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Judgment in Case E-14/10 *Konkurrenten.no AS v EFTA Surveillance Authority*

EFTA COURT ANNULS DECISION TO CLOSE A CASE ON STATE AID FOR KOLLEKTIVTRANSPORTPRODUKSJON AS

In a judgment delivered today, the EFTA Court annulled the EFTA Surveillance Authority's decision No 254/10/COL of 21 June 2010 (AS Oslo Sporveier and AS Sporveisbussene).

By the decision, the EFTA Surveillance Authority (ESA) had closed its investigation of alleged State aid granted to AS Oslo Sporveier, the legal predecessor of Kollektivtransportproduksjon AS (KTP). The contested aid consisted on the one hand of annual compensation payments to AS Oslo Sporveier and its affiliate AS Sporveisbussene for the operation of parts of the public bus transport grid in Oslo and on the other of a capital injection into these companies that was supposed to cover a gap in their pension funds. The companies were also engaged in other commercial activities, in particular on the express bus market.

The applicant Konkurrenten.no AS, a privately owned operator in the express bus market between the central and southern region of Norway, had submitted a complaint to ESA claiming that the aid granted between 1997 and 2008 constituted unlawful aid. In the decision, ESA concluded that the contested measures, although being aid incompatible with the EEA Agreement, constituted existing aid. In view of the termination of those aid measures, ESA considered that no further measures were required.

The Court held that ESA's decision was vitiated by several defects. First, with regard to annual payments of NOK 126,8 million in the years 2000 to 2008, the decision did not make it clear how and for what reasons ESA reached the conclusion that the renewed concession, after the original concession had expired at the end of 1999, constituted a part of an aid scheme that was introduced prior to the entry into force of the EEA Agreement.

Second, the Court found that even though the decision in principle correctly assessed the amount of NOK 199,6 million in compensation payments from 1997 to 1999 to be existing aid, ESA had also considered it likely that some of that aid exceeded the losses associated with discharging the public service obligation. The fact that it found itself unable to establish which parts of the aid granted by the City of Oslo were existing aid and which parts were unlawful aid should have prompted ESA to open the formal investigation procedure in order to become, as far as possible, fully informed of the facts.

Third, with regard to the 2004 capital injection of NOK 800 million into AS Oslo Sporveier, of which AS Sporveisbussene received NOK 111,7 million, the Court considered that the decision, even though both AS Oslo Sporveier and AS Sporveisbussene also provided commercial services, failed to provide any explanation whether and to what extent that capital injection was actually linked to pension costs relating to the discharge of the public services which could be compensated under the aid scheme.

The full text of the judgment may be found on the Internet at: www.eftacourt.int.



This press release is not an official document. Please note that the Court may not comment on the case.