

EFTA COURT

Action brought on 29 August 2011 by Hurtigruten ASA against the EFTA Surveillance Authority

(Case E-10/11)

An action against the EFTA Surveillance Authority was brought before the EFTA Court on 29 August 2011 by Hurtigruten ASA, represented by Siri Teigum, advokat, and Odd Stemsrud, advokat, Advokatfirmaet Thommessen AS, Haakon VII's gate 10, NO-0116 Oslo, Norway.

The Applicant requests the EFTA Court to:

- 1. Annul the EFTA Surveillance Authority's Decision No. 205/11/COL of 29 June 2011 on the Supplementary Agreement on the Hurtigruten Service;**
- 2. In the alternative, declare void Articles 2, 3 and 4 of the EFTA Surveillance Authority's Decision No 205/11/COL of 29 June 2011, to the extent that they order the recovery of the aid referred to in Article 1 of the Decision; and**
- 3. Order the EFTA Surveillance Authority to bear its own costs and to pay those incurred by Hurtigruten ASA.**

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

- The Applicant, Hurtigruten ASA, is a public limited company, pursuing travel and transport activities in Norway and abroad.
- On 28 November 2008, the Norwegian authorities informed the EFTA Surveillance Authority of the renegotiation of the agreement between the Norwegian authorities and Hurtigruten ASA on acquisition of transport services between Bergen and Kirkenes in Norway. On 14 July 2010 the EFTA Surveillance Authority informed the Norwegian authorities that it would initiate the formal investigation procedure laid down in Article 1(2) of Part I of Protocol 3 to the Surveillance and Court Agreement in respect of the additional payments to Hurtigruten in 2008.
- With Decision No. 205/11/COL, the EFTA Surveillance Authority decided that the Supplementary Agreement constituted state aid which

is incompatible with the functioning of the EEA Agreement within the meaning of Articles 61(1) EEA in so far as they constitute a form of overcompensation for public service.

- The Applicant claims, inter alia, that the EFTA Surveillance Authority has based the contested Decision on manifest errors of law and/or assessment:
 - under Article 59(2) EEA relating to the Norwegian Government's right to ensure that the performance of an undertaking entrusted with the operation of services of general economic interest is not obstructed when its continued operation is at risk, and the level of compensation which can be granted in these circumstances;
 - under Article 61(1) EEA and the Altmark framework and the subsequent enforcement of the Decision;
 - of Article 61(3) EEA and the applicability of the State Aid Guidelines for aid for rescuing and restructuring firms in difficulty; and
 - that the Decision must be annulled based on the failure of the EFTA Surveillance Authority to state reasons for its decision as required by Article 16 SCA, breach of the principle of good administration, breach of the duty to exercise due diligence, lack of legal basis in Protocol 3 SCA and/or breach of the principle of legal certainty.