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Notification of the Sale of Municipal Rental Apartments

Reference is made to the EFTA Surveillance Authority's (hereinafter referred to as the Authority) letter dated 31 July 2001, Doc. No: 01-67017-D, and we hereby notify the Authority of the sale of 1744 municipal rental apartments. The information contained in this letter, including the annexes, is considered to meet the requirements referred to in Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement.

1 Introduction and summary

1.1 The facts of the case in brief

In March 2001, the Municipality of Oslo decided to sell a portfolio of 1744 rental apartments before the end of May. The timing of the sale was a result of the introduction of a new legal structure within the hospital sector in Norway, which had as a consequence that the Municipality of Oslo would lose their title to the hospitals and related real estate.

On 16 March, the independent real estate agency Akershus Eiendom AS (hereinafter referred to as Akershus Eiendom) was awarded the task of selling the apartments *en bloc* on behalf of the Municipality of Oslo. These apartments were mainly rented out to employees in municipal hospitals.

On 30 March, an independent consultancy firm, Catella Eiendoms-Consult AS (hereinafter referred to as Catella) submitted a report on and appraisal of the apartments. The report was originally not prepared for the sale of the apartments but for the reorganisation of the Municipality of Oslo's ownership to the hospitals and apartments. The report was however used to provide preliminary guidance to the market and was accompanied by an appraisal based on the presumption that a portfolio sale was to take place.

A second appraisal was later ordered from an independent appraiser, OPAK AS (hereinafter referred to as OPAK), and submitted on 26 April. The background for the new appraisal was that the real estate agent had reason to believe that Catella had

overestimated the rental that could be obtained and that the appraisal by Catella had several other shortcomings, c.f. point 3.5, *infra*.

Akershus Eiendom approached the market on 2 April, with the report from Catella. The sale of the apartments was made public by a press release dated 19 April. A prospectus covering the apartments was distributed from 23 April.

The appraisal done by OPAK proved to be more modest than Catella's; NOK 795 000 000 versus NOK 1 143 000 000. OPAK's appraisal was distributed to potential investors. Investors were asked to submit their bids by 2 May, and the bidding contest was brought to an end on 3 May.

On 8 May, Sundal Collier & Co ASA, Fredensborg Boligutleie ANS (hereinafter referred to as Fredensborg) being its successor, undertook to purchase the apartments. The Municipality of Oslo considered this binding offer for three more weeks.

An adjustment of the OPAK appraisal was requested by the Municipality of Oslo in order to reflect a correction of the value of certain leases due to factual circumstances not considered in the original appraisal. These factual corrections lead OPAK to reduce the value of the assets to NOK 740 000 000. The adjustments were presented to the Municipality of Oslo on 14 May. By signing the contract on 31 May – after several meetings held by the Municipality of Oslo's various bodies – the Municipality of Oslo sold the 1744 apartments *en bloc* at a price of NOK 715 000 000 to Fredensborg.

Annex 1: Chronological outline of the sales process

The issue has been raised as to whether the sale was in accordance with provisions of the EEA-agreement relating to state aid. Hence, the Authority awaits a formal notification of the sale, in accordance with the Authority's Procedural and Substantive Rules in the Field of State Aid to establish whether or not the terms of the transaction constitutes state aid forbidden by the EEA Agreement Article 61 (1), c.f. the letter from the Authority of 31 July 2001, Doc. No. 01-6017-D.

After the state aid issue had been raised, a new appraisal was made at the initiative of the Norwegian authorities suggesting that the market value of the assets at the time of transaction exceeded the price obtained. The appraisal was done on 26 April 2002, and was thus not available to the market at the time of transaction.

1.2 Legal assessment in brief

In order for a measure to constitute state aid pursuant to Article 61 (1) EEA, four cumulative criteria have to be met; there has to be some kind of aid given through state resources, the aid must distort competition, this distortion must be the result of certain

undertakings or the production of certain goods being favoured – often referred to as the selectivity requirement, and this has to affect trade between the contracting parties to the EEA Agreement.

As will be demonstrated, these criteria are not fulfilled.

The first reason is that the price obtained reflects the market value of the assets. The sale was made after a well publicized open auction with several participants, all having equal access to the relevant information, and the bidder with the highest bid was chosen. Thus, the sale “is by definition at market value and consequently does not contain State aid” c.f. Procedural and Substantive Rules in the Field of State Aid, hereinafter referred to as the State Aid Guidelines, point 18B.2.1 (I). Given this, it is also irrelevant “if a different valuation of the assets existed prior to the bidding procedure”, c.f the same section of the State Aid Guidelines. In the present case there was even at the time of the sale an independent appraisal of the assets which confirms that market value was obtained.

Secondly, even if one should find that there is an element of aid in the transaction, and that competition has been distorted as a consequence of certain undertakings, i.e. Fredensborg being favoured, there is no indication that intra-EEA trade is affected. In this context, the relevant market is the market for rental homes. As Fredensborg, in its capacity as provider of rental homes in Oslo and surrounding areas, is not in a competitive relationship to providers of rental homes in other EEA-countries, the exchange of services between EEA-countries is not affected. Also, it is highly unlikely that an aid to Fredensborg would affect cross-border trade in other markets.

It is not disputed that the procedural requirements of the State Aid Guidelines have not been fully observed in the present case. This does not however imply that the transaction involves state aid in conflict with Article 61 (1) EEA, as the State Aid Guidelines merely provides guidelines as regards the procedures, and not binding norms. As pointed out in the State Aid Guidelines, section 18 B, 2.4, the Seller’s use of the procedures set out in the State Aid Guidelines, when selling real estate, allows the Authority to “assume that no state aid is involved”. In this particular case the Authority will have to review the sale’s process on a more factual basis, as the aforementioned guidelines have not been fully observed. It is submitted that the information provided herein will allow the Authority to conclude that the Municipality of Oslo’s portfolio sale does not involve any state aid within the meaning of Article 61 EEA.

1.3 Structure

In order to give the Authority the factual basis for an assessment of whether the sale of the 1744 apartments fulfils the criteria in Article 61 (1) EEA or not, a detailed account of the assets, sales process and markets will be given below.

The structure of the document is as follows: In section 2 a description of the assets is given. As will be demonstrated, the assets have a number of characteristics that makes this transaction stand apart from all other real estate transactions carried out in Norway. This again has several implications in relation to whether there is an element of state aid involved or not.

The sales process, hereunder the real estate agent, is described in section 3. The descriptions in this section show that the real estate agent is independent from the Municipality of Oslo and was not instructed by the Municipality of Oslo; that the sale was given sufficient publicity to attract all potential investors; that the description of the assets and the time offered for inspections did not foreclose potential investors; that the sale was concluded on the basis of competitive bidding alone; and that the terms of the sale neither excluded nor benefited certain investors.

There are substantial discrepancies between the three appraisals given in relation to this sale and only one of them is close to the price obtained. This seems to form the basis for the allegations that there is an element of state aid in the transaction. Thus, possible explanations to these discrepancies are offered in section 4.

The appraisal done by OPAK, was prepared for the purpose of the sale and presented to the bidders as the appraisal that the Municipality of Oslo had obtained for the purpose of the sale. This appraisal should be relied upon for the documentation of the market value of the assets if the Authority should not accept that the auction as such resulted in a price which by definition reflects market value. The difference between the appraisal done by OPAK and the price obtained, some 3 %, should be within an acceptable price margin.

In order for a state aid to fall within the ambit of Article 61 (1) EEA, it has to affect trade between EEA-states. This requirement is addressed in section 1, and it is submitted that even if there should be an element of aid involved in the transaction, it does not affect trade between EEA-states.

Documentation which contains business secrets is set out as Annexes to the letter. The following Annexes should be kept confidential due to the protection of the commercial operators' business interests; 5, 6, 10, 12, 16 (the contract/mandate), 18 (the framework agreement and the annex to the corrected appraisal of 14 Mai 2001), 22 and 26.

2 The assets

The contract concerns assets, i.e. the 1744 apartments, which have certain characteristics that should be mentioned.

Firstly, as the transaction encompasses 1744 apartments, it outnumbers the portfolio of most actors in the present market. This in turn may have an impact on the possibility of the market lifting the transaction as well as on the terms of the transaction.

Secondly, the apartments are hired by consumers with existing lease agreements. One important factor when assessing the value of the apartments is whether and when the rental, according to these contracts, may be increased. This presupposes insight and familiarity with Norwegian mandatory tenant law which is extensive and in this and many other respects, protects tenants in the home rental market as compared to the protection offered to lessees in the business market. So does issues pertaining to the daily management of the property mass. This makes buying the apartments less attractive to undertakings not already established in the home rental market in Norway than to those who are already established in this market. In addition this makes it more attractive to investors not already established in Norway to invest in business premises than in the home rental market.

Thirdly, the tenants' existing lease agreements are non-homogeneous; some contracts are limited to a certain period of time, others are not, and a third group of lease agreements consists of contracts that were originally entered into for a limited period of time, but have now been transformed to contracts without any limitation of time. The number of these contracts is uncertain, and as far as quite a few of them are concerned, it is debatable whether they are now unlimited or not.

For an investor, this represents uncertainty with regard to the risk of possible litigations with the existing tenants, with regard to how fast the investor can increase rents, and on what terms the investor eventually will be able to sell the apartments.

The Municipality of Oslo has recently increased the rentals in the other apartments it has for hire. This has given rise to numerous conflicts with the tenants, lawsuits and negative press coverage. The final outcome remains to be seen, but so far it has been established that increasing rentals may prove more difficult than presupposed by the appraisers.

Annex 2: Newspaper clippings – the Bauge case

Annex 3: Oslo Tingretts judgement of 24 September 2002

Fourthly, the transaction encompasses apartments of varying age, standard and location. This has an impact on the costs involved when renovating the apartments, on the rental obtainable, and on the uncertainties inherent in the transaction viewed from a buyer's point of view.

These factors have implications in two directions. Firstly, the assets are less attractive to investors not already familiar with the Norwegian home rental market and will have implications for the assessment of whether the sale was given sufficient publicity. Secondly, as they have an impact on the investors' appraisal of the assets, they have an impact on the assessment of whether the discrepancy between the appraisals and the

price obtained indicates that there is an element of state aid involved in the transaction or not. These implications are addressed in more detail in sections 3 and 4 infra.

3 The sales process

3.1 Introduction

Even though the procedures set out in the State Aid Guidelines were not fully observed, the sales process was carried out in a way that ensured an open process which resulted in the sale of the portfolio at what must be assumed to be market price. In the following the real estate agent, his mandate, the publicity the sales process was given, the description of the assets, the possibility for inspection of the assets, the duration of the process and the terms of the contract, will be described in order to give the Authority the necessary facts.

3.2 The Real Estate Agent

The sale was conducted through the real estate agent, Akershus Eiendom, with whom the Municipality of Oslo has a framework agreement. Akershus Eiendom is among the largest and most experienced agents within commercial real estate in Norway.

Neither the Municipality of Oslo nor Fredensborg has any ownership interest or other links to Akershus Eiendom which could affect its independency in the pursuance of its tasks.

Annex 4: Descriptions of Akershus Eiendom

3.3 The real estate agent's mandate

Akershus Eiendom was to sell the apartments at the highest price possible, as the guidelines for sale of real estate from the Municipality of Oslo require. The intention behind these guidelines is to establish procedures securing the highest price possible. Thus, the guidelines require that a sale shall be made public, that the sale, if possible, shall take place after competitive bidding, and that the highest bid shall be awarded the contract.

During the sales process, there were no instructions from the Municipality of Oslo likely to obstruct the sales process or favour any potential bidder as compared with others.

In this respect the sale was like any other portfolio sale of real estate.

Annex 5: Framework agreement with Akershus Eiendom and “Oslo Kommunes retningslinjer for salg av fast eiendom” (The Municipality of Oslo’s guidelines for the sale of real estate)

3.4 Publicity

3.4.1 Means for obtaining contact with potential buyers

It was decided not to advertise the sale in advertisement sections in the press. It was considered more efficient to address potential investors by a combination of other means. The sale of the apartments was made known to the market in three ways.

Firstly, Akershus Eiendom initiated the process by approaching those considered by the company to be potential buyers. From an overall perspective and considering the nature of the assets to be sold the potential buyers could either be expected to be found within groupings that already had real estate activities in Norway, and preferably within rental homes, or within groupings of financial investors.

The potential buyers that were contacted directly during these first days (weeks no. 13 and 14, March/April 2001) are set out in Annex 6.

Annex 6: Potential buyers

These potential investors were informed that a sales process was initiated and sent a prospectus and the report prepared by Catella.

Secondly, following a press release dated 19 April from the Municipality of Oslo and subsequent publicity through newspapers, radio and TV, other potential buyers approached Akershus Eiendom.

Annex 7: Press release from the Municipality of Oslo dated 19 April.

Annex 8: Standard distribution of press releases from the Municipality of Oslo

Annex 9: Newspaper clippings and memorandum 0-1/2002 from OPAK, dated 21 Mai 2002

Thirdly, information brokers making cold, i.e. unsolicited, telephone calls to what they consider interested parties in order to obtain a success fee are active players in Norwegian real estate markets. This is a well functioning information channel for large real estate investments. It is fair to assume that some of the potential investors approaching Akershus Eiendom were made aware of the sale through such brokers. The potential investors contacting Akershus Eiendom are set out in Annex 6. The prospectus and the report from Catella were given to all requesting it.

The possibility that any investor considered even remotely interested in investments within the Norwegian market for rental homes was unaware of the sale taking place, is highly unlikely, based on the different actions described above.

It may be noted that no investor has contacted the Municipality of Oslo (or Akershus Eiendom) after the closing of the auction complaining that they were formally or practically excluded from participating in the auction, notwithstanding the fact that the market has been aware of the intervention of public authorities such as the Authority and the District Governor of Oslo and Akershus, and the resulting postponement of the public registration of the transfer of the title to the assets.

All potential investors were treated on an equal footing by Akershus Eiendom and by the Municipality of Oslo.

Annex 10: Letter from Akershus Eiendom to the Municipality of Oslo of 28 May 2001

3.4.2 Potential investors established in other EEA-countries

None of the potential buyers, neither those approached by Akershus Eiendom nor those approaching Akershus Eiendom, were situated outside Norway.

The experience gained when selling other real estate assets shows that investors not already established in Norway are reluctant towards investing in real estate in Norway. One explanation for this is that currency-related risks due to the fact that Norway is not in the Euro-zone, make it less attractive to invest in real estate in Norway. As real estate investments compared to other investments, although they may be of considerable size, have small margins, even small fluctuations in currency may reduce profitability considerably. This makes it less attractive to invest in Norwegian real estate than in real estate within the Euro-zone.

To foreign investors, the Norwegian market seems small when compared to other European markets. The Norwegian market in this context is for all practical purposes Oslo, a city of some 500 000 inhabitants. The smallness of the market results in a lack of escape possibilities. Thus, a foreign investor wanting to retract from the Norwegian market may find it difficult to find buyers for his assets, at least at a profitable price,

even when there is no shortcomings in the Norwegian market. In short, Norwegian real estate assets are considered to be less volatile than real estate assets in other countries. This applies even more to the rental home market, for the reasons explained in section 2 supra.

Annex 11: FinansEiendom, bilag til Finansavisen 22 august og 19 september (Finansavisen's real estate annex for 22 August and 19 September)

Furthermore, there is a general tendency that investments in real estate flow to the centre, rather than the opposite. Norway and Oslo are far from all European centres, be they financial, geographic or demographic.

Illustrative in this context is the quite recent sale of land at Fornebu, which concerned real estate for development, and thus was easier to administer than housing with existing tenants. This sale was publicized internationally, but nevertheless attracted only Norwegian investors. (One foreign investor showed a certain interest for the project, but presented an offer which was not in correspondence with the invitation and thus not even considered).

Annex 12: Description of the Fornebu sales process and of the interest from investors established in other EEA-countries.

The factors mentioned may explain the general lack of non-Norwegian investors' interest in *business premises* in Norway. The fact that the real estate in question consisted of 1744 apartments, most of them leased under separate contracts governed by mandatory law, made the sale even less attractive to investors not established in Norway, than a sale of normal business premises. In order to administer such a bulk of apartments, the owner needs insight into Norwegian tenant law, and an administration body in Norway able to handle the daily dealings with the tenants.

The administration body would have to be particularly skilled in order to realize the profits envisaged by the appraisals, the reason for this being that the appraisals presuppose an increase in the rentals to a radically higher level for most of the apartments as soon as possible. The tenants are resourceful and well organized. Illustrative in this respect are the lawsuits raised against the Municipality of Oslo with regard to the question of pre-emption rights, see Annex 13. Hence, it seems fair to assume that an abrupt increase in rentals would lead to legal conflicts, law suits and problems of other kinds for the owner. As the apartments were sold as such, an investor situated abroad would either have to set up an administration body in Norway, or purchase administrative services.

Annex 13: Four judgements on the subject of pre-emption rights and newspaper clippings

There were no providers of such administrative services of the necessary size and quality serving the Norwegian market at the time of the transaction.

Thus, the sale of the apartments differs significantly from any other situation, be it the sale of business premises – under lease or not –, real estate or companies operating in the home rental market.

In conclusion, Akershus Eiendom assumed that the sale of the apartments would not attract the interest of potential investors established outside Norway.

Annex 14: Letter from Akershus Eiendom to the Municipality of Oslo dated 14 October 2002.

Under these circumstances there seem to be, according to the State Aid Guidelines, no obligation to market the intended sale internationally, c.f. point 18B.2.1, where it is stated that the:

« intended sale of land and buildings, which in view of their high value or other features may attract investors operating on a Europe-wide or international scale, should be announced in publications which have a regular international circulation. Such offers should also be made known through agents addressing clients on a Europe-wide or international scale.»

Thus, where the features of the land and buildings are such that the sale will not attract investors operating on a Europe-wide or international scale, sufficient publicity can be given through domestic channels.

Hence, the intended sale of the apartments was given sufficient publicity to attract the interest of all potential buyers.

3.5 Description and inspection of the assets

The assets were described thoroughly in the material provided to interested parties.

Among the material presented to interested parties was a report prepared by Catella.

This report was originally made in order to set up an opening balance sheet relating to

the hospitals. The report gives a thorough and detailed description of the assets, and is more thorough and detailed than what is normal in portfolio sales.

Annex 15: Prospectus and annexes

Annex 16: Report from Catella and the contract/mandate

With a view to save time, Catella was asked to include an appraisal of the assets put up for sale, based on the presumption that a portfolio sale was to take place. The stipulation of the value of the assets in the report from Catella, NOK 1 143 000 000, was not considered by Akershus Eiendom to reflect the market value. One reason for this was that Akershus Eiendom meant that the stipulated rentals were too high and the estimated initial costs too low, c.f. Annex 14. In addition, the appraisal done by Catella had several other shortcomings, such as

- The report included real estate not included in the sale (Trondheimsveien 235, estimated value NOK 61 mill.);
- The valuation was based on the assumption that maximum rental was obtainable from the first day;
- The impact of the “as-is” clause in the sales contract was not assessed. An “as-is” clause implies that the buyer takes the entire risk as to the peculiarities of the apartments bought, and that he must trust to his own inspections.

Annex 17: Letter from the Municipality of Oslo the Housing and Real Estate Office, to the Department of Business Development and Urban Planning 14.06.01

Thus, OPAK was asked to make a new appraisal. OPAK set the value of the assets to NOK 795 000 000. The appraisal was completed on 26 April 2001, and immediately presented to the potential investors.

Annex 18: Appraisal from OPAK and the framework agreement.

An adjustment of this appraisal was later requested by the Municipality of Oslo in order to reflect a correction of the value of certain leases due to factual circumstances not considered. These factual corrections lead OPAK to reduce the value of the assets to NOK 740 000 000. The adjustments were presented on 14 May, i.e. after the auction had been held. This is addressed in more detail in section 4.2.2 infra.

Inspections were arranged. In accordance with common practice in relation to portfolio sales, the potential buyers did not inspect the whole bulk of apartments, but were shown a representative number of the best, worst and average apartments with regard to standard and size. The potential buyers were offered the possibility to request further inspections, but no such requests were made.

3.6 The bidding process

The sale was conducted through an open bidding process.

The bidding competition was arranged as a two-round process. First an open round with deadline 2 May, and then a closed round with deadline 3 May, c.f. Annex 10.

In the open round, five bids were given. According to Akershus Eiendom the response was better than usual when selling large real estate properties in Norway.

The bids in the open round varied substantially. All the participants in the open round were informed of the content of the highest bid and invited to participate in an additional, last and closed round of bids.

Two bids were given in the closed round. Again there was a clear but not equally substantial difference in the bids. The highest bid was accepted. The bidding process and the bids are described and evaluated in a letter dated 28.05.01 from Akershus Eiendom, c.f. Annex 10.

3.7 The terms of contract

The nature of the assets is reflected in the terms of the contract which was presented in the prospectus. This is based on the model form used by the Municipality of Oslo when selling real estate, but adjusted due to the characteristics of the assets.

Annex 19: Model contract, sale of real estate, Municipality of Oslo.

The terms of the contract were not drafted in a way which could single out certain potential buyers. This applies to the contract as a whole, including the requirement that the Municipality of Oslo should be entitled to rent apartments for a period up to 10 years. In other words, the terms were not designed to foreclose certain potential investors, and did not work this way. The contract was included in the prospectus, c.f. Annex 16, under the heading “salgsvilkår”.

3.8 The duration of the sales process

The sale of the apartments was carried out during what may be considered a rather brief period of time. Akershus Eiendom was engaged on 16 March, and the contract was signed by Fredensborg on 8 May. The Municipality of Oslo signed the contract on 31 May.

It is noted that the sales process was faster than the process may be in order to give a presumption of EEA-compatibility, as provided for by the State Aid Guidelines. However, it is recalled that the use of other procedures than those provided for in the State Aid Guidelines does not necessarily imply that state aid is involved, but rather that an assessment of the merits of the case will be necessary.

It is also noted that the effects of the sale, not the motives of the Municipality of Oslo, is decisive when determining whether state aid is involved or not. However, an enquiry into the motives may be helpful in understanding the process and assessing its effects. The motive of the Municipality of Oslo was to maximise values on its own hands. A reform to be enforced of the Norwegian hospital sector implied that real estate used by municipal hospitals would become state property. The Municipality of Oslo decided to retain its values by selling the apartments concerned, and initiated the sales process described above with the objective to get as good a price as the market could give.

There is no reason to assume that the sales process was so fast that it kept potential bidders away. Illustrative in this respect is the fact that the contract was awarded a grouping, Fredensborg, established ad hoc. In other words the process was long enough for potential investors not approached by Akershus Eiendom to group, assess the assets and raise the necessary funds.

Real estate transactions involving professional buyers are often done at great speed. A portfolio sale requires generally less time for an investor to decide whether or not he is interested than the sale of one single object. The potential buyers would partly have to rely on statistically based assumptions and partly on the fact that the risks involved are evened out on each asset.

3.9 Conclusions

From the above it can be concluded that the intended sale was given sufficient publicity to attract all potential investors, that the description of the assets and the time offered for inspections did not foreclose potential investors, that the sale was concluded on the basis of competitive bidding alone, and that the terms of the sale neither excluded nor favoured certain investors.

In other words, the sales contract has been concluded on the basis of a public auction where all potential investors have had the possibility to participate and where five competent and experienced market operators competed for the contract on an equal

footing. The Municipality of Oslo has not at any stage intervened in the sale's process in any manner which could possibly favour one or the other bidder. The price obtained after this sales process should be considered to reflect the market value of the portfolio of apartments at the time of the sale.

4 The appraisals as indicators of true market value

4.1 Introduction

One of the reasons why the state aid issue is being raised is the discrepancy between some of the appraisals and the price obtained. It is therefore appropriate to address certain aspects relating both to the appraisals and to the sales process that may explain this discrepancy.

Three appraisals have been obtained in connection with the transaction; the appraisal from Catella, the appraisal from OPAK – both already mentioned – and after the sale had been concluded, an appraisal carried out by a valuation committee contracted by the Municipality of Oslo in accordance with the rules on public procurement, hereinafter referred to as FIGA/Nortakst. The last appraisal was obtained in response to the allegations that the sale involved state aid elements in breach of the EEA Agreement. The Royal Ministry of Trade and Industry requested the Municipality of Oslo to get a new appraisal. The Ministry had a law firm work out the mandate, which was subject to minor alterations from both parties, the Ministry and the Municipality of Oslo.

Annex20: Letter from the Royal Ministry of Trade and Industry to the Municipality of Oslo, dated 12.07.01

Annex 21: Appraisal from FIGA/Nortakst and their mandate as an annex to the invitation, part of the basis for the competition on the public procurement

The three appraisals differ considerably both with respect to the value estimated by the appraisers and other aspects. The following paragraphs will demonstrate that there are debatable aspects in all of them, thus making it impossible to decide that one appraisal is correct in each and every detail and the others are not. If one were to be chosen as reflecting market value, it is submitted that this should be the OPAK appraisal.

The analysis below focuses on the appraisal done by FIGA/Nortakst. The reason for this being that this appraisal sets out the parameters of the appraisal in most detail and thereby is the one best suited for illustrating the importance of questioning the assumptions on which the appraisals are made. In addition, as this appraisal differs most

from the price obtained it seems to be of some importance to offer possible explanations to this in detail.

Firstly, the mandate given to the appraisers differs. The report from Catella was originally prepared for a different purpose, and was merely adjusted. As has been demonstrated in section 3.5, the real estate agent Akershus Eiendom found that the appraisal did not reflect the market value of the portfolio and thus, that it could not be relied upon for the sale's process.

The appraisal by OPAK was considered by the Municipality of Oslo to fulfil the requirements set out in the State Aid Guidelines. This view was, however, neither shared by the Ministry nor the Authority, c.f. the above mentioned letter and letter dated 20 July 2001 from the Authority to the Norwegian Mission to the European Union, Doc. No: 00-5673-D. These opinions are not to be questioned at this stage. However, it is simply noted that this does not imply that the appraisal may not be relied upon by the Authority at all. It merely implies that the Authority, if it should decide that an assessment of the appraisals is necessary (instead of reliance on the price obtained during the auction as market value or on the lack of effect on trade between EEA States), will have to assess the different appraisals and make up its own view on the issues raised therein and the correct appraisal of the value of the portfolio in April/May 2001. In doing so, the Authority may find some guidance in the decision of the Court of First Instance in Case T-148/99, *Demesa*, decided on 6 March 2002, cf. point 63-92.

Secondly, another general aspect relates to the assumptions made by the appraisers. The appraisal carried out by FIGA/Nortakst is based on a number of assumptions given in the mandate, which to a certain extent differ from the assumptions on which the other valuations are based.

A third general point is related to the fact that the apartments cover a wide range both with regard to standard and location. The different market indicators taken into account when assessing the portfolio, is difficult to handle with such a diversified and complex portfolio as the one at hand, thus making an appraisal of the property mass most uncertain. Hence, discrepancies between appraisals and the price obtained are not good indicators of a potential discrepancy between the price obtained and the market value.

The discrepancies between the appraisals indicate that considerable discretion is involved in stipulating the value of the portfolio.

Furthermore, a closer analysis of elements in the appraisals shows that it seems fair to assume that the stipulations carried out are not altogether based on considerations shared with the market, i.e. the potential investors. It can also be questioned whether the assumptions are realistic at all, given for instance the legal restrictions applicable to increasing the rents. This will be analysed more closely in the following sections.

4.2 General, market related aspects not reflected equally in the appraisals

4.2.1 The market's ability and willingness to lift the portfolio

FIGA/Nortakst has based its appraisal on the presumption that there is sufficient demand in the market to absorb such a portfolio sale without influencing the price obtainable. This presumption has not been thoroughly scrutinized, neither by FIGA/Nortakst, Catella nor OPAK .

On page 7 in the FIGA/Nortakst appraisal, it is observed that the decision to sell the apartments en bloc and as rental homes for at least 10 years both narrows down the market and reduces the purchase price one may expect. It is claimed that this is taken into consideration when assessing the value of the apartments. However, it is not clearly indicated how this is done and what the price effect is considered to be. A closely related issue not addressed is the market's ability and willingness to absorb the sale at the price indicated. Already the bids obtained illustrate that the appraisal carried out by FIGA/Nortakst is too high. The possibility that the market was not willing, or able, to raise an amount even close to the sums indicated, is not considered at all.

The biggest private actors in the Norwegian home rental market are OBOS holding some 940 apartments for rent, Olav Thon Gruppen AS holding a portfolio of some 900 apartments for rent, Selvaag, holding a portfolio of some 750 apartments for rent, Fredensborg Boligselskap AS, holding some 450 apartments for rent (700 if apartments for short term rent is included), USBL holding a portfolio of some 400 apartments for rent, and Haugen and Damsund, holding a portfolio of some 300 apartments. Thus, the portfolio on sale was nearly twice as big as the portfolio of the biggest private actor in the Norwegian market.

There are only a few investors in the market who can put together the sufficient expertise to handle this number of apartments and get surplus value beyond today's low rental income from the asset. Without this surplus value, the value of the asset based on a capitalized normal result is by FIGA/Nortakst reduced from NOK 1 005 195 916 to NOK 392 507 993, a reduction exceeding NOK 600 000 000, or approximately 61%. This illustrates two points which are closely related. Firstly, all the appraisals are based on the presumption that the rentals may be increased drastically within a short period of time. As demonstrated in section 2 this presumption may not be fulfilled, thus reducing the value of the assets radically. Secondly, if an investor is not convinced that he both has the legal possibility to increase the rentals as presupposed in the appraisals, and the administrative means necessary to do so, his valuation of the assets will be lower.

The buyer, Fredensborg, was established ad hoc for this transaction. It is however closely linked to Fredensborg Boligselskap AS, who manages some 700 apartments – apartments for short-time rent included. They, like the other main actors in this market, may be able to build up an administration capable of handling another 1744 apartments

as efficiently as necessary in order to harvest the full surplus value of the investment, but this will take time. This again indicates that the appraisal done by the potential buyers will tend to be lower than the one carried out by the appraisers.

The list of undertakings contacted, showing an interest in buying the portfolio, and submitting bids, c.f. section 3 supra, is of substantial interest in this context as it both gives an idea of who was interested, and of how the market appraised the assets. One notable feature is that the life-insurance companies, who generally have been active in the home rental market, did not voice any real interest at all.

The transaction at hand is by far the largest en bloc sale of apartments in Norway. Thus, the discrepancy between the valuation carried out by FIGA/Nortakst and the price obtained may be explained by the transaction being so large that it had to have an influence on the price. This is not taken properly into consideration by the appraisers.

This does, however, not demonstrate that there was an element of aid in the transaction, as the price was reached after the assets had been publicly exposed to the market, the market conditions permitted orderly disposal, and a normal period was available for the negotiation of the sale. Thus, the price obtained reflects the market value of the portfolio.

4.2.2 Information available in the market

Information is a key factor in all markets and vital in relation to auctions. The significance of some of the information which was available in the market is, however, non-apparent in the appraisal done by FIGA/Nortakst. This could possibly be partly due to their mandate. According to this mandate the appraisal was to be based on the presumption that a sale would take place under what is considered “a normal sales situation”, with a “normal and proper” period of time allotted to the sales process. The reason for this being that the letter from the Authority of 20 July 2001, Doc. No: 00-5673-D, was understood to require that the valuation should not take into account the time pressure.

However, there were three pieces of information available to, or obtainable by, the potential investors at the time the auction was held, and it can not be ruled out that it had an impact on the price obtained.

Firstly, because of the restructuring of the hospital sector in Norway, the Municipality of Oslo had to sell the apartments and sell them at that time, in order to realize the substantial values they represented to the Municipality. Thus, the sales situation was not “normal” in the sense that a seller of land and buildings may choose not to sell if the price obtained is not found to be satisfactory. It’s possible that potential buyers might have assumed that the Municipality of Oslo did not have the option not to sell. This

shift in balance in favour of the buyer is likely to have had some impact on the bids and the price obtained.

Secondly, when the bids were delivered, two appraisals of the apartments were present; one from Catella, stipulating the value to be NOK 1 143 000 000, and a more recent one from OPAK, stipulating the value to be NOK 795 000 000. Of these appraisals, the market probably put more weight on the one done by OPAK as it corrected for factual errors in the Catella appraisal, was more modest and more recent. (As it later turned out, also the facts on which OPAK's appraisal was based, were not altogether correct. OPAK was therefore asked by the Municipality of Oslo to adjust its appraisal, taking into account the change in the factual basis for the appraisal. This lead OPAK to reduce the value of the apartments to NOK 740 000 000. This reduction appeared after the highest bid had been accepted. This new information regarding the portfolio lead to a reduction of the price to NOK 715 000 000, see Annex 18.) OPAK has confirmed this in their memorandum dated 20 June 2001.

Annex 22: Memorandum O-1/2001 from OPAK, dated 20 June 2001

Annex 23: Contract between Fredensborg and The Municipality of Oslo, c.f. section 2

Even though each investor makes his own calculations and assessments based on the values he thinks the assets represent, there is reason to assume that an appraisal carried out by one of the most experienced undertakings in the field in Norway had an impact on these considerations. Thus, it seems unlikely that any investor would submit bids exceeding the appraisal done by OPAK by some 25 %.

Annex 24: Description of OPAK

It seems fair to assume that the appraisals may also have had an impact on the potential investors' possibility to raise money, even though this also depends on their net capital and their possibility to offer sufficient security by other means than offering a lien on the assets bought.

Thirdly, as is already demonstrated, the market is small. In addition, the inspections of the assets made the market transparent. Thus, it was not difficult for the very few serious bidders to stipulate who would be their competitors in the closed round, and thus their financial position etc.

As the highest bid in the first round was NOK 725 000 000, there is reason to believe that the investors in the closed round speculated in their competitors' financial position,

ability and willingness to go above this sum rather than the estimated technical value of the assets.

Finally, the investors will probably have taken into account the possibility of buying parts of the portfolio from the eventual buyer. Hence, business opportunities related to the transfer of the apartments would persist after the initial sale.

The discrepancy between the appraisal done by FIGA/Nortakst and the highest bid may to some extent be explained by these factors.

4.3 Comments to the differences in the appraisals regarding some specific elements

4.3.1 Introduction

In addition to these more general comments, it may also be noted that the appraisal differs substantially regarding certain specific elements, which clearly must have an impact on the market value. Some main points shall be presented below. It is generally submitted that the OPAK appraisal of these elements is more realistic than the FIGA/Nortakst appraisal.

4.3.2 Renovating costs and the possibility to obtain market rent

The general condition of the apartments is very poor. The Municipality of Oslo has not done any substantial renovation to the apartments since they were built, some 30 to 50 years ago. This fact is observed by all the appraisers, and not disputed.

In the appraisal done by FIGA/Nortakst, no allowances are made for renovation and refurbishing, as it is assumed that the apartments may be hired out “as is”, and still obtain what is referred to as “market rent”. This presumption is neither shared by OPAK nor Catella, as their appraisals allow for NOK 150 000 000 and “a certain amount” respectively in order to bring the standard of the apartments to a level legitimizing a current market rent.

Even if it should prove possible, as FIGA/Nortakst assumes, to hire out the apartments “as is” and still obtain market rent, it is unlikely that an investor would base his calculations on this. One reason for this is that he would run the risk of getting negative publicity. The tenants are resourceful, willing and able to use the media if necessary to suit their cause. In addition, the investor would run the risk of other actions from the tenants; be it refusal to pay their rentals or other actions. Furthermore, the investor would run the risk of increased vacancies.

The term “market rental” is used by the different appraisers to describe the rental obtainable. The size of this rental is dependant on the state of the apartments. This has

been accounted for by the appraisers. It seems however fair to assume that substandard apartments will be more exposed to downward trends in the rental market than apartments of a higher standard.

The non-inclusion of renovating costs also has an impact on the assessment of vacancies, as necessary renovations to a large degree presuppose empty buildings. And as vacancies increase, cash flow decreases. This again has an impact on the price an investor would be willing to pay.

4.3.3 Renovating costs and the likelihood of obtaining the market price when selling the apartments

The non-inclusion of renovating costs in the FIGA/Nortakst appraisal has repercussions also on a third issue. The appraisal of the 81,6 % apartments that can be turned into separate units and sold separately in 10 years is based on the presumption that this can be done without any renovation whilst still obtaining fairly ordinary sales prices. It seems fair to question whether this presumption is realistic, taking into consideration that little renovation has been done for the last 30 to 50 years, and that there is still some 10 years until the apartments are made available on the market.

4.3.4 Market rental assumed obtainable from day one

Currently, the rentals paid by the tenants are considered by two of the appraisers to be well below market value. The valuation obtained from FIGA/Nortakst presupposes that "market rental" may be obtained from the first day such rental may legally be collected. Catella seems to make the assumption that "market rental" is obtainable from the day the apartments are bought, while OPAK assumes that market rental is obtainable over a period of 1 to 3 years. OPAK's assumptions pertaining to market rental is that the apartments have been renovated.

None of the appraisers analyzed the existing lease agreements. Thus all the appraisers base their calculations on assumptions, and on assumptions that differ considerably.

Serious investors would rather base their own appraisal on assumptions comparable to those applied by OPAK. One reason is that it probably will prove hard to enforce a substantial increase in rentals, which is foreseen by all three appraisers, without running the risk of substantial negative publicity and actions from the tenants, with considerable costs as a consequence. The likelihood of such publicity and actions would be less if the apartments were renovated first.

Secondly, it will probably prove virtually impossible to execute a piecemeal increase, contract by contract, unless this is coupled to prior renovation as this will result in different rentals for identical apartments. It seems fair to assume that only in a very tight

market will potential tenants be willing to pay considerably higher rentals than their next-door neighbour who has an identical apartment.

Furthermore, recent articles in the newspapers also show that the adjustment of current rentals to what may be referred to as “market rental” may prove to be problematic.

Annex 25: Articles on and criticism of the Municipality of Oslo’s increase of the rents.

This is also addressed in the bid set out in Annex 26. Here, the bidder is of the opinion that the going rental is that which is possible in the market for apartments of such very low standard. In this context, it should also be noted that current rental levels often include electricity and heating.

Annex 26: Bid dated 2 May 2001

Finally, recent court- and tribunal decisions indicate that the legal possibility to increase rentals in existing contracts may be smaller than the appraisers have accounted for, c.f. Annex 2 and 3.

4.3.5 Presumed vacancy

FIGA/Nortakst presumes that the vacancy in the portfolio will be 2% during the period until the apartments may be sold. Catella makes the assumption that it will be 3 %, while OPAK finds that in a market in balance, the vacancy rate will vary between 3 and 5 %. As far as the apartments in question are concerned, OPAK sets a vacancy rate of 4 %, pertaining to renovated apartments.

Present vacancy levels are 20 %.

Annex 27: Vacancies in the portfolio, 2002.

It is fair to assume that today’s vacancies could be reduced through (more) professional administration of the portfolio, and by renovating the apartments. It is however questionable whether an instant reduction to 2 or 3 %, without allowing for any renovation, is an assumption that was shared by the investors.

Taking into consideration the ordinary change of tenants, a reduction of the vacancy rates to level below what characterizes a market in balance seems difficult. If rentals are increased as envisaged in the appraisals done by FIGA/Nortakst and Catella, and

without renovating the apartments first, it seems fair to assume that vacancy will increase as the tenant turnover increases.

A low vacancy rate presupposes apartments of a reasonable standard. As renovation cannot be done with tenants in the apartments, vacancy rates will increase as the apartments are upgraded from their present substandard state.

It seems unlikely that any investor would calculate on the basis of a low vacancy rate from day one, especially as a low vacancy rate is dependant on considerable investments in the renovation of the property.

4.3.6 Section-sale of apartments

The sales conditions do not make it possible for the buyer to section and sell apartments before 2011. All the appraisals have stipulated a certain portion of sale of apartments after this date.

FIGA/Nortakst presupposes that all the apartments that can be legally sectioned can and will be sold immediately after this date and without any renovation in the intermediate period and still obtain fairly ordinary sales prices. This assumption is commented upon in section 4.3.3 supra. FIGA/Nortakst also bases its assumptions of the sales price of the sectioned apartments in 2011 on a annual price increase of 4 %, whereas inflation is stipulated to 2.25 %. The inflation estimate is based on the estimate from the Central Bureau of Statistics in Norway.

Housing prices have increased steadily for the last 10 years or so. A serious investor would probably not count on this to continue when considering whether to invest or not. Thus, it is clearly open to debate whether a serious investor would make his investments based on the assumption that there will be a annual gap of 1.75% between the development of sales prices of the apartments and inflation over the next 10-year period.

Again, the appraisal done by OPAK is based on other assumptions, leading OPAK to conclude differently.

Illustrative in this context is that there now are indicators of prices going down, see article in Aftenposten dated 13 January 2003, Annex 28.

Annex 28: Newspaper clipping, Aftenposten 13 January 2003

4.3.7 Tax on transfer of real estate

The Norwegian tax on transfer of real estate is 2.5% of the sale price of the property. When a valuation is based on the present value of running cash flow and future sales one should not forget that the buyer has to pay 2.5% of the sales price in transfer tax.

An investor will have to take this into account when he is making his calculations, as also this amount also has to be served with the present value of cash flow and future sale.

4.3.8 Investment return ratio

The valuation from FIGA/Nortakst is based on an investment return ratio of 8.44 %, while OPAK operates with an investment return ratio of 8,25 %. These are rather low, indicating that the investment is considered to involve relatively low risks. The ratios assumed may be on the lower side of the ratio an investor would base his calculations upon. OPAK has generally (without reference to this transaction) advised the Municipality of Oslo that investment return ratio relating to the acquisition or sale of real estate should be between 8 and 12 % depending on location. The normal investment return ratio is considered to be 9-11 %.

Annex 29: Principles for appraisals (Takseringsprinsipper) 21 May 2002, OPAK, c.f. page 27

It is submitted that it is almost impossible, both for the Municipality of Oslo and for the Authority, to choose one of the investment ratios based upon by the appraisers as objectively correct and as the only possible basis for the Authority's ex-post calculation of a market value of the portfolio.

4.3.9 The terms of the transaction

It was essential for the Municipality of Oslo to avoid future claims and conflicts in connection with the sale. As a consequence, the sales conditions are substantially in favour of the seller. The most typical example is that the sale is a strict "as is" sale (art. 8 in the contract). It is in this connection expressly stated in art. 8 sec 4 that the buyer must be aware of and accept that the sold assets may have considerable defects.

According to art. 2 he must also accept any discrepancies between the stipulated size and the actual size of the apartments or the building sites. There are also other atypical clauses such as a shorter period to present any claims to the seller and the pre-rent right for the Municipality of Oslo for 10 years. Even though these clauses do not differ much

from the ordinary clauses the Municipality of Oslo uses when selling real estate, they are more in favour of the seller than the contractual terms applied between private parties in real estate transactions. When these clauses are seen in view of the fact that this property has not been renovated for decades it seems obvious that the sale conditions should have had and did have economic importance.

In the appraisal done by FIGA/Nortakst this is not accorded any relevance; see point 8.1 in the appraisal.

4.3.10 Risks not taken into account in the appraisals

Several factors not pertaining to the technical aspects of the apartments, but nevertheless which may have had a possible impact on the price an investor would be willing to pay, are not taken into consideration or even addressed. These factors are both of a legal and of a political nature.

The transaction was subject to approval by the City Council of Oslo. This represents an uncertainty as to whether the transaction may be executed. In the present case, as the Municipality of Oslo had to sell, this factor was probably not very important. Still, the transaction was subject to considerable political debate, and it could be foreseen that the political opposition may use legal arguments to postpone or hinder the transaction.

This may be illustrated by statements from one of the bidders. This bidder claims that because the lessees claimed to have a right of first refusal, he abstained from further participation in the bidding contest as he did not have confidence in the assurances from the Municipality of Oslo that this would not cause any problems. The background for this was that he one year earlier had experienced that in spite of similar assurances, the City Council of Oslo decided in favour of the lessees. This bidder found that he could not risk being locked with several hundred of millions of NOK for a long period of time.

Annex 30: Newspaper clipping, Dagens Næringsliv 19/20 May 2001

These are factors beyond the control of the buyer with repercussions as to his legal position. The present case illustrates this in a most telling way.

A buyer must also be aware of the public attention with respect to the sale and the buyer itself. The buyer will receive public attention during the sales process, but also in the coming years in connection with increased rentals, the sale of sections of the property etc. It cannot be assumed that the buyer will get sympathy in the press. In a society as small and transparent as the Norwegian one, this factor should not be underestimated. Generally, it is fair to assume that these apartments, housing a large

part of the hospital employees in Oslo, will be of public interest for many years to come.

It seems fair to assume that these factors may reduce the price of the portfolio as well as the number of interested investors.

4.3.11 Summary

When doing appraisals, the appraisers will have to consider a number of issues. The preceding paragraphs demonstrate that appraisals are subject to discretion, showing that one appraisal hardly can be considered to be objectively correct in its entirety. The preceding paragraphs illustrate that appraisals can never be much more than qualified calculated guesses as to what the market may be willing to pay for certain assets.

Annex 31: Newspaper clippings on discrepancies between appraisals

Whether the appraisals are to be considered to be accurate or not, depends on whether one shares the assumptions on which they are, or are not, based. As has been demonstrated, the assumptions made in the appraisals are open to debate. This is especially apparent in the valuation carried out by FIGA/Nortakst, but is also true to some extent in respect of the other appraisals.

The methods, sophisticated as they may be, applied when appraising real estate assets seem not be properly adjusted to a portfolio sale of this size, which includes many and complicated issues as regards factual, legal and political aspects.

Caution should be shown when considering whether to replace the valuation provided by the market for the appraisal of the appraisers. If one decides to put the value set by the market aside, a fair assumption would however be that it is the OPAK appraisal that best reflects market value.

4.4 Reactions to the appraisals

4.4.1 Reactions to the appraisals from potential investors

There is reason to believe that the investors did not consider the appraisals done by Catella and OPAK respectively as fully corresponding with the calculations they have to do before considering investment. This is indicated by both the bids that were actually obtained, i.e. the market's valuation of the apartments, and, more explicitly, by comments in one of the bids, where it is stated that this bidder considers both the appraisal done by Catella and the one done by OPAK as wrong, and not to be taken

seriously, c.f. Annex 26. Considering the bid submitted, there is little reason to assume that this bidder meant that the appraisals were too low.

Given this, there is even less reason to consider the valuation from FIGA/Nortkast as an indicator of what the market was willing to give for the apartments.

4.4.2 Indications from Akershus Eiendom AS

Akershus Eiendom gave their assessment of the market to the Municipality of Oslo before addressing potential buyers. The price obtained proved to be well in accordance with this assessment, cf. Annex 10.

4.5 Conclusions

As indicated in section 4.1 the purpose of this section was to describe the element of discretion involved when appraising real estate. The intention has been to offer explanations to the differences between the appraisals, and between the appraisals and the price obtained.

From the above, it is illustrated that none of the appraisals give the only and correct answer to the question of what is market price. It is already submitted that due to the way in which the sales process was conducted, the sales price reflects the market value of the property at that time. Hence, caution should be taken if the Authority considers whether or not to replace the assessment done by the market with their judgement.

However, if the Authority consider this, they will have to determine the value of the portfolio upon the information provided in all the appraisals, the information provided by the market players in their bids and the actual sale price. In this regard, it is submitted that OPAK's appraisal constitutes the best point of departure for such an appraisal.

5 Cross-border impact

Even if the price obtained were found to be below market value, thus constituting an aid, the sale of the apartments would in the opinion of the Municipality of Oslo not constitute aid within the meaning of Article 61 (1) EEA. The reason for this being that the market in which Fredensborg, the buyer, is involved, does not contain elements of cross-border trade.

The European Commission has on several occasions addressed the fact that certain service markets may have such a local character that aid to service providers in this market does not affect trade between member states, c.f. Communication from the

Commission on services of general interest in Europe, 2001 OJ no C17 p. 4, point 33 and the recent non-paper on services of general economic interest and state aid of 12. December 2002. Commission decision N 258/00, *Freizeitbad Dorsten*, N 376/01 *Aid Scheme for cableways*, and N 560/01 and NN 17/02 *Brighton West Pier* illustrates the same point. It is our view that the market for rental homes in south-eastern Norway has such a local character.

It seems fair to assume that the apartments sold are of little – if any – interest to persons living in other EEA-countries. Firstly, this is due to the distance between Oslo and other EEA-countries. Sweden is the EEA-country which is closest to Oslo – the distance from Oslo to the Swedish border is approximately 100 km, which most Swedes probably find to be too long distance to travel. Secondly, the apartments are in no way unique. They are not particularly attractive – on the contrary; the general condition of the apartments is poor. Thirdly, there is reason to believe that most people place more importance on other factors than price when they chose where to rent an apartment, for instance whether or not they feel a belonging to the place. Accordingly, the apartments have not been promoted in Sweden or any other EEA-country.

Furthermore; for the same reasons as mentioned above it is rather unlikely that Norwegians living and working in Norway find renting an apartment in other EEA-countries interesting. This means that there is not any competition between providers of rental homes in Oslo and providers of such homes in other EEA-countries.

Neither has foreign providers of rental homes shown any interest in the Norwegian market. This is probably due to the complexity of the rental market for apartments in Norway, cf. the above reasoning in point 3.4.2, Potential investors established in other EEA-countries, *supra*. In short, this refers to the demand for insight in Norwegian mandatory tenant law, the currency related risks, lack of escape possibilities due to smallness of the market, the regional scope of the market et cetera. Hence, these are factors that make it economically risky for foreign investors to engage in investments within this sector of real estate in Norway.

Fredensborg does not compete in the market for rental homes in other EEA-countries, nor in other product markets, be it in Norway or other EEA-countries – the undertaking competes only in the Norwegian market for rental homes. Consequently, an aid to Fredensborg will only strengthen the undertakings position in this market.

When refurbishing the apartments and running the administration of them, Fredensborg will most certainly have to purchase goods and services. It is, however, difficult to see how an aid to Fredensborg would distort competition in these markets.

The Municipality of Oslo is thus of the opinion that an aid to Fredensborg does not affect or threaten to affect trade between EEA-countries.

6 Conclusions

The sale was conducted through a well-publicized, open and unconditional bidding process, albeit the period in which the apartments were marketed was shorter than the period required according to the State Aid Guidelines. There is, however, no reason to assume that the sale was conducted in a manner not likely to achieve market value for the apartments sold, or likely to exclude foreign investors.

Even if the Authority should be of the opinion that the sale comprise an element of aid, we submit that it should be concluded that the transaction does not fall within the ambit of Article 61 (1) EEA, as intra-EEA trade is not affected.

On behalf of the Municipality of Oslo, Department of Business Development and Urban Planning

Yours sincerely,

OFFICE OF THE CITY ADVOCATE



Camilla Selman

lawyer

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