooperativos)   |
| Legal basis   | Resolución de 9 de marzo de 2007 (DOG nº 59, de 23 de marzo) por la que se da publicidad al acuerdo del Consejo de Dirección del Instituto Gallego de Promoción Económica (Igape) que aprueba las bases reguladoras de los incentivos económicos del Igape y se procede a la convocatoria de determinadas líneas de ayuda.<br><br>Resolución de 10 de abril de 2007 (DOG nº 74, de 17 de abril) por la que se procede a la convocatoria de esta línea de ayudas. |
| Type of measure   | Aid scheme   |
| Budget  | Annual budget: EUR 0,3 million; Overall budget: —  |
| Maximum aid intensity   | In conformity with Articles 4(2)-(6) and 5 of the Regulation   |
| Date of implementation  | 1.6.2007   |
| Duration  | 31.12.2013   |
| Objective   | Small and medium-sized enterprises   |
| Economic sectors  | All sectors eligible for aid to SMEs   |
| Name and address of the granting authority                      | Subsidies of up to EUR 3 000 000 are approved by the Director-General of Igape, those over EUR 3 000 000 by the President of Igape<br><br>Instituto Gallego de Promoción Económica (Igape)<br>Complejo Administrativo de San Lázaro, s/n<br>E-15703 Santiago de Compostela (A Coruña)  |

|   |  |
|---|--|
| Aid No  | XS 206/07  |
| Member State  | Spain  |
| Region  | Galicia  |
| Title of aid scheme or name of company receiving individual aid | IG121: Preparación de proyectos de innovación para concurrir a convocatorias públicas estatales o europeas   |
| Legal basis   | Resolución de 9 de marzo de 2007 (DOG nº 59, de 23 de marzo) por la que se da publicidad al acuerdo del Consejo de Dirección del Instituto Gallego de Promoción Económica (Igape) que aprueba las bases reguladoras de los incentivos económicos del Igape y se procede a la convocatoria de determinadas líneas de ayuda.<br>Resolución de 10 de abril de 2007 (DOG nº 74, de 17 de abril) por la que se procede a la convocatoria de esta línea de ayudas.                       |
| Type of measure   | Aid scheme   |
| Budget  | Annual budget: EUR 0,2 million; Overall budget: —  |
| Maximum aid intensity   | In conformity with Articles 4(2)-(6) and 5 of the Regulation   |
| Date of implementation  | 2.11.2007  |
| Duration  | 31.12.2013   |
| Objective   | Small and medium-sized enterprises   |
| Economic sectors  | All sectors eligible for aid to SMEs   |
| Name and address of the granting authority                      | Subsidies of up to EUR 3 000 000 are approved by the Director-General of Igape, those over EUR 3 000 000 by the President of Igape<br><br>Instituto Gallego de Promoción Económica (Igape)<br>Complejo Administrativo de San Lázaro, s/n<br>E-15703 Santiago de Compostela (A Coruña)  |
| Aid No  | XS 207/07  |
| Member State  | Spain  |
| Region  | Galicia  |
| Title of aid scheme or name of company receiving individual aid | IG127: Adopción de nuevos modelos empresariales innovadores que incidan en la mejora de las diferentes áreas de la empresa   |
| Legal basis   | Real Decreto nº 1579/2006, de 22 de diciembre (BOE nº 29, de 2 de febrero), por el que se establece el régimen de ayudas y el sistema de gestión del programa de apoyo a la innovación de las pequeñas y medianas empresas (Innoempresa) 2007-2013.<br>Resolución de 9 de mayo de 2007 (DOG nº 96, de 21 de mayo) por la que se da publicidad a las bases reguladoras del Programa de Apoyo a la Innovación de las Pequeñas y Medianas Empresas (Programa Innoempresa) en Galicia. |
| Type of measure   | Aid scheme   |
| Budget  | Annual budget: EUR 4,555598 million; Overall budget: —   |

|   |  |
|---|--|
| Maximum aid intensity   | In conformity with Articles 4(2)-(6) and 5 of the Regulation   |
| Date of implementation  | 17.7.2007  |
| Duration  | 31.12.2013   |
| Objective   | Small and medium-sized enterprises   |
| Economic sectors  | Other manufacturing, Other services  |
| Name and address of the granting authority                      | Subsidies of up to EUR 3 000 000 are approved by the Director-General of Igape, those over EUR 3 000 000 by the President of Igape<br><br>Instituto Gallego de Promoción Económica (Igape)<br>Complejo Administrativo de San Lázaro, s/n<br>E-15703 Santiago de Compostela (A Coruña)  |
| Aid No  | XS 208/07  |
| Member State  | Spain  |
| Region  | Galicia  |
| Title of aid scheme or name of company receiving individual aid | IG128: Diagnósticos integrales de situación y elaboración e implantación de planes estratégicos  |
| Legal basis   | Real Decreto nº 1579/2006, de 22 de diciembre (BOE nº 29, de 2 de febrero), por el que se establece el régimen de ayudas y el sistema de gestión del programa de apoyo a la innovación de las pequeñas y medianas empresas (Innoempresa) 2007-2013.<br><br>Resolución de 9 de mayo de 2007 (DOG nº 96, de 21 de mayo de 2007) por la que se da publicidad a las bases reguladoras del Programa de Apoyo a la Innovación de las Pequeñas y Medianas Empresas (Programa Innoempresa) en Galicia. |
| Type of measure   | Aid scheme   |
| Budget  | Annual budget: EUR 4,555598 million; Overall budget: —   |
| Maximum aid intensity   | In conformity with Articles 4(2)-(6) and 5 of the Regulation   |
| Date of implementation  | 17.7.2007  |
| Duration  | 31.12.2013   |
| Objective   | Small and medium-sized enterprises   |
| Economic sectors  | Other manufacturing, Other services  |
| Name and address of the granting authority                      | Subsidies of up to EUR 3 000 000 are approved by the Director-General of Igape, those over EUR 3 000 000 by the President of Igape<br><br>Instituto Gallego de Promoción Económica (Igape)<br>Complejo Administrativo de San Lázaro, s/n<br>E-15703 Santiago de Compostela (A Coruña)  |

|   |  |
|---|--|
| Aid No  | XS 209/07  |
| Member State  | Spain  |
| Region  | Galicia  |
| Title of aid scheme or name of company receiving individual aid | IG129: Proyectos de diseño de nuevo producto   |
| Legal basis   | Real Decreto nº 1579/2006, de 22 de diciembre (BOE nº 29, de 2 de febrero), por el que se establece el régimen de ayudas y el sistema de gestión del programa de apoyo a la innovación de las pequeñas y medianas empresas (Innoempresa) 2007-2013.<br><br>Resolución de 9 de mayo de 2007 (DOG nº 96, de 21 de mayo de 2007) por la que se da publicidad a las bases reguladoras del Programa de Apoyo a la Innovación de las Pequeñas y Medianas Empresas (Programa Innoempresa) en Galicia. |
| Type of measure   | Aid scheme   |
| Budget  | Annual budget: EUR 4,555598 million; Overall budget: —   |
| Maximum aid intensity   | In conformity with Articles 4(2)-(6) and 5 of the Regulation   |
| Date of implementation  | 17.7.2007  |
| Duration  | 31.12.2013   |
| Objective   | Small and medium-sized enterprises   |
| Economic sectors  | Other manufacturing, Other services  |
| Name and address of the granting authority                      | Subsidies of up to EUR 3 000 000 are approved by the Director-General of Igape, those over EUR 3 000 000 by the President of Igape<br><br>Instituto Gallego de Promoción Económica (Igape)<br>Complejo Administrativo de San Lázaro, s/n<br>E-15703 Santiago de Compostela (A Coruña)  |



**Information communicated by Member States regarding State aid granted under Commission Regulation (EC) No 70/2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises**

(Text with EEA relevance)

(2007/C 250/04)

|   |  |
|---|--|
| Aid No  | XS 210/07  |
| Member State  | Spain  |
| Region  | Galicia  |
| Title of aid scheme or name of company receiving individual aid | IG130: Diagnósticos tecnológicos y planes de mejora tecnológica  |
| Legal basis   | Real Decreto nº 1579/2006, de 22 de diciembre (BOE nº 29, de 2 de febrero), por el que se establece el régimen de ayudas y el sistema de gestión del programa de apoyo a la innovación de las pequeñas y medianas empresas (Innoempresa) 2007-2013<br><br>Resolución de 9 de mayo de 2007 (DOG nº 96, de 21 de mayo de 2007) por la que se da publicidad a las bases reguladoras del Programa de Apoyo a la Innovación de las Pequeñas y Medianas Empresas (Programa Innoempresa) en Galicia |
| Type of measure   | Aid scheme   |
| Budget  | Annual budget: EUR 4,555598 million; overall budget: —   |
| Maximum aid intensity   | In conformity with Articles 4(2)-(6) and 5 of the Regulation   |
| Date of implementation  | 17.7.2007  |
| Duration  | 31.12.2013   |
| Objective   | Small and medium-sized enterprises   |
| Economic sectors  | Other manufacturing, other services  |
| Name and address of the granting authority                      | Subsidies of up to EUR 3 000 000 are approved by the Director-General of Igape, those over EUR 3 000 000 by the President of Igape<br><br>Instituto Gallego de Promoción Económica (Igape)<br>Complejo Administrativo de San Lázaro, s/n<br>E-15703 Santiago de Compostela (A Coruña)  |
| Aid No  | XS 211/07  |
| Member State  | Spain  |
| Region  | Galicia  |
| Title of aid scheme or name of company receiving individual aid | IG131: Desarrollo tecnológico aplicado   |

|   |  |
|---|--|
| Legal basis   | Real Decreto nº 1579/2006, de 22 de diciembre (BOE nº 29, de 2 de febrero), por el que se establece el régimen de ayudas y el sistema de gestión del programa de apoyo a la innovación de las pequeñas y medianas empresas (Innoempresa) 2007-2013<br><br>Resolución de 9 de mayo de 2007 (DOG nº 96, de 21 de mayo de 2007) por la que se da publicidad a las bases reguladoras del Programa de Apoyo a la Innovación de las Pequeñas y Medianas Empresas (Programa Innoempresa) en Galicia |
| Type of measure   | Aid scheme   |
| Budget  | Annual budget: EUR 4,555598 million; overall budget: —   |
| Maximum aid intensity   | In conformity with Articles 4(2)-(6) and 5 of the Regulation   |
| Date of implementation  | 17.7.2007  |
| Duration  | 31.12.2013   |
| Objective   | Small and medium-sized enterprises   |
| Economic sectors  | Other manufacturing, other services  |
| Name and address of the granting authority                      | Subsidies of up to EUR 3 000 000 are approved by the Director-General of Igape, those over EUR 3 000 000 by the President of Igape<br><br>Instituto Gallego de Promoción Económica (Igape)<br>Complejo Administrativo de San Lázaro, s/n<br>E-15703 Santiago de Compostela (A Coruña)  |
| Aid No  | XS 212/07  |
| Member State  | Spain  |
| Region  | Galicia  |
| Title of aid scheme or name of company receiving individual aid | IG132: Implantación y certificación de proyectos de I+D+i y de sistemas de gestión   |
| Legal basis   | Real Decreto nº 1579/2006, de 22 de diciembre (BOE nº 29, de 2 de febrero), por el que se establece el régimen de ayudas y el sistema de gestión del programa de apoyo a la innovación de las pequeñas y medianas empresas (Innoempresa) 2007-2013<br><br>Resolución de 9 de mayo de 2007 (DOG nº 96, de 21 de mayo de 2007) por la que se da publicidad a las bases reguladoras del Programa de Apoyo a la Innovación de las Pequeñas y Medianas Empresas (Programa Innoempresa) en Galicia |
| Type of measure   | Aid scheme   |
| Budget  | Annual budget: EUR 4,555598 million; overall budget: —   |
| Maximum aid intensity   | In conformity with Articles 4(2)-(6) and 5 of the Regulation   |
| Date of implementation  | 17.7.2007  |
| Duration  | 31.12.2013   |
| Objective   | Small and medium-sized enterprises   |

|   |  |
|---|--|
| Economic sectors  | Other manufacturing, other services  |
| Name and address of the granting authority                      | Subsidies of up to EUR 3 000 000 are approved by the Director-General of Igape, those over EUR 3 000 000 by the President of Igape<br><br>Instituto Gallego de Promoción Económica (Igape)<br>Complejo Administrativo de San Lázaro, s/n<br>E-15703 Santiago de Compostela (A Coruña)  |
| Aid No  | XS 213/07  |
| Member State  | Spain  |
| Region  | Galicia  |
| Title of aid scheme or name of company receiving individual aid | IG133: Implantación y certificación de sistemas de gestión medioambiental, sistemas integrados de calidad y medioambiente, excelencia empresarial y sistemas de gestión de la seguridad de la información  |
| Legal basis   | Real Decreto nº 1579/2006, de 22 de diciembre (BOE nº 29, de 2 de febrero), por el que se establece el régimen de ayudas y el sistema de gestión del programa de apoyo a la innovación de las pequeñas y medianas empresas (Innoempresa) 2007-2013<br><br>Resolución de 9 de mayo de 2007 (DOG nº 96, de 21 de mayo de 2007) por la que se da publicidad a las bases reguladoras del Programa de Apoyo a la Innovación de las Pequeñas y Medianas Empresas (Programa Innoempresa) en Galicia |
| Type of measure   | Aid scheme   |
| Budget  | Annual budget: EUR 4,555 598 million; overall budget: —  |
| Maximum aid intensity   | In conformity with Articles 4(2)-(6) and 5 of the Regulation   |
| Date of implementation  | 17.7.2007  |
| Duration  | 31.12.2013   |
| Objective   | Small and medium-sized enterprises   |
| Economic sectors  | Other manufacturing, other services  |
| Name and address of the granting authority                      | Subsidies of up to EUR 3 000 000 are approved by the Director-General of Igape, those over EUR 3 000 000 by the President of Igape<br><br>Instituto Gallego de Promoción Económica (Igape)<br>Complejo Administrativo de San Lázaro, s/n<br>E-15703 Santiago de Compostela (A Coruña)  |
| Aid No  | XS 214/07  |
| Member State  | Spain  |
| Region  | Galicia  |
| Title of aid scheme or name of company receiving individual aid | IG134: Proyectos integrados destinados a mejorar procesos y productos de empresas relacionadas por la cadena de valor  |

|  |  |
|--|--|
| Legal basis                                | Real Decreto nº 1579/2006, de 22 de diciembre (BOE nº 29, de 2 de febrero), por el que se establece el régimen de ayudas y el sistema de gestión del programa de apoyo a la innovación de las pequeñas y medianas empresas (Innoempresa) 2007-2013<br><br>Resolución de 9 de mayo de 2007 (DOG nº 96, de 21 de mayo de 2007) por la que se da publicidad a las bases reguladoras del Programa de Apoyo a la Innovación de las Pequeñas y Medianas Empresas (Programa Innoempresa) en Galicia |
| Type of measure                            | Aid scheme   |
| Budget                                     | Annual budget: EUR 4,555598 million; overall budget: —   |
| Maximum aid intensity                      | In conformity with Articles 4(2)-(6) and 5 of the Regulation   |
| Date of implementation                     | 17.7.2007  |
| Duration                                   | 31.12.2013   |
| Objective                                  | Small and medium-sized enterprises   |
| Economic sectors                           | All sectors eligible for aid to SMEs   |
| Name and address of the granting authority | Subsidies of up to EUR 3 000 000 are approved by the Director-General of Igape, those over EUR 3 000 000 by the President of Igape<br><br>Instituto Gallego de Promoción Económica (Igape)<br>Complejo Administrativo de San Lázaro, s/n<br>E-15703 Santiago de Compostela (A Coruña)  |

**Information communicated by Member States regarding State aid granted under Commission Regulation (EC) No 70/2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises**

(Text with EEA relevance)

(2007/C 250/05)

|  |   |                       |            |
|--|---|-----------------------|------------|
| Aid No   | XS 216/07   |                       |            |
| Member State   | Hungary   |                       |            |
| Region   | Magyarország valamennyi régiója   |                       |            |
| Title of aid scheme or name of company receiving individual aid  | Állami támogatás KKV-knak a Kutatási és Innovációs Alapból  |                       |            |
| Legal basis  | 146/2007. (VI. 26.) Korm. rendelet a Kutatási és Technológiai Innovációs Alapból nyújtott állami támogatások szabályairól<br>— 2003. évi XC. törvény a Kutatási és Technológiai Innovációs Alapról<br>— 133/2004. (IV. 29.) Korm. rendelet a Kutatási és Technológiai Innovációs Alap kezeléséről és felhasználásáról |                       |            |
| Type of measure  | Aid scheme  |                       |            |
| Budget   | Annual budget: HUF 7 800 million; Overall budget: —   |                       |            |
| Maximum aid intensity  | In conformity with Articles 4(2)-(6) and 5 of the Regulation  |                       |            |
| Date of implementation   | 4.7.2007  |                       |            |
| Duration   | 30.6.2008   |                       |            |
| Objective  | Small and medium-sized enterprises  |                       |            |
| Economic sectors   | All sectors eligible for aid to SMEs  |                       |            |
| Name and address of the granting authority   | Gazdasági és Közlekedési Minisztérium<br>Honvéd u. 13-15.<br>H-1055 Budapest  |                       |            |
|  |   |                       |            |
| Aid No   | XS 217/07   |                       |            |
| Member State   | The Netherlands   |                       |            |
| Region   | Provincie Groningen   |                       |            |
| Title of aid scheme or name of company receiving individual aid  | Wolfard & Wessels Werktuigbouw B.V. te Foxhol   |                       |            |
| Legal basis  | Algemene wet bestuursrecht 4.2<br>Algemene Subsidieverordening SNN  |                       |            |
| Annual expenditure planned under the scheme or overall amount of individual aid granted to the company | Aid scheme  | Annual overall amount | —          |
|  |   | Loans guaranteed      | —          |
|  | Individual aid  | Overall aid amount    | EUR 52 322 |
|  |   | Loans guaranteed      | —          |

|  |  |  |
|--|--|--|
| Maximum aid intensity                      | <p>In conformity with Articles 4(2)-(6) and 5 of the Regulation.</p> <p>The total cost of the project is EUR 130 805. The total eligible cost is EUR 130 805. The total amount to be subsidised by SNN is EUR 52 322 (aid percentage of 35 % in accordance with Article 5a(3)(c) of Commission Regulation (EC) No 364/2004 amending Regulation (EC) No 70/2001 as regards the extension of its scope to include aid for research and development, increased by 5 % under Article 5a(4)(a), making a total of 40 %).</p> <p>The firm is located in the municipality of Hoogezand-Sappemeer, which means it falls within the new aid map</p>   | Yes  |
| Date of implementation                     | 1.8.2007   |  |
| Duration                                   | Until 1.7.2008   |  |
| Objective                                  | <p>Aid to SMEs</p> <p>The aim of the project is to develop an innovative ship by means of innovative forms of cooperation.</p> <p>The participants are developing a new type of ship by pooling their know-how in the field of process innovation and design with the help of modern on-line 3D design and engineering software, coupled with a central database and a central planning system. Production and assembly planning are integrated into one streamlined whole. Product innovations on board the ships are aimed at reducing fuel expenditure and increasing safety.</p> <p>The costs for which subsidies are made available concern technical analysis, engineering of hull and construction, engineering of the screw propeller concept, research and analysis of vibrations and sound, research and analysis of the ship's performance, NUPAS computerisation support and research, analysis and support by classification society.</p> <p>As the planning for creating this approximately 6 300 tonnes dead weight (tdw) ship clearly shows, it is a pilot project aimed at testing the intended working method for process innovation within the chain. The main outcome will therefore be the new working method, which will make optimal use of the flexible and high-quality design/engineering/production capacity of the joint Northern maritime cluster</p> | Yes  |
| Economic sectors                           | Limited to specific sectors  | Yes  |
|  | Other manufacturing  | Yes, mechanical engineering installation company |
| Name and address of the granting authority | Samenwerkingsverband Noord-Nederland   |  |
|  | Postbus 779<br>9700 AT Groningen<br>Nederland  |  |
| Large individual aid grants                | In conformity with Article 6 of the Regulation   | Yes  |

|  |  |                       |            |
|--|--|-----------------------|------------|
| Aid No   | XS 218/07  |                       |            |
| Member State   | The Netherlands  |                       |            |
| Region   | Provincie Groningen  |                       |            |
| Title of aid scheme or name of company receiving individual aid  | Gebr. De Haan B.V. te Hoogezand  |                       |            |
| Legal basis  | Algemene wet bestuursrecht 4.2<br>Algemene Subsidieverordening SNN   |                       |            |
| Annual expenditure planned under the scheme or overall amount of individual aid granted to the company | Aid scheme   | Annual overall amount | —          |
|  |  | Loans guaranteed      | —          |
|  | Individual aid   | Overall aid amount    | EUR 71 750 |
|  |  | Loans guaranteed      | —          |
| Maximum aid intensity  | <p>In conformity with Articles 4(2)-(6) and 5 of the Regulation</p> <p>The total cost of the project is EUR 179 374. The total eligible cost is EUR 179 374. The total amount to be subsidised by SNN is EUR 71 750 (aid percentage of 35 % in accordance with Article 5a(3)(c) of Commission Regulation (EC) No 364/2004 amending Regulation (EC) No 70/2001 as regards the extension of its scope to include aid for research and development, increased by 5 % under Article 5a(4)(a), making a total of 40 %).</p> <p>The firm is located in the municipality of Hoogezand-Sappemeer, which means it falls within the new aid map</p>  |                       | Yes        |
| Date of implementation   | 1.8.2007   |                       |            |
| Duration   | Until 1.7.2008   |                       |            |
| Objective  | <p>Aid to SMEs</p> <p>The aim of the project is to develop an innovative ship by means of innovative forms of cooperation.</p> <p>The participants are developing a new type of ship by pooling their know-how in the field of process innovation and design with the help of modern on-line 3D design and engineering software, coupled with a central database and a central planning system. Production and assembly planning are integrated into one streamlined whole. Product innovations on board the ships are aimed at reducing fuel expenditure and increasing safety.</p> <p>The costs for which subsidies are made available concern technical analysis, engineering of hull and construction, engineering of the screw propeller concept, research and analysis of vibrations and sound, research and analysis of the ship's performance, NUPAS computerisation support and research, analysis and support by classification society.</p> <p>As the planning for creating this approximately 6 300 tonnes dead weight (tdw) ship clearly shows, it is a pilot project aimed at testing the intended working method for process innovation within the chain. The main outcome will therefore be the new working method, which will make optimal use of the flexible and high-quality design/engineering/production capacity of the joint Northern maritime cluster</p> |                       | Yes        |

|   |   |                         |
|---|---|-------------------------|
| Economic sectors  | Limited to specific sectors   | Yes                     |
|   | Other manufacturing   | Yes, systems technology |
| Name and address of the granting authority                      | Samenwerkingsverband Noord-Nederland  |                         |
|   | Postbus 779<br>9700 AT Groningen<br>Nederland   |                         |
| Large individual aid grants                                     | In conformity with Article 6 of the Regulation  | Yes                     |
|   |   |                         |
| Aid No  | XS 219/07   |                         |
| Member State  | The Netherlands   |                         |
| Region  | Provincie Groningen   |                         |
| Title of aid scheme or name of company receiving individual aid | Bodewes Managementservices B.V. Hoogezand   |                         |
| Legal basis   | Algemene wet bestuursrecht 4.2<br>Algemene subsidieverordening SNN  |                         |
| Type of measure   | Individual aid  |                         |
| Budget  | Annual budget: —; Overall budget: EUR 0,378476 million  |                         |
| Maximum aid intensity   | <p>In conformity with Articles 4(2)-(6) and 5 of the Regulation.</p> <p>The total cost of the project is EUR 946 191. The total eligible cost is EUR 946 191. The total amount to be subsidised by SNN is EUR 378 476 (aid percentage of 35 % in accordance with Article 5a(3)(c) of Commission Regulation (EC) No 364/2004 amending Regulation (EC) No 70/2001 as regards the extension of its scope to include aid for research and development, increased by 5 % under Article 5a(4)(a), making a total of 40 %).</p> <p>The firm is located in the municipality of Hoogezand-Sappemeer, which means it falls within the new aid map</p>   |                         |
| Date of implementation  | 1.8.2007  |                         |
| Duration  | 1.7.2008  |                         |
| Objective   | <p>Small and medium-sized enterprises</p> <p>The aim of the project is to develop an innovative ship by means of innovative forms of cooperation.</p> <p>The participants are developing a new type of ship by pooling their know-how in the field of process innovation and design with the help of modern on-line 3D design and engineering software, coupled with a central database and a central planning system. Production and assembly planning are integrated into one streamlined whole. Product innovations on board the ships are aimed at reducing fuel expenditure and increasing safety.</p> <p>The costs for which subsidies are made available concern technical analysis, engineering of hull and construction, engineering of the screw propeller concept, research and analysis of vibrations and sound, research and analysis of the ship's performance, NUPAS computerisation support and research, analysis and support by classification society.</p> <p>As the planning for creating this approximately 6 300 tonnes dead weight (tdw) ship clearly shows, it is a pilot project aimed at testing the intended working method for process innovation within the chain. The main outcome will therefore be the new working method, which will make optimal use of the flexible and high-quality design/engineering/production capacity of the joint Northern maritime cluster</p> |                         |



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|  |   |
|--|---|
| Economic sectors                           | Shipbuilding  |
| Name and address of the granting authority | Samenwerkingsverband Noord-Nederland<br>Postbus 779<br>9700 AT Groningen<br>Nederland |

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## NOTICES CONCERNING THE EUROPEAN ECONOMIC AREA

## EFTA SURVEILLANCE AUTHORITY

**Communication from the EFTA Surveillance Authority Notice on the rules for access to the EFTA Surveillance Authority file in Cases pursuant to Articles 53, 54 and 57 of the EEA Agreement**

(2007/C 250/06)

- A. The present Notice is issued pursuant to the rules of the Agreement on the European Economic Area (hereafter the 'EEA Agreement') and the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (hereafter the 'Surveillance and Court Agreement').
- B. The European Commission (hereafter the 'Commission') has issued a notice entitled 'Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004' <sup>(1)</sup>. That non-binding act sets out the principles which the Commission follows for allowing access to the Commission file in accordance with Article 27(1) and (2) of Council Regulation (EC) No 1/2003 <sup>(2)</sup>, Article 15(1) of Commission Regulation (EC) No 773/2004 <sup>(3)</sup>, Article 18(1) and (3) of the Council Regulation (EC) No 139/2004 <sup>(4)</sup> and Article 17(1) of Commission Regulation (EC) No 802/2004 <sup>(5)</sup>.
- C. The EFTA Surveillance Authority considers the abovementioned act to be EEA relevant. In order to maintain equal conditions of competition and to ensure a uniform application of the EEA competition rules throughout the European Economic Area, the EFTA Surveillance Authority adopts the present Notice under the power conferred upon it by Article 5(2)(b) of the Surveillance and Court Agreement. It intends to follow the principles and rules laid down in this Notice when applying the relevant EEA rules to a particular case.

## I. INTRODUCTION AND SUBJECT-MATTER OF THE NOTICE

1. Access to the EFTA Surveillance Authority file is one of the procedural guarantees intended to apply the principle of equality of arms and to protect the rights of the defence. Access to the file is provided for in Article 27(1) and (2) of Chapter II of Protocol 4 to the Surveillance and Court Agreement (hereafter 'Chapter II') <sup>(6)</sup>, Article 15(1) of Chapter III of Protocol 4 to the Surveillance and Court Agreement (hereafter 'Chapter III') <sup>(7)</sup> and Article 18(1) and (3) of Chapter XIII of Protocol 4 to the Surveillance and

<sup>(1)</sup> OJ C 325, 22.12.2005, p. 7.

<sup>(2)</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

<sup>(3)</sup> Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ L 123, 27.4.2004, p. 18).

<sup>(4)</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004, p. 1).

<sup>(5)</sup> Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ L 133, 30.4.2004, p. 1). Corrected in the OJ L 172, 6.5.2004, p. 9.

<sup>(6)</sup> Following the Agreement amending Protocol 4 to the Agreement of the EFTA States on the establishment of a Surveillance Authority and a Court of Justice of 24 September 2004, which entered into force on 20 May 2005, Chapter II of Protocol 4 to the Surveillance and Court Agreement reflects to a large extent in the EFTA pillar Regulation (EC) No 1/2003.

<sup>(7)</sup> Following the entry into force of the Agreement amending Protocol 4 to the Agreement of the EFTA States on the establishment of a Surveillance Authority and a Court of Justice of 3 December 2004 on 1 July 2005, Chapter III of Protocol 4 to the Surveillance and Court Agreement reflects Regulation (EC) No 773/2004.

Court Agreement <sup>(1)</sup> (hereafter 'Chapter XIII') <sup>(2)</sup>. In accordance with these provisions, before taking decisions on the basis of Articles 7, 8, 23 and 24(2) of Chapter III and Articles 6(3), 7(3), 8(2) to (6), 14 and 15 of Chapter XIII, the Authority shall give the persons, undertakings or associations of undertakings, as the case may be, an opportunity of making known their views on the objections against them and they shall be entitled to have access to the Authority's file in order to fully respect their rights of defence in the proceedings. The present Notice provides the framework for the exercise of the right set out in these provisions. It does not cover the possibility of the provision of documents in the context of other proceedings. This Notice is without prejudice to the interpretation of such provisions by the EFTA Court, the Court of Justice and the Court of First Instance of the European Communities.

2. This specific right outlined above is distinct from the Authority's general rules on access to documents <sup>(3)</sup>, which is subject to different criteria and exceptions and pursues a different purpose.
3. The term access to the file is used in this Notice exclusively to mean the access granted to the persons, undertakings or association of undertakings to whom the EFTA Surveillance Authority has addressed a statement of objections. This Notice clarifies who has access to the file for this purpose.
4. The same term, or the term access to documents, is also used in the above-mentioned Chapters in respect of complainants or other involved parties. These situations are, however, distinct from that of the addressees of a statement of objections and therefore do not fall under the definition of access to the file for the purposes of this Notice. These related situations are dealt with in a separate section of the notice.
5. This Notice also explains to which information access is granted, when access takes place and what are the procedures for implementing access to the file.
6. The rules on access to file set out in this Notice take account of the amended versions of Chapter II, Chapter III and Chapter XIII <sup>(4)</sup>, as well as the EFTA Surveillance Authority Decision No 177/02/COL of 30 October 2002 on the terms of reference of Hearing Officers in certain competition proceedings <sup>(5)</sup>. It also takes into account the recent case law of the Court of Justice and the Court of First Instance of the European Communities <sup>(6)</sup> and the practice developed by the EFTA Surveillance Authority, as well as the practice developed by Commission since the adoption of the Commission's 1997 Notice on access to file <sup>(7)</sup>.

<sup>(1)</sup> Following the Agreement of 4 June 2004 amending Protocol 4 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice, which entered into force 20 May 2005, Article 4(4) to (5) and Articles 6 to 24 of Chapter XIII correspond to identically numbered Articles of Regulation (EC) No 139/2004. (Articles 1 to 3, 4(1) to (3) and 5 of that Regulation are to be found in the act referred to in point 1 of Annex XIV to the EEA Agreement (Regulation (EC) No 139/2004)).

<sup>(2)</sup> Access to file is also provided for in Article 17(1) of Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ L 133, 30.4.2004, p. 1). Corrected in the OJ L 172, 6.5.2004, p. 9 (hereafter the 'Commission Merger Implementing Regulation'). This Commission Regulation is presently expected to be incorporated into the EEA Agreement and the Surveillance and Court Agreement. As it is foreseen that Protocol 4 to the Surveillance and Court Agreement, when amended, will contain provisions corresponding to those of the Commission Merger Implementing regulation, the EFTA Surveillance Authority will in the following also take account of, and make references to, the Commission Merger Implementing Regulation.

<sup>(3)</sup> See the EFTA Surveillance Authority's Information Guidelines at: <http://www.eftasurv.int/information/dbaFile449.html>

<sup>(4)</sup> As well as the Commission Merger Implementing Regulation, see note 9 above.

<sup>(5)</sup> OJ L 80, 27.3.2003, p. 27 and EEA Supplement to the OJ No 16, 27.3.2003, p. 2.

<sup>(6)</sup> In particular Joint Cases T-25/95 *et al.*, *Cimenteries CBR SA et al. v Commission* [2000] ECR II-0491. Article 6 of the EEA Agreement provides that, without prejudice to future developments of case-law, the provisions of this Agreement, in so far as they are identical in substance to corresponding rules of the Treaty establishing the European Community and the Treaty establishing the European Coal and Steel Community and to acts adopted in application of these two treaties, shall in their implementation and application, be interpreted in conformity with the relevant rulings of the Court of Justice of the European Communities given prior to the date of signature of the EEA Agreement. As regards relevant rulings by the Court of Justice given after the date of signature of the EEA Agreement, it follows from Article 3(2) of the Surveillance and Court Agreement that the EFTA Surveillance Authority and the EFTA Court shall pay due account to the principles laid down by these rulings.

<sup>(7)</sup> Commission Notice on the internal rules of procedure for processing requests for access to the file in Cases under Articles 85 and 86 (now 81 and 82) of the EC Treaty, Articles 65 and 66 of the ECSC Treaty and Council Regulation (EEC) No 4064/89 (OJ C 23, 23.1.1997, p. 3). As stated in Article 58 of the EEA Agreement and Protocol 23 thereto, the Authority and the Commission are to co-operate with a view to *inter alia* promoting a homogenous implementation, application and interpretation of the EEA Agreement. Although the Commission's Decisions are not binding on the Authority, the Authority will thus endeavour to take due account of the case practice of the Commission.

## II. SCOPE OF ACCESS TO THE FILE

### A. Who is entitled to access to the file?

7. Access to the file pursuant to the provisions mentioned in paragraph 1 is intended to enable the effective exercise of the rights of defence against the objections brought forward by the EFTA Surveillance Authority. For this purpose, both in cases under Articles 53 and 54 of the EEA Agreement and in cases under Article 57 of the EEA Agreement, access is granted, upon request, to the persons, undertakings or associations of undertakings <sup>(1)</sup>, as the case may be, to which the Authority addresses its objections <sup>(2)</sup> (hereinafter, 'the parties').

### B. To which documents is access granted?

#### 1. The content of the EFTA Surveillance Authority file

8. The 'EFTA Surveillance Authority file' in a competition investigation (hereafter also referred to as 'the file') consists of all documents <sup>(3)</sup>, which have been obtained, produced and/or assembled by the EFTA Surveillance Authority Competition and State Aid Directorate, during the investigation.
9. In the course of investigation under Articles 20, 21 and 22(2) of Chapter II and Articles 12 and 13 of Chapter XIII, the EFTA Surveillance Authority may collect a number of documents, some of which may, following a more detailed examination, prove to be unrelated to the subject matter of the case in question. Such documents may be returned to the undertaking from which those have been obtained. Upon return, these documents will no longer constitute part of the file.

#### 2. Accessible documents

10. The parties must be able to acquaint themselves with the information in the EFTA Surveillance Authority's file, so that, on the basis of this information, they can effectively express their views on the preliminary conclusions reached by the Authority in its objections. For this purpose they will be granted access to all documents making up the Authority file, as defined in paragraph 8, with the exception of internal documents, business secrets of other undertakings, or other confidential information <sup>(4)</sup>.
11. Results of a study commissioned in connection with proceedings are accessible together with the terms of reference and the methodology of the study. Precautions may however be necessary in order to protect intellectual property rights.

<sup>(1)</sup> In the remainder of this Notice, the term 'undertaking' includes both undertakings and associations of undertakings. The term 'person' encompasses natural and legal persons. Many entities are legal persons and undertakings at the same time; in this case, they are covered by both terms. The same applies where a natural person is an undertaking within the meaning of Articles 53 and 54 of the EEA Agreement. In Merger proceedings, account must also be taken of persons referred to in Article 3(1)(b) of the act referred to in point 1 of Annex XIV to the EEA Agreement (Regulation (EC) No 139/2004), even when they are natural persons. Where entities without legal personality which are also not undertakings become involved in EFTA Surveillance Authority competition proceedings, the Authority applies, where appropriate, the principles set out in this Notice *mutatis mutandis*.

<sup>(2)</sup> Cf. Article 15(1) of Chapter III, Article 18(3) of Chapter XIII and Article 17(1) of the Commission Implementing Regulation, see note 9 above.

<sup>(3)</sup> In this Notice the term 'document' is used for all forms of information support, irrespective of the storage medium. This covers also any electronic data storage device as may be or become available.

<sup>(4)</sup> Cf. Article 27(2) of Chapter II, Articles 15(2) and 16(1) of Chapter III, and Article 17(3) of the Commission Merger Implementing Regulation see note 9 above. Those exceptions are also mentioned in Case T-7/89, *Hercules Chemicals v Commission* [1991] ECR II-1711, paragraph 54. The Court of First Instance of the European Communities has ruled that it does not belong to the Commission alone to decide which documents in the file may be useful for the purposes of the defence (Cf. Case T-30/91, *Solvay v Commission* [1995] ECR II-1775, paragraphs 81-86, and Case T-36/91, *ICI v Commission* [1995] ECR II-1847, paragraphs 91-96).

### 3. Non-accessible documents

#### 3.1. Internal documents

##### 3.1.1 General principles

12. Internal documents can be neither incriminating nor exculpatory <sup>(1)</sup>. They do not constitute part of the evidence on which the EFTA Surveillance Authority can rely in its assessment of a case. Thus, the parties will not be granted access to internal documents in the Authority file <sup>(2)</sup>. Given their lack of evidential value, this restriction on access to internal documents does not prejudice the proper exercise of the parties' right of defence <sup>(3)</sup>.
13. There is no obligation on the EFTA Surveillance Authority to draft any minutes of meetings <sup>(4)</sup> with any person or undertaking. If the Authority chooses to make notes of such meetings, such documents constitute the Authority's own interpretation of what was said at the meetings, for which reason they are classified as internal documents. Where, however, the person or undertaking in question has agreed the minutes, such minutes will be made accessible after deletion of any business secrets or other confidential information. Such agreed minutes constitute part of the evidence on which the Authority can rely in its assessment of a case <sup>(5)</sup>.
14. In the case of a study commissioned in connection with proceedings, correspondence between the EFTA Surveillance Authority and its contractor containing evaluation of the contractor's work or relating to financial aspects of the study, are considered internal documents and will thus not be accessible.

##### 3.1.2 Correspondence with other public authorities

15. A particular case of internal documents is the EFTA Surveillance Authority's correspondence with other public authorities and the internal documents received from such authorities. Examples of such non-accessible documents include:
- correspondence between the Authority and the competition authorities of the EFTA States, or between the latter <sup>(6)</sup>,
  - correspondence between the Authority and other public authorities of the EFTA States <sup>(7)</sup>,
  - correspondence between the Authority, the Commission and public authorities of EU Member States,
  - correspondence between the Authority and public authorities of other countries, including their competition authorities.
16. In certain exceptional circumstances, access is granted to documents originating from the EFTA States, the Commission or EU Member States, after deletion of any business secrets or other confidential information. The EFTA Surveillance Authority will consult the entity submitting the document prior to granting access to identify business secrets or other confidential information.

<sup>(1)</sup> Examples of internal documents are drafts, opinions, memos or notes from the Authority's Directorates or other public authorities concerned.

<sup>(2)</sup> Cf. Article 27(2) of Chapter II, Article 15(2) of Chapter III, and Article 17(3) of the Commission Merger Implementing Regulation, see note 9 above.

<sup>(3)</sup> Cf. paragraph 1 above.

<sup>(4)</sup> See in this respect judgment of 30 September 2003 in Joined Cases T-191/98 and T-212/98 to T-214/98, *Atlantic Container Line and others v Commission (TACA)* [2003] ECR II-3275, paragraphs 349-359.

<sup>(5)</sup> Statements recorded pursuant to Article 19 or Article 20(2)(e) of Chapter II or Article 13(2)(e) of Chapter XIII will also normally belong to the accessible documents (see paragraph 10 above).

<sup>(6)</sup> Cf. Article 27(2) of Chapter II, Article 15(2) of Chapter III, Article 17(3) of the Commission Merger Implementing Regulation, see note 9 above. In this Notice the term 'EFTA States' includes the EFTA States that are parties to the EEA Agreement.

<sup>(7)</sup> See in this respect Order of the Court of First Instance in Cases T-134/94, *et al. NMH Stahlwerke and Others v Commission* [1997] ECR II-2293, paragraph 36, and Case T-65/89, *BPB Industries and British Gypsum* [1993] ECR II-389, paragraph 33.

This is the case where the documents originating from the EFTA States contain allegations brought against the parties, which the EFTA Surveillance Authority must examine, or form part of the evidence in the investigative process, in a way similar to documents obtained from private parties. These considerations apply, in particular, as regards:

- documents and information exchanged pursuant to Article 12 of Chapter II, and information provided to the Authority pursuant to Article 18(6) of Chapter II,
- complaints lodged by an EFTA State under Article 7(2) of Chapter II.

Access will also be granted to documents originating from EEA States or the Commission in so far as they are relevant to the parties' defence with regard to the exercise of competence by the EFTA Surveillance Authority <sup>(1)</sup>.

### 3.2. Confidential information

17. The EFTA Surveillance Authority file may also include documents containing two categories of information, namely business secrets and other confidential information, to which access may be partially or totally restricted <sup>(2)</sup>. Access will be granted, where possible, to non-confidential versions of the original information. Where confidentiality can only be assured by summarising the relevant information, access will be granted to a summary. All other documents are accessible in their original form.

#### 3.2.1 Business secrets

18. In so far as disclosure of information about an undertaking's business activity could result in a serious harm to the same undertaking, such information constitutes business secrets <sup>(3)</sup>. Examples of information that may qualify as business secrets include: technical and/or financial information relating to an undertaking's know-how, methods of assessing costs, production secrets and processes, supply sources, quantities produced and sold, market shares, customer and distributor lists, marketing plans, cost and price structure and sales strategy.

#### 3.2.2 Other confidential information

19. The category 'other confidential information' includes information other than business secrets, which may be considered as confidential, insofar as its disclosure would significantly harm a person or undertaking. Depending on the specific circumstances of each case, this may apply to information provided by third parties about undertakings which are able to place very considerable economic or commercial pressure on their competitors or on their trading partners, customers or suppliers. It is legitimate to refuse to reveal to such undertakings certain letters received from their customers, since their disclosure might easily expose the authors to the risk of retaliatory measures <sup>(4)</sup>. Therefore the notion of other confidential information may include information that would enable the parties to identify complainants or other third parties where those have a justified wish to remain anonymous.

20. The category of other confidential information also includes military secrets.

#### 3.2.3 Criteria for the acceptance of requests for confidential treatment.

21. Information will be classified as confidential where the person or undertaking in question has made a claim to this effect and such claim has been accepted by the EFTA Surveillance Authority <sup>(5)</sup>.

<sup>(1)</sup> In the merger control area, this may apply in particular to submissions by an EFTA State under Article 9(2) of Chapter XIII with regard to a case referral.

<sup>(2)</sup> Cf. Article 16(1) of Chapter III and Article 17(3) of the Commission Merger Implementing Regulation, see note 9 above; Case T-7/89, *Hercules Chemicals NV v Commission* [1991] ECR II-1711, paragraph 54; Case T-23/99, *LR AF 1998 A/S v Commission* [2002] ECR II-1705, paragraph 170.

<sup>(3)</sup> Judgment of 18 September 1996 in Case T-353/94, *Postbank NV v Commission* [1996] ECR II-921, paragraph 87.

<sup>(4)</sup> The Community Courts have pronounced upon this question related to the corresponding Community provisions both in cases of alleged abuse of a dominant position (Article 82 of the EC Treaty) (Case T-65/89, *BPB Industries and British Gypsum* [1993] ECR II-389; and Case C-310/93P, *BPB Industries and British Gypsum* [1995] ECR I-865), and in merger Cases (Case T-221/95, *Endemol v Commission* [1999] ECR II-1299, paragraph 69, and Case T-5/02, *Laval v Commission* [2002] ECR II-4381, paragraph 98 *et seq.*).

<sup>(5)</sup> See paragraph 40 below.

22. Claims for confidentiality must relate to information which is within the scope of the above descriptions of business secrets or other confidential information. The reasons for which information is claimed to be a business secret or other confidential information must be substantiated <sup>(1)</sup>. Confidentiality claims can normally only pertain to information obtained by the EFTA Surveillance Authority from the same person or undertaking and not to information from any other source.
23. Information relating to an undertaking but which is already known outside the undertaking (in case of a group, outside the group), or outside the association to which it has been communicated by that undertaking, will not normally be considered confidential <sup>(2)</sup>. Information that has lost its commercial importance, for instance due to the passage of time, can no longer be regarded as confidential. As a general rule, the EFTA Surveillance Authority presumes that information pertaining to the parties' turnover, sales, market-share data and similar information which is more than 5 years old is no longer confidential <sup>(3)</sup>.
24. In proceedings under Articles 53 and 54 of the EEA Agreement, the qualification of a piece of information as confidential is not a bar to its disclosure if such information is necessary to prove an alleged infringement ('inculpatory document') or could be necessary to exonerate a party ('exculpatory document'). In this case, the need to safeguard the rights of the defence of the parties through the provision of the widest possible access to the EFTA Surveillance Authority file may outweigh the concern to protect confidential information of other parties <sup>(4)</sup>. It is for the Authority to assess whether those circumstances apply to any specific situation. This calls for an assessment of all relevant elements, including:
- the relevance of the information in determining whether or not an infringement has been committed, and its probative value,
  - whether the information is indispensable,
  - the degree of sensitivity involved (to what extent would disclosure of the information harm the interests of the person or undertaking in question),
  - the preliminary view of the seriousness of the alleged infringement.
- Similar considerations apply to proceedings under Article 57 of the EEA Agreement when the disclosure of information is considered necessary by the EFTA Surveillance Authority for the purpose of the procedure <sup>(5)</sup>.
25. Where the EFTA Surveillance Authority intends to disclose information, the person or undertaking in question shall be granted the possibility to provide a non-confidential version of the documents where that information is contained, with the same evidential value as the original documents <sup>(6)</sup>.

### C. When is access to the file granted?

26. Prior to the notification of the EFTA Surveillance Authority's statement of objections pursuant to the provisions mentioned in paragraph 1, the parties have no right of access to the file.

#### 1. In antitrust proceedings under Articles 53 and 54 of the EEA Agreement

27. Access to the file will be granted upon request and, normally, on a single occasion, following the notification of the EFTA Surveillance Authority's objections to the parties, in order to ensure the principle of equality of arms and to protect their rights of defence. As a general rule, therefore, no access will be granted to other parties' replies to the Authority's objections.

<sup>(1)</sup> See paragraph 35 below.

<sup>(2)</sup> However, business secrets or other confidential information which are given to a trade or professional association by its members do not lose their confidential nature with regard to third parties and may therefore not be passed on to complainants. Cf. Joined Cases 209 to 215 and 218/78, *Fedetab* [1980] ECR 3125, paragraph 46.

<sup>(3)</sup> See paragraphs 35-38 below on asking undertakings to identify confidential information.

<sup>(4)</sup> Cf. Article 27(2) of Chapter II and Article 15(3) of Chapter III.

<sup>(5)</sup> Article 18(1) of the Commission Merger Implementing Regulation, see note 9 above.

<sup>(6)</sup> Cf. paragraph 42 below.

A party will, however, be granted access to documents received after notification of the objections at later stages of the administrative procedure, where such documents may constitute new evidence — whether of an incriminating or of an exculpatory nature —, pertaining to the allegations concerning that party in the EFTA Surveillance Authority's statement of objections. This is particularly the case where the Authority intends to rely on new evidence.

2. *In proceedings under Article 57 of the EEA Agreement*

28. In accordance with Article 18(1) and (3) of Chapter XIII <sup>(1)</sup>, the notifying parties will be given access to the EFTA Surveillance Authority's file upon request at every stage of the procedure following the notification of the Authority's objections up to the consultation of the Advisory Committee. In contrast, this Notice does not address the possibility of the provision of documents before the Authority states its objections to undertakings under Article 57 of the EEA Agreement and Chapter XIII.

### III. PARTICULAR QUESTIONS REGARDING COMPLAINANTS AND OTHER INVOLVED PARTIES

29. The present section relates to situations where the EFTA Surveillance Authority may or has to provide access to certain documents contained in its file to the complainants in antitrust proceedings and other involved parties in merger proceedings. Irrespective of the wording used in the antitrust and merger implementing regulations <sup>(2)</sup>, these two situations are distinct — in terms of scope, timing, and rights — from access to the file, as defined in the preceding section of this Notice.

#### A. Provision of documents to complainants in antitrust proceedings

30. Complainants do not have the same rights and guarantees as the parties under investigation <sup>(3)</sup>. Therefore complainants cannot claim a right of access to the file as established for parties.
31. However, a complainant who, pursuant to Article 7(1) of Chapter III, has been informed of the EFTA Surveillance Authority's intention to reject its complaint <sup>(4)</sup>, may request access to the documents on which the Authority has based its provisional assessment <sup>(5)</sup>. The complainant will be provided access to such documents on a single occasion, following the issuance of the letter informing the complainant of the Authority's intention to reject its complaint.
32. Complainants do not have a right of access to business secrets or other confidential information which the EFTA Surveillance Authority has obtained in the course of its investigation <sup>(6)</sup>.

#### B. Provision of documents to other involved parties in merger proceedings

33. Access to the file in merger proceedings shall also be given, upon request, to other involved parties who have been informed of the objections in so far as this is necessary for the purposes of preparing their comments <sup>(7)</sup>.
34. Such other involved parties are parties to the proposed concentration other than the notifying parties, such as the seller and the undertaking which is the target of the concentration <sup>(8)</sup>.

<sup>(1)</sup> And Article 17(1) of the Commission Merger Implementing Regulation, see note 9 above.

<sup>(2)</sup> Cf. Article 8(1) of Chapter III, which speaks about 'access to documents' to complainants and Article 17(2) of the Commission Merger Implementing Regulation, see note 9 above, which speaks about 'access to file' to other involved parties 'in so far as this is necessary for the purposes of preparing their comments'.

<sup>(3)</sup> See in this respect Case T-17/93, *Matra-Hachette SA v Commission* [1994] ECR II-595, paragraph 34. The Court of First Instance of the European Communities ruled that the rights of third parties, as laid down by Article 19 of the Council Regulation No 17 of 6 February 1962 (now replaced by Article 27 of Regulation (EC) No 1/2003), were limited to the right to participate in the administrative procedure.

<sup>(4)</sup> By means of a letter issued in accordance with Article 7(1) of Chapter III.

<sup>(5)</sup> Cf. Article 8(1) of Chapter III.

<sup>(6)</sup> Cf. Article 8(1) of Chapter III.

<sup>(7)</sup> See Article 18(4) of Chapter II and Article 17(2) of the Commission Implementing Regulation, see note 9 above.

<sup>(8)</sup> Cf. Article 11(b) of the Commission Merger Implementing Regulation, see note 9 above.



## IV. PROCEDURE FOR IMPLEMENTING ACCESS TO THE FILE

## A. Preparatory procedure

35. Any person which submits information or comments in one of the situations listed hereunder, or subsequently submits further information to the EFTA Surveillance Authority in the course of the same procedures, has an obligation to clearly identify any material which it considers to be confidential, giving reasons, and provide a separate non-confidential version by the date set by the Authority for making its views known <sup>(1)</sup>:

## (a) In antitrust proceedings

- an addressee of an Authority's statement of objections making known its views on the objections <sup>(2)</sup>,
- a complainant making known its views on an Authority statement of objections <sup>(3)</sup>,
- any other natural or legal person, which applies to be heard and shows a sufficient interest, or which is invited by the Authority to express its views, making known its views in writing or at an oral hearing <sup>(4)</sup>,
- a complainant making known his views on an Authority letter informing him on the Authority's intention to reject the complaint <sup>(5)</sup>.

## (b) In merger proceedings

- notifying parties or other involved parties making known their views on Authority objections adopted with a view to take a decision with regard to a request for a derogation from suspension of a concentration and which adversely affects one or more of those parties, or on a provisional decision adopted in the matter <sup>(6)</sup>,
- notifying parties to whom the Authority has addressed a statement of objections, other involved parties who have been informed of those objections or parties to whom the Authority has addressed objections with a view to inflict a fine or a periodic penalty payment, submitting their comments on the objections <sup>(7)</sup>,
- third persons who apply to be heard, or any other natural or legal person invited by the Authority to express their views, making known their views in writing or at an oral hearing <sup>(8)</sup>,
- any person which supplies information pursuant to Article 11 of Chapter XIII.

36. Moreover, the EFTA Surveillance Authority may require undertakings <sup>(9)</sup>, in all cases where they produce or have produced documents, to identify the documents or parts of documents, which they consider to contain business secrets or other confidential information belonging to them, and to identify the undertakings with regard to which such documents are to be considered confidential <sup>(10)</sup>.

<sup>(1)</sup> Cf. Article 16(2) of the Chapter III and Article 18(2) of the Commission Merger Implementing Regulation, see note 9 above.

<sup>(2)</sup> Pursuant to Article 10(2) of Chapter III.

<sup>(3)</sup> Pursuant to Article 6(1) of the Chapter III.

<sup>(4)</sup> Pursuant to Article 13(1) and (3) of Chapter III.

<sup>(5)</sup> Pursuant to Article 7(1) of Chapter III.

<sup>(6)</sup> Article 12 of the Commission Merger Implementing Regulation, see note 9 above.

<sup>(7)</sup> Article 13 of the Commission Merger Implementing Regulation, see note 9 above.

<sup>(8)</sup> Pursuant to Article 16 of the Commission Merger Implementing Regulation, see note 9 above.

<sup>(9)</sup> In merger proceedings the principles set out in the present and subsequent paragraphs also apply to the persons referred to in Article 3(1)(b) of the act referred to in point 1 of Annex XIV to the EEA Agreement (Regulation (EC) No 139/2004).

<sup>(10)</sup> Cf. Article 16(3) of Chapter III and Article 18(3) of the Commission Merger Implementing Regulation, see note 9 above. This also applies to documents gathered by the EFTA Surveillance Authority in an inspection pursuant to Article 13 of Chapter XIII and Articles 20 and 21 of Chapter II.

37. For the purposes of quickly dealing with confidentiality claims referred to in paragraph 36 above, the EFTA Surveillance Authority may set a time-limit within which the undertakings shall: (i) substantiate their claim for confidentiality with regard to each individual document or part of document; (ii) provide the Authority with a non-confidential version of the documents, in which the confidential passages are deleted <sup>(1)</sup>. In antitrust proceedings the undertakings in question shall also provide within the said time-limit a concise description of each piece of deleted information <sup>(2)</sup>.
38. The non-confidential versions and the descriptions of the deleted information must be established in a manner that enables any party with access to the file to determine whether the information deleted is likely to be relevant for its defence and therefore whether there are sufficient grounds to request the EFTA Surveillance Authority to grant access to the information claimed to be confidential.

### B. Treatment of confidential information

39. In antitrust proceedings, if undertakings fail to comply with the provisions set out in paragraphs 35 to 37 above, the EFTA Surveillance Authority may assume that the documents or statements concerned do not contain confidential information <sup>(3)</sup>. The Authority may consequently assume that the undertaking has no objections to the disclosure of the documents or statements concerned in their entirety.
40. In both antitrust proceedings and in proceedings under Article 57 of the EEA Agreement, should the person or undertaking in question meet the conditions set out in paragraphs 35 to 37 above, to the extent they are applicable, the EFTA Surveillance Authority will either:
- provisionally accept the claims which seem justified, or
  - inform the person or undertaking in question that it does not agree with the confidentiality claim in whole or in part, where it is apparent that the claim is unjustified.
41. The EFTA Surveillance Authority may reverse its provisional acceptance of the confidentiality claim in whole or in part at a later stage.
42. Where the EFTA Surveillance Authority's Competition and State Aid Directorate does not agree with the confidentiality claim from the outset or where it takes the view that the provisional acceptance of the confidentiality claim should be reversed, and thus intends to disclose information, it will grant the person or undertaking in question an opportunity to express its views. In such cases, the Competition and State Aid Directorate will inform the person or undertaking in writing of its intention to disclose information, give its reasons and set a time-limit within which such person or undertaking may inform it in writing of its views. If, following submission of those views, a disagreement on the confidentiality claim persists, the matter will be dealt with by the Hearing Officer according to the applicable EFTA Surveillance Authority terms of reference of Hearing Officers <sup>(4)</sup>.
43. Where there is a risk that an undertaking which is able to place very considerable economic or commercial pressure on its competitors or on its trading partners, customers or suppliers will adopt retaliatory measures against those, as a consequence of their collaboration in the investigation carried out by the EFTA Surveillance Authority <sup>(5)</sup>, the Authority will protect the anonymity of the authors by providing access to a non-confidential version or summary of the responses in question <sup>(6)</sup>. Requests for anonymity in such circumstances, as well as requests for anonymity according to point 81 of the Authority Notice on the handling of complaints <sup>(7)</sup> will be dealt with according to paragraphs 40 to 42 above.

<sup>(1)</sup> Cf. Article 16(3) of Chapter III and Article 18(3) of the Commission Merger Implementing Regulation, see note 9 above.

<sup>(2)</sup> Cf. Article 16(3) of Chapter III.

<sup>(3)</sup> Cf. Article 16 of Chapter III.

<sup>(4)</sup> Cf. Article 9 of Decision No 177/02/COL of 30 October 2002 (OJ L 80, 27.3.2003, p. 27) and EEA Supplement to the OJ No 16, 27.3.2003, p. 2.

<sup>(5)</sup> Cf. paragraph 19 above.

<sup>(6)</sup> Cf. Case T-5/02, *Tetra Laval v Commission* [2002] ECR II-4381, paragraph 98, 104 and 105.

<sup>(7)</sup> EFTA Surveillance Authority Notice on the handling of complaints by the EFTA Surveillance Authority under Articles 53 and 54 of the EEA Agreement, not yet published.

### C. Provision of access to file

44. The EFTA Surveillance Authority may determine that access to the file shall be granted in one of the following ways, taking due account of the technical capabilities of the parties:
- by means of a CD-ROM(s) or any other electronic data storage device as may become available in the future,
  - through copies of the accessible file in paper form sent to them by mail,
  - by inviting them to examine the accessible file on the Authority's premises.
- The Authority may choose any combination of these methods.
45. In order to facilitate access to the file, the parties will receive an enumerative list of documents setting out the content of the EFTA Surveillance Authority file, as defined in paragraph 8 above.
46. Access is granted to evidence as contained in the EFTA Surveillance Authority file, in its original form: the Authority is under no obligation to provide a translation of documents in the file <sup>(1)</sup>.
47. If a party considers that, after having obtained access to the file, it requires knowledge of specific non-accessible information for its defence, it may submit a reasoned request to that end to the EFTA Surveillance Authority. If the services of the Competition and State Aid Directorate are not in a position to accept the request and if the party disagrees with that view, the matter will be resolved by the Hearing Officer, in accordance with the applicable terms of reference of Hearing Officers <sup>(2)</sup>.
48. Access to the file in accordance with this Notice is granted on the condition that the information thereby obtained may only be used for the purposes of judicial or administrative proceedings for the application of competition rules in the EEA Agreement at issue in the related administrative proceedings <sup>(3)</sup>. Should the information be used for a different purpose, at any point in time, with the involvement of an outside counsel, the EFTA Surveillance Authority may report the incident to the bar of that counsel, with a view to disciplinary action.
49. With the exception of paragraphs 45 and 47, this section C applies equally to the grant of access to documents to complainants (in antitrust proceedings) and to other involved parties (in merger proceedings).

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<sup>(1)</sup> See in this respect. Case T-25/95, *et al. Cimenteries*, paragraph 635.

<sup>(2)</sup> Cf. Article 8 of Decision No 177/02/COL of 30 October 2002 (OJ L 80, 27.03.2003, p. 27) and EEA Supplement to the OJ No 16, 27.3.2003, p. 2.

<sup>(3)</sup> Cf. Articles 15(4) and 8(2) of Chapter III, respectively, and Article 17(4) of the Commission Merger Implementing Regulation, see note 9 above.

## Scheme for reducing nitrogen oxide for vessels in the Norwegian shipping register (NOR)

### Summary information

(2007/C 250/07)

|  |   |  |  |
|--|---|--|--|
| Number of aid  | 61 272  |  |  |
| EFTA State   | Norway  |  |  |
| Title and objective of aid schemes or name of company beneficiary of an individual aid (aid based on a scheme which should however be notified individually and aid not based on a scheme) | Scheme for reducing nitrogen oxide (NO <sub>x</sub> )-NO <sub>x</sub> RED, for vessels in the Norwegian shipping register (NOR) |  |  |
| Legal basis  | Adoption by the Norwegian Parliament  |  |  |
| Annual expenditure planned or overall amount of individual aid granted (In national currency)  | Aid scheme  | Annual expenditure planned:<br>NOK 15 million (2007) and<br>NOK 35 million (2008-2009) | EUR 1,86 million (2007)<br>and EUR 4,34 million<br>(2008-2009) |
|  |   | Overall amount:<br>NOK 50 million (2007-2009)  | EUR 6,2 million  |
| Duration   | 2007-2009   |  |  |
| Maximum aid intensity of the aid scheme  | 30 % of eligible costs (15 % in the case of engine replacement)   |  |  |
| Economic sectors<br>Limited to specific sectors as mentioned in the 'General information' (Part I, paragraph 4.2.)   | Vessels in the Norwegian Shipping register, operating in the Norwegian coastal area   |  |  |
| Name and address of the granting authority   | Norwegian Maritime Authority  |  |  |

**Authorisation of State aid pursuant to Article 61 of the EEA Agreement and Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement**

**EFTA Surveillance Authority decision not to raise objections**

(2007/C 250/08)

**Date of adoption:** 27 February 2007

**EFTA State:** Norway

**Aid No:** Case 60221

**Title:** Scheme for Centres for Research-based Innovation

**Objective:** The principal objective of the scheme is to promote research, development and innovation by:

- creating a knowledge base that will give enterprises an incentive to innovate,
- facilitating active alliances between research active enterprises and research groups at research institutions,
- supporting industrially oriented research groups doing frontier research, and
- by stimulating researcher training and transfer of research-based knowledge.

**Legal basis:** Government White Paper on Research 2005 '*Commitment to Research*' (St. meld. No 20, 2004-2005) and the Budget document for 2006 from the Ministry of Education and Research to the Research Council of Norway.

**Budget/Duration:** The yearly budget of the scheme is NOK 100 million (approximately EUR 12,5 million). The scheme is notified for a duration of 8 years starting in 2007 and ending in 2015.

The authentic text of the decision, from which all confidential information has been removed, can be found at:

<http://www.eftasurv.int/fieldsOfWork/fieldStateAid/stateAidRegistry>

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**Invitation to submit comments pursuant to Article 1(2) in Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice on State aid with regard to the sale and rent by the Norwegian authorities of Lista air base**

(2007/C 250/09)

By means of Decision No 183/07/COL of 6 June 2007, reproduced in the authentic language on the pages following this summary, the EFTA Surveillance Authority initiated proceedings pursuant to Article 1(2) in Part I of Protocol 3 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ('the Surveillance and Court Agreement'). The Norwegian authorities have been informed by means of a copy of the Decision.

The EFTA Surveillance Authority hereby gives the EFTA States, EU Member States and interested parties notice to submit their comments on the measure in question within one month from the publication of this notice to:

EFTA Surveillance Authority  
Registry  
Rue Belliard 35  
B-1040 Brussels

The comments will be communicated to the Norwegian authorities. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing, stating the reasons for the request.

SUMMARY

**PROCEDURE**

The EFTA Surveillance Authority (hereinafter referred to as 'the Authority') learnt about the sale of the Lista air base by way of a report issued by the Office of the Auditor General which concludes that the Norwegian Defence Estates Agency (hereinafter the 'NDEA') is unable to produce reliable evidence documenting that Lista air base was sold at market value.

On 14 September 2005, the Authority sent a letter to the Norwegian authorities requesting information regarding the sale of Lista air base located in the municipality of Farsund in Southern Norway.

By letter dated 28 October 2005 from the Norwegian Mission to the European Union, forwarding two letters, respectively dated 26 October 2005 from the Ministry of Modernisation and 24 October 2005 from the Ministry of Defence, the Norwegian authorities replied to the questions raised by the Authority. This letter was received and registered by the Authority on 29 October 2005.

By letter dated 28 March 2007, the Authority requested the Norwegian authorities to communicate additional information.

By letter dated 4 May 2007, received and registered by the Authority on the same day, the Norwegian authorities provided further information.

**ASSESSMENT OF THE MEASURES**

The Decision No 183/07/COL concerns two distinct measures: firstly, the sale, and secondly, the lease of Lista air base.

*Sale of Lista air base*

On 12 September 2002, the NDEA sold Lista air base to Lista Flypark AS. The sale resulted in a net disbursement from the Norwegian State to Lista Flypark AS of NOK 10 875 000. Two sets of evaluations had been carried out by two distinct independent evaluators: Verditakst had estimated that the market value of the property was of NOK 11 000 000 whereas OPAK had concluded to a market value of NOK 32 000 000.

The sales price was agreed on the basis of the valuation carried out by Verditakst, namely NOK 11 000 000. An amount of NOK 7 500 000 was deducted from the value of the property to take into account the works that needed to be carried out in order to comply with applicable fire safety standards. The sales price of the property was therefore brought down to NOK 3 500 000.

However, in addition to the above, the Norwegian authorities contractually agreed to compensate the buyer of the air base for the following costs:

- NOK 3 500 000 corresponding to the need to carry out works relating to technical installations (such as electrical transmission lines),
- NOK 5 500 000 corresponding to works to be carried out for the development of new infrastructure, and
- NOK 5 375 000 corresponding to compensation for the lease agreement entered into with LILAS (see below, Section *Leasing out of Lista air base*).

The total compensation agreed and amounting to NOK 14 375 000 was set off against the sales price of NOK 3 500 000. The Norwegian authorities thus actually paid the purchaser NOK 10 875 000.

Transfer of the property took place on 9 December 2002.

The Authority's doubts relate to both the value of the property *per se* (i.e. the choice of the Verditakst report over the OPAK report) and the justification for the compensations which the Norwegian authorities contractually agreed to.

#### *Leasing out of Lista air base*

On 27 June 1996, the NDEA entered into a ten year lease agreement with Lista Airport Development AS ('LAD') to enter into effect on 1 July 1996 until 30 June 2006 with the possibility for LAD to rent the air base for another ten year period. LAD was owned by the Municipality of Farsund (20 %) and local investors (80 %).

The lease agreement was later transferred to Lista Lufthavn AS ('LILAS') which had been established on 3 May 1996.

According to Articles 3(1) and 3(2) of the lease agreement, LILAS would rent a specified part of the buildings and the airstrip at an annual price of NOK 10 000.

The Norwegian authorities admitted that '*LILAS' rent is also extremely low and below market price (NOK 10 000 a year)*'.

Consequently, the Authority has doubts whether the rent paid by LILAS reflected fair market value.

#### **CONCLUSION**

In the light of the foregoing considerations, the Authority decided to open the formal investigation procedure in accordance with Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement. Interested parties are invited to submit their comments within one month from publication of this decision in the *Official Journal of the European Union*.

## EFTA SURVEILLANCE AUTHORITY DECISION

No 183/07/COL

of 6 June 2007

**to initiate the procedure provided for in Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement with regard to the sale and the rent of Lista air base**

(Norway)

THE EFTA SURVEILLANCE AUTHORITY <sup>(1)</sup>,

Having regard to the Agreement on the European Economic Area <sup>(2)</sup>, 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 <sup>(3)</sup>, in particular to Article 24 thereof,

Having regard to Article 1 in Part I and Articles 10 and 13 in Part II of Protocol 3 to the Surveillance and Court Agreement,

Having regard to the Authority's Guidelines <sup>(4)</sup> on the application and interpretation of Articles 61 and 62 of the EEA Agreement, and in particular, the Chapter on State Aid elements in sales of land and buildings by public authorities,

Whereas:

## I. FACTS

## 1. Procedure

The Authority learned about the sale of the Lista air base by way of a report issued by the Office of the Auditor General which concludes that the Norwegian Defence Estates Agency (hereinafter the 'NDEA') is unable to produce reliable evidence documenting that Lista air base was sold at market value <sup>(5)</sup>.

On 14 September 2005, the Authority sent a letter to the Norwegian authorities requesting information regarding the sale of Lista air base located in the municipality of Farsund in Southern Norway (Event No 332322).

By letter dated 28 October 2005 from the Norwegian Mission to the European Union, forwarding two letters, respectively dated 26 October 2005 from the Ministry of Modernisation and 24 October 2005 from the Ministry of Defence, the Norwegian authorities replied to the questions raised by the Authority. This letter was received and registered by the Authority on 29 October 2005 (Event No 348525).

By letter dated 28 March 2007 (Event No 414743), the Authority requested that the Norwegian authorities communicate additional information.

By letter dated 4 May 2007 (Event No 420179), received and registered by the Authority on the same day, the Norwegian authorities provided further information.

<sup>(1)</sup> Hereinafter referred to as 'the Authority'.

<sup>(2)</sup> Hereinafter referred to as 'the EEA Agreement'.

<sup>(3)</sup> Hereinafter referred to as 'the Surveillance and Court Agreement'.

<sup>(4)</sup> Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 in Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in OJ L 231, 3.9.1994, p. 1, EEA Supplements No 32, 3.9.1994. The Guidelines were last amended on 3 May 2007. Hereinafter referred to as 'the State Aid Guidelines'.

<sup>(5)</sup> Report No 3:7 (2004-2005), The Auditor General's study of the sale of Lista air base.

## 2. Description of the sale

On 12 September 2002, the NDEA sold Lista air base to Lista Flypark AS. The sale resulted in a net disbursement from the Norwegian State to Lista Flypark AS of NOK 10 875 000.

## 2.1. The property sold

Lista air base covers 5 000 000 m<sup>2</sup> of land. The conglomeration of buildings consists of storage buildings, barracks, mess halls and hangars representing in total approximately 28 000 m<sup>2</sup>. The estate also includes an airstrip and a wetland area.

According to the municipal sector plan of Lista air base approved by the Municipal Council of Farsund <sup>(6)</sup>, the property may be used for commercial activities including aviation services, public development, crafts and industry. The area around Slevdalsvannet, which encompasses the wetland area and an ammunition depot for the Norwegian Armed Forces, has been reserved for the use of the Norwegian Armed Forces, airport services and nature conservation. Around 1 900 000 m<sup>2</sup> can be used for industrial purposes.

Finally, parts of the land and some buildings are protected in accordance with National Protection Plan from the Norwegian Armed Forces, including:

- three hangars and the air defence simulator <sup>(7)</sup>,
- a mess hall, and
- parts of the land, including runways, taxiways and some of the road network.

## 2.2. The LILAS agreement

In Proposition No 50 (1994-1995) to the Parliament, the Ministry of Defence presented its proposal on the closing of Lista air base. The Ministry of Defence proposed the so-called 'development alternative' providing that the military air base activities on Lista air base should cease as from 1 July 1996.

According to such alternative, the Norwegian Armed Forces would evaluate the conglomeration of buildings to decide on the buildings which could not or should not be used for industrial and commercial purposes.

<sup>(6)</sup> Decision No 73/01 and 05/00 of 18 December 2001 by the Municipal Council of Farsund.

<sup>(7)</sup> See Regulation 2004-05-06 No 718 based the Norwegian Heritage Act from 1978.



The remaining buildings, which could be used for such purposes, should be maintained in condition for a period of maximum ten years in order to review the possibilities of industrial and commercial development and arrange for best possible commercial use of Lista air base. In its recommendation to the Parliament, the Parliamentary Committee supported the proposal from the Government.

On 12 June 1995, the Parliament made a resolution in accordance with the recommendations of the Parliamentary Committee.

On 27 June 1996, the NDEA entered into a ten year lease agreement with Lista Airport Development AS ('LAD') to enter into effect on 1 July 1996 until 30 June 2006 with the possibility for LAD to rent the air base for another ten year period. The company was owned by the Municipality of Farsund (20 %) and local investors (80 %).

The agreement covered a conglomeration of buildings which in total adds up to 12 500 m<sup>2</sup> and approximately 60 % of the estate.

The main objective of the agreement was to develop, as part of the implementation of the 'development alternative' within a period of maximum ten years, commercial air services on the air base.

The lease agreement was later transferred to Lista Lufthavn AS ('LILAS') which, as such, was established on 3 May 1996.

According to Articles 3(1) and 3(2) of the lease agreement, LILAS would rent a specified part of the buildings and the airstrip at an annual price of NOK 10 000.

Article 7(5) of the lease agreement further provides that the owner of the air base is responsible for external maintenance of buildings and maintenance of the airstrip. The liability is limited to NOK 1 500 000 annually. As consideration for this obligation, the owner is entitled to a split of the profit as provided by Article 3 of the lease agreement <sup>(1)</sup>.

In case LILAS does not use its right to prolong the lease at the end of the initial ten year period, it may buy, according to Article 13(1) of the lease agreement, a specified area of the air base at a price of NOK 10 000 000.

According to Article 13(6) of the lease agreement, LILAS may buy, in a situation where the NDEA decides to sell Lista air base *en bloc* during the lease period, the entire air base at a price of NOK 25 000 000. By letter dated 13 December 2002, LILAS waived its pre-emptive right to buy Lista air base *en bloc*.

In June 2006, in conformity with Article 13(1) of the lease agreement, LILAS exercised its pre-emptive right to purchase parts of the Lista air base for an amount of NOK 10 000 000 from Lista Flypark AS. Section 3 of the 2002 sales agreement between the NDEA and Lista Flypark AS, provided that in case of sale by the buyer of part of the property within five years, the formal approval of the NDEA had to be granted and 50 %

<sup>(1)</sup> Article 3 of the lease agreement provided that in case the profit generated as a result of the commercial use of the air base exceeded NOK 4 500 000, the owner of the air base would be entitled to a share of the profit equal to 20 % of the share of the profit exceeding NOK 4 500 000.

of the proceeds of the sale had to be paid to the NDEA. Consequently, when Lista Flypark sold parts of the air base to LILAS, NDEA in turn exercised its right to be paid by Lista Flypark AS an amount corresponding to 50 % of the net income of the sale.

LILAS' plan for civil use of the air base was to operate domestic scheduled flights and international air freight with export of fish to Europe, the United States and the Far East. The commercial services stopped as of 1 November 1999. LILAS received however some income from the sub leases of certain parts of the air base.

### 2.3. The sales process

During 2000, to attract potential buyers, the NDEA had put several advertisements in Norwegian newspapers in which the possible uses of parts of Lista air base were listed. According to the Norwegian authorities, the advertisements were published in Farsund Avis, which is a local newspaper, Fedrelandsvennen and Stavanger Aftenblad, both of which are regional newspapers.

According to the Norwegian authorities, an *en bloc* sale of Lista air base was not advertised at this stage.

On 16-17 August 2001, the NDEA hosted the 'Lista conference' to which 7 000-8 000 potential investors were invited. 180 participants attended the conference. The objective of the conference was to present Lista air base to potential buyers. On the agenda was the transformation of the air base from military to civilian commercial use. Further to the conference, the Norwegian authorities engaged Mr Christer Hjort, a Swedish consultant, to assist them with the sale process. The Norwegian authorities have indicated that Mr Christer Hjort had concluded that the possibilities of considering Lista air base as an investment object were limited due to the ten year lease agreement in which LILAS had been granted a privileged position.

In August 2001, the NDEA decided that the air base should be sold *en bloc*. Several reports were requested in order to assess the condition of the air base, including a report regarding fire-technical status, possible need to decontaminate the land and the necessity to improve the land drainage system.

The Norwegian authorities only provided the NDEA with a fire safety report dated 24 January 2002 in which a consultancy, TekØk, estimated that the necessary fire safety upgrades required to meet the applicable standard, amounted to NOK 14 596 800.

In the beginning of 2002, sales negotiations were initiated with the real estate developers Intervest Eiendom AS and Interconsult Prosjektutvikling AS, following an initiative from the Municipality of Farsund.

As part of the negotiations with the two companies mentioned here above, the NDEA ordered two value assessments by the real estate value assessors Verditakst and OPAK <sup>(2)</sup>.

<sup>(2)</sup> The conclusions of which are mentioned below in section 2.5.

For the years 2002-2004, the Parliament gave the Ministry of Defence, according to Section 2.1(1) of the Regulation on Alienation (hereinafter the 'Regulation'), the authority to alienate redundant property, buildings and installations used by the Armed Forces at market value. On behalf of the Ministry of Defence, the alienations were to be carried out by the NDEA.

According to Section 3.1 of the Regulation, alienation had to be conducted in such a way that the State received the best economic result possible. Alienation had to be done either by the NDEA itself or through a real estate agent. It followed from Section 3.4 of the Regulation that alienation by the NDEA itself should, in principle, be conducted by way of a public announcement. The announcement should be made public in the Official Norwegian Gazette and at least one local newspaper. As a general principle, the bidding procedure should be open; however a closed bidding procedure could be used if the NDEA considered it appropriate. Finally, it followed from the last paragraph of Section 3.4 of the Regulation that if the property had insignificant value or if there was only one or a limited number of potential buyers, the NDEA could alienate in the form of a direct sale. This would imply a sale based on bids from either one or a limited number of invited buyers. The sale price could not in any event be agreed below the market value established in the value assessment.

#### 2.4. The terms and conditions of the sale

On 12 September 2002, the NDEA sold Lista air base to Lista Flypark AS. The sales price was agreed on the basis of the valuation carried out by Verditakst, in which the market value of Lista air base was estimated at NOK 11 000 000.

At the time of the sale, there was no air service activity on Lista air base; however, the air base was still being used for some military activities (*inter alia* shooting range, ammunition depot and a mobilisation depot among others).

An amount of NOK 7 500 000 was deducted from the value of the property to take into account the works that needed to be carried out in order to comply with applicable fire safety standards. The sales price of the property was therefore brought down to NOK 3 500 000.

In addition to the above, the Norwegian authorities contractually agreed to compensate the buyer for the following costs:

- NOK 3 500 000 corresponding to the need to carry out works relating to technical installations <sup>(1)</sup> (such as electrical transmission lines),
- NOK 5 500 000 corresponding to works to be carried out for the development of new infrastructure <sup>(2)</sup>, and
- NOK 5 375 000 corresponding to compensation for the lease agreement entered into with LILAS <sup>(3)</sup>. The amount of this compensation is based on the fact that the NDEA was, at the time of the sale in 2002, under an obligation to pay LILAS a yearly amount of NOK 1 500 000 for costs related to the maintenance of the buildings for approximately another four years.

<sup>(1)</sup> Article 20 of the Sales agreement and section 2 in the Annex to the registered deed.

<sup>(2)</sup> Article 19 of the Sales agreement and section 2 in the Annex to the registered deed.

<sup>(3)</sup> Article 9 of the Sales agreement and section 2 in the Annex to the registered deed.

The total compensation agreed and amounting to NOK 14 375 000 was set off against the sale price of NOK 3 500 000. The Norwegian authorities thus paid the purchaser NOK 10 875 000.

Transfer of the property took place on 9 December 2002.

#### 2.5. The valuation reports of Lista air base

Two independent valuation reports of the property were carried out.

##### 2.5.1. The Verditakst valuation report

The valuation report dated 7 June 2002 estimated that the *en bloc* market value of Lista air base was NOK 11 000 000. The Verditakst report was based on an inspection of the property carried out on 23 May 2002.

The estimation of the market value was based on the following set of assumptions:

- the NDEA was positive to a sale of Lista air base,
- Lista air base could publicly be advertised for sale during a normal period,
- potential buyers who were willing to bid unreasonably high due to special interests in the property could be disregarded,
- the information provided by the NDEA was accurate,
- Verditakst had not surveyed the conglomeration of buildings, checked foundations, or controlled the presence of asbestos in the buildings,
- Verditakst had not been provided with a certificate of practical completion, or controlled whether there were public orders, including fire safety orders or whether the use of the property at the time was permitted,
- Verditakst had not controlled registered servitudes or possible transmission lines in the ground, and
- Lista air base was fully insured.

The market value of NOK 11 000 000 corresponds to:

- capitalised value of net income from the lease: NOK 6 500 000,
- value of the land: NOK 4 500 000.

According to the Verditakst report, the technical installations in the buildings were partly outdated. No technical inspection was carried out. The condition of the buildings as regards maintenance has not been inspected, only roughly estimated. Verditakst evaluated that the total building area was of 25 000 m<sup>2</sup>.

By letter dated 4 May 2005, the Norwegian authorities asked Verditakst to provide some additional information. Thus, the valuator was asked whether it had taken into account the deficiency of the technical condition revealed by the TekØk report regarding fire safety and the liability related to the ten year lease.

By letter dated 6 May 2005, Verditakst confirmed that it had not taken into account those two elements when assessing the value of the property.

### 2.5.2. The OPAK valuation report

According to a simplified valuation report dated 29 May 2002, OPAK estimated the *en bloc* market value of Lista air base by using three alternatives. Alternative 1 resulted in an estimated market value of NOK 32 000 000 and alternative 2 in an estimated market value of NOK 34 000 000. The third alternative value estimated the market value at NOK 25 000 000.

Indeed, OPAK considered that there were three alternative ways to assess the value of the property:

- alternative 1: sale of the property to new purchaser: NOK 32 000 000,
- alternative 2: sale of the property to LILAS on the basis of its pre-emptive right to buy part of the leased building and land at the end of the ten year lease: NOK 34 000 000, and
- alternative 3: sale of the property to LILAS on the basis of its pre-emptive right to buy the property *en bloc* during the lease period: NOK 25 000 000.

The OPAK report was based on an inspection of the property carried out on 21 May 2002.

The estimated market value was based on the following assumptions:

- the NDEA was positive to a sale of Lista air base,
- Lista air base could publicly be advertised for sale during a normal period,
- potential buyers who were willing to bid unreasonably high due to special interests in the property could be disregarded,
- the information provided by the NDEA was accurate,
- OPAK had not obtained financial information or status of tenants present at the time,
- OPAK had not surveyed the conglomeration of buildings, controlled foundations, or controlled the presence of asbestos in the buildings,
- OPAK had not been provided with a certificate of practical completion, or controlled whether there were public orders, including fire safety orders or whether the use of the property at the time was permitted,
- OPAK had not controlled registered servitudes or possible transmission lines in the ground, and
- all costs in relation to possible contamination of the ground was held to be the responsibility of the NDEA.

The conditions of the sale actually corresponded to the alternative 1 as the air base was sold to a new purchaser.

The market value arrived at for alternative 1 and rounded up to NOK 32 000 000 corresponds to:

- capitalised value of net income from the lease: NOK 26 500 000,

— value of the land: NOK 10 000 000,

— compensation for LILAS agreement deducted from the value: NOK 5 000 000.

According to the OPAK report, the condition of the buildings as regards maintenance had not been inspected, only roughly estimated. During inspection, OPAK did not take note of any ground pollution. OPAK was aware of the existing lease agreements including the LILAS agreement. OPAK estimated the total building area at 28 467 m<sup>2</sup>.

### 3. Comments by the Norwegian authorities

The Norwegian authorities have argued that the possibility for the air base to be seen as an attractive investment for potential investors was very limited, particularly in the light of the existing lease agreement entered into with LILAS and the possibility for the latter to purchase the property at the end of a ten year period. Indeed, very few would-be buyers would be willing to invest in the air base and develop it as the tenant of the property was given the right to purchase part/all of it after just a few years.

The Norwegian authorities consider that *'the market value of the air base is by definition not more than possible buyers are willing to pay. (...) NDEA made its best efforts to achieve the highest possible price in the existing markets'*.

The Norwegian authorities have argued that the reason for their choosing the Verditakst report instead of the OPAK report was because *'the value assessment made by OPAK AS dated 29 May 2002 was a temporary and simplified value assessment primarily carried out for budgetary purposes. Basically, the assessment was a suggestion of the highest possible payment investors might be willing to pay for the air base, provided that all favourable preconditions were fully met'*.

The Norwegian authorities have furthermore indicated that the value of NOK 25 000 000 which was set in the case LILAS decided to buy the entire property *en bloc* during the lease, was the result of negotiations. According to the Norwegian authorities, such a high amount was arrived at because *'in 1996, the parties were optimistic about the potential outcome of their mutual efforts in developing the property and thereby create additional value to the property'*.

The Norwegian authorities have furthermore indicated that their aim in selling Lista air base was to save the government future costs. Indeed, over the period 1996-2002, the NDEA spent NOK 41 500 000 on the management, maintenance and upgrades of the air base. The works included drainage, installation of runway lightening and public relations spending. The cost arising from the 'development alternative' was of NOK 50 000 000 whereas maintaining the air base would have had a cost of NOK 50 000 000-258 000 000. The Norwegian authorities consider that this element should be taken into account when evaluating whether the NDEA should have sold the property at the agreed price.

## II. APPRECIATION

### 1. The presence of State aid

#### 1.1. State aid within the meaning of Article 61(1) EEA Agreement

Article 61(1) of the EEA Agreement 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, between Contracting Parties, be incompatible with the functioning of this Agreement'.

Aid falling within this provision is, as a rule, incompatible with the EEA Agreement and hence prohibited, provided that the following four conditions are fulfilled:

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'; and
4. the aid 'affects trade between the Contracting Parties'.

The measure under review could take two distinct forms which could amount to State aid: firstly, the sale of the air base at a price below market value (see Section 2.3 below) and secondly, the leasing out of the air base at a price below market value (see Section 2.4 below).

#### 1.2. State aid within the meaning of the State Aid Guidelines — Chapter on State aid elements in sales of land and buildings by public authorities

The State Aid Guidelines, Chapter on State aid elements in sales of land and buildings by public authorities, gives further information on how the Authority interprets and applies the provisions of the EEA Agreement governing State aid when it comes to assessing sales of public land and buildings. Section 2.1 describes a sale through an unconditional bidding procedure, while Section 2.2 describes a sale without an unconditional bidding procedure (by way of an independent expert evaluation). These two procedures allow EFTA States to handle sales of land and buildings in a way that precludes the existence of State aid.

The State Aid Guidelines, Chapter on State aid elements in sales of land and buildings by public authorities provides expressly that 'the guidance concerns only sales of publicly owned land and buildings. It does not concern the public acquisition of land and buildings or the letting or leasing of land and buildings by public authorities. Such transactions may also include State aid elements'. (emphasis added)

#### 1.3. The sale of Lista air base

##### 1.3.1. Presence of State resources

Condition 1 above is directed at all aid financed from public resources. It is thus clear that aid from the NDEA falls within the scope of State resources.

Sale of publicly owned land and buildings below market value implies that State resources are involved. However, the Chapter on State aid elements in sales of land and buildings provides for two cases where, if the applicable conditions are met, the price paid for the property will be held to correspond to fair market value therefore excluding the presence of State resources.

Two situations should be distinguished: cases where the sale has taken place through an unconditional bidding procedure (see (i) below) and those where the sale has been carried out with reference to value assessments carried out by independent experts (see (ii) below).

##### (i) Sale through an unconditional bidding procedure

The Norwegian authorities recognise that '*the process started out as an unconditional bidding procedure regarding the sale of parts of the air base. Advertisements listing possible uses of the air base were published in different newspapers such as Farsund Avis, Fedrelandsvennen and Stavanger Aftenblad in 2000*'.

Neither the advertisements nor the so-called 'Lista conference' led to any sale. The process did not cover the case of a sale of the air base *en bloc*. The Authority therefore considers that there was no unconditional bidding procedure in connection with the sale of the air base *en bloc* and that the possibility to preclude the existence of State aid on the basis of the relevant Chapter of the State Aid Guidelines is therefore excluded.

##### (ii) Sale without an unconditional bidding procedure

Section 2.2 of the State Aid Guidelines — Chapter on State Aid elements in sales of land and buildings by public authorities, regarding sale without an unconditional bidding procedure provides that '*if public authorities intend not to use the procedure described under Section 2.1, an independent evaluation should be carried out by one or more independent asset valuers prior to the sale negotiations in order to publish 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 without granting State aid*'. (emphasis added)

The Norwegian authorities have indicated that '*in the beginning of 2002, sales negotiations were initiated with the real estate developers Intervest Eiendom AS and Interconsult Prosjektutvikling AS, following an initiative from the Municipality of Farsund. As part of the negotiation with the above mentioned companies, NDEA ordered two new value assessments, by the real estate value assessor firms Verditakst AS and OPAK. A sales agreement was reached on 12 September 2002 between NDEA and Lista Flypark AS*'.

This is confirmed by the Report from the Auditor General which concluded that neither a valuation of the entire property nor a public announcement of the intended sale was made prior to the start of the negotiations with Lista Flypark AS in March 2002.

As the conditions set by the State Aid Guidelines — Chapter on State Aid elements in sales of land and buildings by public authorities appear not to have been fulfilled, the Authority cannot exclude that the sale may have involved some elements of State aid. Indeed, some uncertainties exist regarding the purchase price of the air base.

## (iii) Uncertainties regarding the purchase price

Based on the information submitted, the Authority has serious doubts as to whether the value of the property used as a basis for determining the price finally paid by the purchaser reflected market value.

The price paid by the purchaser was determined by reference to the valuation report which was carried out by Verditakst, i.e. NOK 11 000 000. The Authority has doubts whether this amount represented the market value of the property as OPAK concluded that the value was of NOK 32 000 000 and as the sales price stated in the lease agreement was of NOK 25 000 000 for the whole airport.

Indeed, in the light of the nearly identical set of assumptions used by both Verditakst and OPAK to assess the value of the property, the Authority cannot see how the significant difference between the value reached by both independent evaluators (i.e. from NOK 11 000 000 for Verditakst to NOK 32 000 000 for OPAK) can be explained. This difference is even more difficult to explain in view of the fact that OPAK took into account, in its value assessment, the liability related to the existence of the LILAS lease agreement.

The Authority has not been presented with convincing evidence that the high value reached by OPAK can be explained, as argued by the Norwegian authorities, by the fact that such value assessment was *'a temporary and simplified value assessment primarily carried out for budgetary purposes. (...) the assessment was a suggestion of the highest possible payment investors might be willing to pay for the air base, provided that all favourable preconditions were fully met'*.

The doubts are furthermore confirmed by the Study of the Auditor General which concludes that there is no documentation available indicating that the valuation of NOK 11 000 000 was used as a basis for calculating the sales figure. Furthermore, the Auditor General is of the opinion that documentation proving that the purchase price reflected the market value had not been produced.

Furthermore, Section 2.2.c of the Chapter on State aid elements in sales of land and buildings by public authorities states that: *'special obligations that relate to the land and buildings and not to the purchaser or his economic activities may be attached to the sale in the public interest provided that every potential buyer is required, and in principle is able, to fulfil them, irrespective of whether or not he runs a business or of the nature of his business. The economic disadvantage of such obligations should be evaluated separately by independent valuers and may be set off against the purchase price (...)*. (emphasis added)

In the case at hand, the purchaser was compensated for the following:

- compensation related to technical installations: NOK 3 500 000,
- compensation related to the development of new infrastructure: NOK 5 500 000, and
- compensation related to LILAS agreement: NOK 5 375 000.

The Authority notes that these compensatory payments together with the applied value assessment implied in reality that the

Norwegian State paid Lista Flypark AS NOK 10 875 000 to obtain the air base and the related buildings.

The Authority has doubts whether these payments can be said to compensate for special obligations that relate to the land and the buildings in the meaning of the above quoted Section 2.2.c of the relevant Chapter of the mentioned Guidelines.

## 1.3.2. Favouring certain undertakings or the production of certain goods

Referring to the third condition mentioned above, it is to be noted: first, the aid measure must confer on Lista Flypark AS advantages that relieve it of charges that are normally borne from its budget. The Authority considers that if Lista Flypark AS was able to buy the property for less than its fair market value, the difference between the price actually paid and the fair market value would constitute an advantage.

Second, the aid measure must be selective in that it favours *'certain undertakings or the production of certain goods'*. In the case at hand, the beneficiary would be Lista Flypark AS.

The Authority considers that this condition is fulfilled.

## 1.3.3. Distortion of competition and effect on trade between Contracting Parties

According to conditions two and four, the aid measure must distort competition and affect trade between the Contracting Parties. Under settled case law for the purpose of these provisions, the mere fact that an aid strengthens a firm's position compared with that of other firms, which are competitors in intra-EEA trade, is enough to allow the conclusion to be drawn that intra-EEA trade is affected.

The Authority considers that the real estate market in Southern Norway is not limited to local undertakings. Lista Flypark AS is in competition with similar undertakings in Norway and other EEA States. A sales price below market value favouring Lista Flypark AS would distort or threaten to distort competition and affect trade between Contracting Parties. Consequently, the Authority considers that conditions two and four above, are fulfilled.

## 1.4. The leasing out of part of Lista air base

## 1.4.1. Presence of State resources

Should the air base have been rented out at a price below market value, the condition regarding involvement of State resources would be met for the same reasons as those set out above regarding the sale of the air base.

On the basis of the information it has been provided with at this stage, the Authority has doubts that the value of the rent paid under the LILAS agreement corresponded to fair market value. Indeed, the Norwegian authorities themselves have admitted that the rent was below market value. In such a case, the difference between the amount actually paid by the tenant and the market value of the property would result in State resources having been involved.

#### 1.4.2. Favouring certain undertakings or the production of certain goods

The Norwegian authorities have indicated in their letter dated 24 October 2005 that 'LILAS' rent is also extremely low and below market price (NOK 10 000 a year)'. (emphasis added)

LILAS may thus have been benefiting from a favourable treatment in the form of a reduced rent.

#### 1.4.3. Distortion of competition and effect on trade between Contracting Parties

The aid measure must distort competition and affect trade between the Contracting Parties. Under settled case law for the purpose of these provisions, the mere fact that an aid strengthens a firm's position compared with that of other firms, which are competitors in intra-EEA trade, is enough to allow the conclusion to be drawn that intra-EEA trade is affected. The activity LAD and then LILAS were intending to carry out at the time of the signing and then of the transfer of the lease agreement was the operation of domestic scheduled flights and international air freight with export of fish to Europe, the United States and the Far East. The fact that both companies may have benefited from favourable conditions may then have distorted competition and had an effect on trade within the EEA.

By allowing LILAS to benefit from a reduced rent to carry out its economic activities, the NDEA may thus have distorted competition and affected trade within the EEA.

#### 1.5. Conclusion

The Authority, after having reviewed all the data in its possession, considers that it cannot be excluded that both the sale of the Lista air base and the leasing out of part of the air base could both constitute aid measures.

## 2. Procedural requirements

Pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement, 'the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. [...]. The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision'.

The State Aid Guidelines, Chapter on State Aid elements in sales of land and buildings by public authorities, states *inter alia* that the EFTA States should notify any sale of land and buildings by public authorities that was not concluded on the basis of an open and unconditional bidding procedure and any sale that was, in the absence of such procedure, conducted at less than market value.

The Norwegian authorities did not notify the sale of Lista air base to the Authority. If the doubts of the Authority as to the sale below market price were confirmed, this would constitute State aid within the meaning of Article 61(1) of the EEA Agreement. In that case the Norwegian authorities would not have respected their obligations pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement.

Furthermore, the Norwegian authorities have also indicated that the rent paid under the LILAS agreement was below market

value, which could result in some elements of State aid being involved prior to the signing of the sales agreement. If such were the case, the rent at lower than market value was not notified to the Authority. This would also constitute a breach of the Norwegian authorities' obligations pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement.

## 3. Compatibility of the aid

The Authority has assessed the two potential aid measures under Article 61(3) of the EEA Agreement. With regard to the sale of the air base, the Authority has also assessed the measure in combination with the State Aid Guidelines, Chapter on State aid elements in sales of land and buildings by public authorities.

### 3.1. Sale of the air base

The Norwegian authorities have argued that the sale does not contain aid. However, after assessing the likely involvement of State aid in the sale of the air base, it has to be considered whether such aid could be compatible with the EEA Agreement by virtue of Article 61(3) of the EEA Agreement.

On the basis of the information the Authority has received, Article 61(3)(a)-(c) of the EEA Agreement appears to be inapplicable. In the view of the Authority, the sale is not designed to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, to promote a project of common European interest or to facilitate the development of certain economic activities or of certain economic areas.

### 3.2. Leasing out of the air base

Regarding the leasing out of the air base at a price which may be below market value, for the same reasons as those set out under 3.1 here above, it is not clear either on what grounds such a measure could be held to amount to compatible aid.

## 4. Conclusion

Based on the information submitted by the Norwegian authorities, the Authority cannot exclude the possibility that the measure(s) under scrutiny constitute aid within the meaning of Article 61(1) of the EEA Agreement. Furthermore, the Authority has doubts that these measures can be regarded as complying with Article 61(3) of the EEA Agreement. The Authority thus doubts that the above measures are compatible with the functioning of the EEA Agreement.

Consequently, and in accordance with Article 10 in Part II of Protocol 3 to the Surveillance and Court Agreement, the Authority is obliged to open the procedure provided for in Article 1(2) in Part I of Protocol 3 of the Surveillance and Court Agreement. The decision to open proceedings is without prejudice to the final decision of the Authority, which may conclude that the measures in question are compatible with the functioning of the EEA Agreement.

In light of the foregoing considerations, the Authority, acting under the procedure laid down in Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement, requests the Norwegian authorities to submit their comments within one month of the date of receipt of this Decision.

In light of the foregoing consideration, the Authority requires that, within one month of receipt of this decision, the Norwegian authorities provide all documents, information and data needed for assessment of the compatibility of both the sale of the air base and the renting out of the air base to LILAS. It requests the Norwegian authorities to forward a copy of this letter to the potential recipient of the aid immediately.

The Authority would like to remind the Norwegian authorities that, according to the provisions of Protocol 3 to the Surveillance and Court Agreement, any incompatible aid unlawfully put at the disposal of the beneficiaries will have to be recovered, unless this recovery would be contrary to a general principle of EEA law,

HAS ADOPTED THIS DECISION:

*Article 1*

The EFTA Surveillance Authority has 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 against Norway regarding the sale of Lista air base and the lease agreement between the Norwegian Defence Estates Agency and LILAS.

*Article 2*

The Norwegian authorities are requested, pursuant to Article 6(1) in Part II of Protocol 3 to the Surveillance and Court Agreement, to submit their comments on the opening of the formal investigation procedure within one month from the notification of this Decision.

*Article 3*

The Norwegian authorities are required to provide within one month from notification of this Decision, all documents, infor-

mation and data needed for the assessment of the compatibility of the aid measure.

*Article 4*

The EC Commission shall be informed, in accordance with Protocol 27(d) of the EEA Agreement, by means of a copy of this Decision.

*Article 5*

Other EFTA States, EC Member States, and interested parties shall be informed by publishing this Decision in its authentic language version, accompanied by a meaningful summary in languages other than the authentic language version, in the EEA Section of the *Official Journal of the European Union* and the EEA Supplement thereto, inviting them to submit comments within one month from the date of publication.

*Article 6*

This Decision is addressed to the Kingdom of Norway.

*Article 7*

Only the English version is authentic.

Done at Brussels, 6 June 2007.

*For the EFTA Surveillance Authority,*

Kurt JAEGER  
*Acting President*

Kristján Andri STEFÁNSSON  
*College Member*

## V

*(Announcements)*

## ADMINISTRATIVE PROCEDURES

## EUROPEAN PERSONNEL SELECTION OFFICE (EPSO)

**NOTICE OF OPEN COMPETITION EPSO/AD/100/07**

(2007/C 250/10)

The European Personnel Selection Office (EPSO) is organising the following open competition:

EPSO/AD/100/07 — English-language translators (AD5)

The competition notice is published in Official Journal C 250 A of 25 October 2007 in English only.

Full details can be found on the EPSO website: <http://europa.eu/epso>

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**CORRIGENDA****Corrigendum to Information communicated by Member States regarding State aid granted under Commission Regulation (EC) No 1628/2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid**

*(Official Journal of the European Union C 193 of 21 August 2007)*

(2007/C 250/11)

The publication of information communicated regarding State aid in the Official Journal mentioned below (p. 5, Aid XR 118/07), is cancelled.

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