

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 83/18/COL

of 26 September 2018

on state guarantees granted to Landsvirkjun for derivative contracts (Iceland) [2019/156]

THE EFTA SURVEILLANCE AUTHORITY (‘the Authority’),

Having regard to:

the Agreement on the European Economic Area (‘the EEA Agreement’), in particular to Article 61,

Protocol 26 to the EEA Agreement,

the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (‘the Surveillance and Court Agreement’), in particular to Article 24,

Protocol 3 to the Surveillance and Court Agreement (‘Protocol 3’), in particular to Article 7(2) of Part II,

Having called on interested parties to submit their comments ⁽¹⁾ and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) On 3 May 2017, the Authority opened a formal investigation into potential state aid granted to Landsvirkjun through state guarantees for derivative contracts (‘the opening decision’) ⁽²⁾.
- (2) By letter dated 15 September 2017 ⁽³⁾, Landsvirkjun submitted its comments ⁽⁴⁾. The Authority in turn submitted the comments to Iceland ⁽⁵⁾. The Authority did not receive comments from any other interested party.
- (3) By letter dated 25 September 2017 ⁽⁶⁾, the Icelandic authorities submitted comments.
- (4) On 23 March 2018, the Authority met with representatives of Landsvirkjun and the Icelandic authorities. Following the meeting and receiving questions from the Authority on 27 March 2018 ⁽⁷⁾, Landsvirkjun submitted additional information on 11 April 2018 ⁽⁸⁾. On 12 April 2018, the Icelandic authorities informed the Authority that it supports Landsvirkjun’s arguments and did not see the need to submit additional observations ⁽⁹⁾.

⁽¹⁾ Decision No 85/17/COL of 3 May 2017 to initiate the formal investigation procedure into potential state aid granted to Landsvirkjun through state guarantees on derivative contracts (OJ C 242, 27.7.2017, p. 6 and EEA Supplement No 46, 27.7.2017, p. 1).

⁽²⁾ *Ibid.*

⁽³⁾ Document No 874341.

⁽⁴⁾ At the request of Landsvirkjun dated 8 August 2017 (Document No 869480), the Authority extended the deadline to submit comments until 15 September 2017 (Document No 869479).

⁽⁵⁾ Document No 878807.

⁽⁶⁾ Document No 875032.

⁽⁷⁾ Document No 905567.

⁽⁸⁾ Document No 908632.

⁽⁹⁾ Document No 908885.

- (5) On 6 June 2018, the Authority discussed the matter further at a meeting with the Icelandic authorities and Landsvirkjun. On 7 June 2018, Landsvirkjun sent additional information to the Authority⁽¹⁰⁾. Following the meeting and receiving the additional information from Landsvirkjun, the Authority asked the Icelandic authorities for additional clarifications⁽¹¹⁾. By letter dated 29 June 2018, the Icelandic authorities sent the requested information⁽¹²⁾.

2. DESCRIPTION OF THE MEASURE

2.1. The beneficiary: Landsvirkjun

- (6) Landsvirkjun is a public partnership company regulated by the Landsvirkjun Act⁽¹³⁾. As of 1 January 2007, the State Treasury took over full ownership of Landsvirkjun. Landsvirkjun is owned by the state, directly by the State Treasury (99,9 %) and indirectly through Eignarhlutir ehf. (0,1 %), a limited liability company that is wholly owned by the State Treasury.

2.2. Derivative contracts entered into by Landsvirkjun and state guarantees

- (7) According to the Icelandic authorities⁽¹⁴⁾, Landsvirkjun is exposed to foreign currency exchange ('FX') and interest rate risks on its debt portfolio. Landsvirkjun uses various derivative contracts to control and manage these risks.
- (8) As explained in the opening decision, the Authority looked into the following types of derivative contracts entered into by Landsvirkjun: FX swaps, FX options and interest rate swaps⁽¹⁵⁾. In the opening decision, the Authority provided a description of these derivative contracts based on the explanations of the Icelandic authorities⁽¹⁶⁾.

2.3. The existing aid procedure as regards state aid granted through unlimited state guarantees

- (9) By letter dated 26 September 2006⁽¹⁷⁾, the Authority initiated the procedure on existing aid measures provided for in Article 17(2) of Part II of Protocol 3, with respect to certain measures in favour of electricity utilities in Iceland, including unlimited state guarantees to Landsvirkjun. In that letter, the Authority informed the Icelandic authorities of its preliminary view that these measures involved existing state aid incompatible with the functioning of the EEA Agreement.
- (10) The Authority concluded in its Decision No 302/09/COL⁽¹⁸⁾ that the unlimited state guarantee to Landsvirkjun constituted existing state aid. In that decision, the Authority proposed that the Icelandic authorities take legislative, administrative and other measures necessary to eliminate any incompatible aid resulting from the unlimited state guarantee granted to Landsvirkjun.
- (11) By letter dated 8 August 2009⁽¹⁹⁾, the Icelandic authorities accepted the proposed measures and committed themselves to inform the Authority of the measures they would take to implement Decision No 302/09/COL. After further exchanges with the Icelandic authorities, the Authority recorded in its Decision No 159/13/COL⁽²⁰⁾ Iceland's acceptance of the appropriate measures with regard to the existing aid scheme and closed the case.

3. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

- (12) In the opening decision, the Authority presented its preliminary view on the existence of aid concerning the guarantees at stake and their potential incompatibility with the functioning of the EEA Agreement.

⁽¹⁰⁾ Documents No 918376 and 918377.

⁽¹¹⁾ Documents No 917646 and 917656.

⁽¹²⁾ Documents No 920923 and 920925.

⁽¹³⁾ Act No 42/1983 on Landsvirkjun as amended.

⁽¹⁴⁾ Document No 793116.

⁽¹⁵⁾ Paragraph 14 of the opening decision.

⁽¹⁶⁾ Sections 2.3.1 to 2.3.3 of part I of the opening decision.

⁽¹⁷⁾ Document No 280834.

⁽¹⁸⁾ The Authority's Decision No 302/09/COL of 8 July 2009 to propose appropriate measures with regard to state aid granted to Landsvirkjun and Orkuveita Reykjavíkur.

⁽¹⁹⁾ Document No 527076.

⁽²⁰⁾ Decision No 159/13/COL of 24 April 2013 to close the case concerning existing aid granted to Landsvirkjun and Orkuveita Reykjavíkur through unlimited state guarantees (OJ C 237, 15.8.2013, p. 3 and EEA Supplement No 45, 15.8.2013, p. 28).

- (13) According to the Authority's preliminary view, the state guarantees in question had been granted to Landsvirkjun for derivative contracts at least since 2013. The Authority explained in the opening decision that several aspects necessary for the state aid assessment of the guarantees to Landsvirkjun for derivative contracts remained unclear ⁽²¹⁾.
- (14) The Authority could not rule out the existence of state aid concerning the guarantees. As regards the economic advantage, the Authority was of the preliminary view that the guarantees in question did not meet the conditions (b), (c) and (d) of point 3.2 of the state aid guidelines on state guarantees ('the Guarantee Guidelines') ⁽²²⁾ and constituted an advantage within the meaning of the state aid rules. The Authority expressed doubts as to whether the guarantees could be declared compatible with the functioning of the EEA Agreement.
- (15) Iceland and Landsvirkjun have submitted comments both as regards the derivative contracts entered into by Landsvirkjun and the state guarantees. The parts of the comments relevant for the decision are summarised in Sections 4 and 5.

4. COMMENTS BY ICELAND

4.1. General comments as regards the derivative contracts and state guarantees

- (16) Referring to paragraph 20 of the opening decision ⁽²³⁾, Iceland argues that in contrast to what was stated in the follow-up letter of the Authority of 27 June 2016, Landsvirkjun was able to enter into the hedging derivative contracts without state guarantees. The statement in the follow-up letter to the contrary is a mistake that Iceland did not identify at the time. Furthermore, the relevant legal framework does not oblige Landsvirkjun to obtain a state guarantee, in order to enter into a derivative contract. Landsvirkjun can apply every year for a guarantee for hedging derivatives up to a specific cumulative nominal value.
- (17) Referring to paragraphs 20, 24, 33 and 39 of the opening decision ⁽²⁴⁾, Iceland explains that the guarantees were granted by the Minister of Finance and Economic Affairs rather than the Government Debt Management ('GDM'), which is a unit within the Central Bank under Treasury and Market Operations. The GDM is entrusted with certain tasks related to state guarantees, but that is not to say that the GDM is entrusted with granting them ⁽²⁵⁾.

4.2. Existence of state aid

- (18) Iceland does not dispute that the state guarantees in question are imputable to the state nor that, should a selective advantage be found to exist, they are liable to distort competition and to affect trade between the Contracting Parties to the EEA Agreement.
- (19) However, Iceland disputes the Authority's preliminary finding ⁽²⁶⁾ that the guarantees in question could grant an advantage to Landsvirkjun.
- (20) According to Iceland, the guarantees in question are guarantees of collection that do not have a specific value for Landsvirkjun. There is only a theoretical possibility of collection against the state. Iceland claims that Landsvirkjun enters into derivative contracts for hedging purposes only, i.e. to reduce Landsvirkjun's financial risk from the underlying financial transactions. This is demanded by the state as the owner as well as Landsvirkjun's risk management policy set by its Board of Directors. Iceland also argues that Landsvirkjun enters into derivative contracts without a state guarantee with terms identical to guaranteed contracts.

⁽²¹⁾ Paragraph 24 of the opening decision.

⁽²²⁾ OJL 105, 21.4.2011, p. 32 and EEA Supplement No 23, 21.4.2011, p. 1.

⁽²³⁾ According to paragraph 20 of the opening decision, the Authority had understood the Icelandic authorities to have explained at a meeting on 31 May 2016 that Landsvirkjun would not be able to enter into the hedging derivative contracts without the state guarantee.

⁽²⁴⁾ Paragraphs 20, 24, 33 and 39 of the opening decision reflect the Authority's initial understanding that the guarantees in question were granted by the Government Debt Management.

⁽²⁵⁾ Document No 875032.

⁽²⁶⁾ Paragraph 58 of the opening decision.

4.3. Applicability of the Icelandic legislative framework for state guarantees

- (21) By reference to paragraph 65 of the opening decision ⁽²⁷⁾, Iceland argues the guarantees in question fell under the legislative framework that was subject to the Authority's Decision No 302/09/COL, both before and after the amendments following that decision. Iceland refers to correspondence between the Icelandic authorities and the Authority confirming that explanation.

5. COMMENTS BY LANDSVIRKJUN ⁽²⁸⁾

5.1. The Icelandic legal framework on state guarantees to Landsvirkjun

- (22) The legislative framework, under which state guarantees are granted to Landsvirkjun, is based on the State Guarantee Act ⁽²⁹⁾ and the Landsvirkjun Act. Landsvirkjun was already established as a partnership under the previously applicable Act on Landsvirkjun ⁽³⁰⁾.
- (23) According to Article 1 of the State Guarantee Act, the state can never issue a guarantee without a legal basis ⁽³¹⁾. In the case of Landsvirkjun, the legal basis for state guarantees is the Landsvirkjun Act. Under the Landsvirkjun Act, before and after the existing aid procedure, the owners' guarantee is a guarantee of collection. Furthermore, the guarantees are granted by the Minister of Finance and Economic Affairs rather than the GDM.
- (24) A guarantee of collection is different from the normally applicable liability rules for owners of partnership companies. Under the Act on Partnership Companies No 50/2007, the owners are liable for the partnership company's obligations on the basis of a direct, unlimited and unconditional guarantee, and thus without limitations, for all the obligations of the company.
- (25) Under a guarantee of collection a creditor must exhaust all legal remedies against Landsvirkjun before proceeding against the state. In practice, this means that the creditor must prove that the debtor is insolvent, according to the general principles of Icelandic law. The creditor therefore would need to have unsuccessful distraint or formally start (or be a part of with others) the procedures set out in the Bankruptcy Act before reverting to the guarantor ⁽³²⁾. Due to the very burdensome and lengthy procedure and the requirement that all means are exhausted with respect to the company before the guarantor can be addressed, a guarantee of collection has far less value for the creditors. Landsvirkjun also refers to the Authority's previous practice in this regard ⁽³³⁾.

5.2. Landsvirkjun's use of derivative contracts

- (26) As regards the derivative contracts in question that were covered by a state guarantee, these derivative contracts concerned underlying financial obligations (loans or bonds) that were entered into prior to implementing the appropriate measure under the existing aid procedure ⁽³⁴⁾.
- (27) Landsvirkjun states that it structures its financing fully in line with standard practice throughout the OECD countries for large undertakings and derivative contracts form an integral part of risk management. Landsvirkjun enters into ISDA Master Agreements ⁽³⁵⁾ with counterparties, which set out standard terms that apply to all the derivative transactions entered into between those parties ⁽³⁶⁾.

⁽²⁷⁾ According to paragraph 65 of the opening decision (by reference to Section 2.5 of Part I), the Authority was of the preliminary view that the guarantees in question did not meet the terms of Iceland's amended legislative framework for state guarantees nor with the Guarantee Guidelines. In particular, Landsvirkjun did not appear to pay a premium covering the benefits it enjoys due to the guarantees; the guarantees appeared to cover more than 80 % of any outstanding obligations; and the guarantees did not appear to be linked to specific financial transactions, for a fixed maximum amount and limited in time.

⁽²⁸⁾ The Authority notes that, as explained in Section 1, Iceland agrees with the comments submitted by Landsvirkjun.

⁽²⁹⁾ Act No 121/1997.

⁽³⁰⁾ Article 1 of the Act No 59/1965, as translated by Landsvirkjun: 'The Government and the City council of Reykjavik set up a power company, named Landsvirkjun. The company is an independent legal entity, which has an independent financial and accounting status. Its home and venue is in Reykjavik. Landsvirkjun is a partnership company of the state and the city of Reykjavik with each party owning half of the company. Each party is solely responsible for all liabilities of the company, but their internal liability depends on ownership ratios. Neither party may withdraw from the company without the consent of the other.'

⁽³¹⁾ The same was enacted in the previously applicable State Guarantee Act No 37/1961.

⁽³²⁾ Documents No 874341 and 92092.

⁽³³⁾ The Authority's Decision No 227/06/COL of 19 July 2006 with regard to State aid in favour of Farice hf. (OJ L 36, 5.2.2009, p. 69 and EEA Supplement No 6, 5.2.2009, p. 9).

⁽³⁴⁾ Document No 917656.

⁽³⁵⁾ The ISDA Master Agreement is a standard document that is regularly used to govern over-the-counter derivatives transactions. The ISDA Master Agreement is published by the International Swaps and Derivatives Association (ISDA).

⁽³⁶⁾ Document No 874341.

- (28) Landsvirkjun has financial obligations denominated in USD and other currencies, with both variable and fixed interest rates ⁽³⁷⁾. Landsvirkjun is therefore exposed to FX and interest rate risks. Landsvirkjun hedges these risks by using derivative contracts to convert financial obligations denominated in currency other than USD (its functional currency since 2008) to USD and financial obligations with variable interest rates to fixed interest rates.
- (29) Landsvirkjun uses derivative contracts for hedging purposes only ⁽³⁸⁾. Landsvirkjun does not enter into derivative contracts for speculative or arbitrage purposes ⁽³⁹⁾. Limiting the use of derivative contracts to hedging purposes only has also been imposed on Landsvirkjun by its owner — the State. Landsvirkjun submitted internal documents and letters from its owner to confirm these claims ⁽⁴⁰⁾.
- (30) Landsvirkjun also explains that its policy is not to use any guarantees, either private or public, for any transactions. Following the amendments to the state guarantee system, Landsvirkjun started to negotiate a renewal of the guaranteed derivative contracts, with the last state guarantee removed in July 2017 ⁽⁴¹⁾. Landsvirkjun is able to and indeed does enter into derivative contracts without state guarantees. Landsvirkjun has also provided evidence showing that removing the state guarantees did not result in changes to the economic terms of the derivative contracts ⁽⁴²⁾.

5.3. No advantage

- (31) Landsvirkjun is of the opinion that no advantage was granted through the state guarantees for the derivative contracts in question.
- (32) A hedging derivative will by definition reduce the risk exposure which should lead to a reduction of the premium paid for the guarantee linked to the underlying transaction. Landsvirkjun reiterates that the amendment of the outstanding derivative contracts to eliminate the state guarantee has not entailed any additional cost for the company. The conditions and requirements with respect to the financing of Landsvirkjun with or without a state guarantee have not changed ⁽⁴³⁾.
- (33) Landsvirkjun has submitted two reports on the effect of the state guarantees on the derivative contracts ⁽⁴⁴⁾. According to the reports, an economic advantage of the state guarantees on the derivative portfolio was non-existent.
- (34) Landsvirkjun also explains that during 2010 to 2017 its cash at hand was between USD 142 million and USD 287 million. This high cash at hand position has been held for liquidity risk purposes, i.e. as a buffer for unforeseen risk. The strong liquidity entails opportunity cost that is directly linked to the premiums currently paid to the state. Instead of holding the cash at hand, the company could have bought back bonds from the market and/or prepaid/amortized loans from their lenders. It would not only save interest, but also the [0,1-2] % guarantee fee that Landsvirkjun currently pays for the guaranteed bonds and loans.

6. PRESENCE OF STATE AID

- (35) 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, be incompatible with the functioning of this Agreement.’
- (36) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be granted by the state or through state resources; (ii) it must confer an advantage on an undertaking; (iii) it must favour certain undertakings; and (iv) it must be liable to distort competition and affect trade. ⁽⁴⁵⁾ The Authority finds it appropriate to start its assessment with whether the guarantees for the derivative contracts in question conferred an advantage on Landsvirkjun.

⁽³⁷⁾ Document No 908632.

⁽³⁸⁾ Document No 908632.

⁽³⁹⁾ Document No 874341.

⁽⁴⁰⁾ Document No 875032.

⁽⁴¹⁾ *Idem*.

⁽⁴²⁾ Documents No 908633 and 920923.

⁽⁴³⁾ Documents No 874341, 908633 and 920923.

⁽⁴⁴⁾ Documents No 874344 (Zanders report, September 2017) and 874345 (Summa report, September 2017).

⁽⁴⁵⁾ See, inter alia, judgment in *World Duty Free Group SA and Others*, C-20/15 P and C-21/15 P, EU:C:2016:981, paragraph 53.

6.1. Advantage

6.1.1. Preliminary remarks

- (37) The Authority concurs with the Icelandic authorities and Landsvirkjun that the guarantees in question fall under the Icelandic legislation on state guarantees, including the Landsvirkjun Act, which was subject to the existing aid procedure ⁽⁴⁶⁾.
- (38) The current formal investigation initiated by the opening decision has a narrower focus than the existing aid procedure in that it only covers the application of the Landsvirkjun Act to state guarantees for certain derivative contracts.
- (39) In the opening decision, the Authority questioned whether the guarantees met the conditions (b), (c) and (d) under point 3.2 ⁽⁴⁷⁾ of the Guarantee Guidelines that would allow ruling out the presence of aid ⁽⁴⁸⁾.
- (40) Without prejudice to the issue of whether the conditions set out in the Guarantee Guidelines for ruling out state aid are met, as explained below and based on the information received from Iceland and Landsvirkjun in the course of the formal investigation, the Authority finds that the state guarantees in question did not result in an advantage to Landsvirkjun ⁽⁴⁹⁾.

6.1.2. Exclusion of advantage from state guarantees for the derivative contracts

- (41) An advantage within the meaning of Article 61(1) of the EEA Agreement is any economic benefit which an undertaking could not have obtained under normal market conditions that is to say in the absence of the state intervention ⁽⁵⁰⁾. The Authority has held on several occasions that a guarantee may constitute an advantage under Article 61(1) of the EEA Agreement ⁽⁵¹⁾.
- (42) The benefit of a guarantee is that the risk associated with the guarantee is carried by the state. Such risk-carrying by the state should normally be remunerated by an appropriate premium ⁽⁵²⁾. However, according to the Guarantee Guidelines, 'if an individual guarantee or a guarantee scheme entered into by the state does not bring any advantage to an undertaking, it will not constitute state aid' ⁽⁵³⁾. Points 3.2 to 3.5 of the Guarantee Guidelines set out the conditions for excluding aid in individual guarantees and guarantee schemes. According to point 3.6 of the Guarantee Guidelines, 'a failure to comply with any one of the conditions set out in points 3.2 to 3.5 does not mean that the guarantee or guarantee scheme is automatically regarded as state aid.'
- (43) After 1 January 2010, Landsvirkjun has managed to negotiate with the derivative contracts counterparties the removal of the state guarantees, with the last such guarantee removed in July 2017 ⁽⁵⁴⁾. As the evidence provided during the formal investigation shows, removing the state guarantees did not change the economic terms of the derivative contracts ⁽⁵⁵⁾.
- (44) The Authority sees the fact that the counterparties were willing to remove the state guarantees without requesting better economic terms as an indication that the guarantees did not entail an advantage for Landsvirkjun.
- (45) Furthermore, Landsvirkjun has not used private guarantees and from the information provided during the formal investigation, it is not possible to establish a market price for the guarantees on hedging derivatives.
- (46) In order to quantify the potential advantage conferred by a guarantee (where a market price cannot be established), the Guarantee Guidelines foresee a comparison of the economic terms of a transaction with and without the guarantee ⁽⁵⁶⁾.

⁽⁴⁶⁾ Sections 4.3 and 5.1.

⁽⁴⁷⁾ In the opening decision, the Authority did not question, and had no reason to question, that Landsvirkjun fulfilled condition (a) of point 3.2 of the Guarantee Guidelines, i.e. that the borrower must not be in financial difficulty.

⁽⁴⁸⁾ Section 1.1.3 of Part II of the opening decision.

⁽⁴⁹⁾ The Authority notes that this conclusion concerns the guarantees covered by the opening decision and the current decision only and is without prejudice to any other state guarantees to either Landsvirkjun or other undertakings.

⁽⁵⁰⁾ See for instance judgments in *SFEI and Others*, C-39/94, EU:C:1996:285, paragraph 60 and *Spain v Commission*, C-342/96, EU:C:1999:210, paragraph 41.

⁽⁵¹⁾ The Authority has found an advantage to exist, inter alia, in its Decision No 177/05/COL of 15 July 2005 concerning a state guarantee to Liechtensteinische Landesbank (not published) and Decision No 227/06/COL with regard to state aid in favour of Farice hf. (OJ L 36, 5.2.2009, p. 69 and EEA Supplement No 6, 5.2.2009, p. 9).

⁽⁵²⁾ Guarantee Guidelines, point 2.1.

⁽⁵³⁾ Guarantee Guidelines, point 3.1.

⁽⁵⁴⁾ Document No 908632.

⁽⁵⁵⁾ Section 5.2.

⁽⁵⁶⁾ Guarantee Guidelines, point 4.2.

- (47) The removal of the state guarantees in question did not change the economic terms of the relevant derivative contracts. Therefore, the guarantees cannot be seen to constitute an advantage to Landsvirkjun. Further, the Authority has no indications or information at its disposal suggesting that the economic terms of the relevant derivative contracts would have been different without the state guarantees at the time when the state guarantees were actually granted. Consequently, the Authority must assume that a removal (or non-existence) of the state guarantees did not change the economic terms of the relevant derivative contracts at any given point during the lifetime of these guarantees.
- (48) The conclusion that the guarantees on the derivative contracts in question did not confer an advantage on Landsvirkjun is also supported by the reports referred to in recital 33. In particular, Zanders (a consulting firm specialising in financial services) looked, on behalf of Landsvirkjun, at a sample of derivatives held by Landsvirkjun and calculated the corresponding margins for those derivative contracts⁽⁵⁷⁾. The report showed that such margins, which ranged between [(-)2-2] and [10-15] basis points, were in line with the margins observed for similar derivative contracts held by companies with a comparable credit rating, which, unlike Landsvirkjun, did not benefit from a guarantee of collection. On this basis, the Zanders report concludes that, on average, there is no pricing advantage between Landsvirkjun and other companies as a result of the guarantee of collection. Accordingly, the report concludes that Landsvirkjun did not enjoy an economic benefit from such a guarantee.
- (49) A report by another consulting firm, Summa Consulting slf, noted in respect of the pricing of the hedging derivatives that, 'considering the strong balance sheet, good liquidity position and credit quality of Landsvirkjun, it is not likely that a state guarantee or an absence thereof will have meaningful effects on the pricing of derivative contracts that Landsvirkjun enters into'⁽⁵⁸⁾.
- (50) Further, Landsvirkjun used the guaranteed derivative contracts exclusively for hedging purposes, i.e. to convert its financial obligations denominated in currency other than USD (its functional currency since 2008) to USD and financial obligations with variable interest rates to fixed interest rates⁽⁵⁹⁾. According to the information submitted during the formal investigation, the implementation of the appropriate measures in the course of the existing aid procedure led to limiting the state guarantees to 80 % of the value of the derivative contracts in question and the guarantees on hedging derivatives were limited by a specific cumulative nominal value⁽⁶⁰⁾. Hence, neither Landsvirkjun nor the state as its guarantor can be said to have been exposed to unlimited liabilities from these guarantees.
- (51) Furthermore, the guarantees in question are, according to Article 1 of the Landsvirkjun Act, guarantees of collection. Under a guarantee of collection, a creditor must exhaust all legal remedies against Landsvirkjun before proceeding against the state.⁽⁶¹⁾ The Authority has earlier concluded that, though not excluding the advantage, this type of guarantee comes with lesser risk⁽⁶²⁾. As shown by Landsvirkjun, in each of the years 2010 to 2017 the company's cash and cash equivalents exceeded losses recorded from the guaranteed derivatives⁽⁶³⁾. Therefore, any risks to the guarantor were reduced.
- (52) As explained in recital 36, for a measure to constitute state aid within the meaning of Article 61(1) of the EEA Agreement, all four conditions must be cumulatively fulfilled. Since the guarantees in question do not confer an advantage on Landsvirkjun, it is not necessary to carry out an assessment with regard to the other conditions.

7. CONCLUSION

- (53) On the basis of the foregoing assessment, the Authority concludes that the state guarantees to Landsvirkjun for derivative contracts for hedging Landsvirkjun's foreign currency exchange and interest rate risks, the last of which was removed in July 2017, did not constitute state aid within the meaning of Article 61(1) of the EEA Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The state guarantees to Landsvirkjun for derivative contracts for hedging Landsvirkjun's foreign currency exchange and interest rate risks, the last of which was removed in July 2017, did not constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

⁽⁵⁷⁾ Document No 874344.

⁽⁵⁸⁾ Document No 874345.

⁽⁵⁹⁾ Section 5.2 and Document No 874345.

⁽⁶⁰⁾ Documents No 875032, 874341 and 908632.

⁽⁶¹⁾ Section 5.1.

⁽⁶²⁾ Footnote 34.

⁽⁶³⁾ Document No 874345.

The formal investigation is hereby closed.

Article 2

This Decision is addressed to Iceland.

Article 3

Only the English language version of this decision is authentic.

Done at Brussels, 26 September 2018.

For the EFTA Surveillance Authority,

Bente ANGELL-HANSEN
*President
Responsible College
Member*

Frank J. BÜCHEL
College Member

Högni KRISTJÁNSSON
College Member

Carsten ZATSCHLER
*Countersigning as Director,
Legal and Executive Affairs*
