



Oslo kommune  
**Kommuneadvokaten**

Nærings- og handelsdepartementet  
Seksjon for næringsrettet offentlig konkurransepolitikk  
Att: Bjørnar Alteskjær  
Postboks 8014  
0030 OSLO

Deres ref.:

Vår ref.:  
c0102326-rl-acs  
(Bes oppgitt ved henvendelse)

Dato:  
14.05.2003

**Oslo kommunens salg av personalboliger - brev til ESA**

Herved oversendes som avtalt vårt brev til ESA av i dag. Brevet leveres med bud.

Med hilsen  
KOMMUNEADVOKATEN

Camilla Selman  
advokat

**Kommuneadvokaten**

Postadresse:  
Rådhuset, 0037 OSLO  
Kontoradresse:  
Fr Nansens pl. 5

Telefon: 23 46 15 22  
Telefaks. 23 46 15 31

Bankgiro: 6004.06.46054  
Org.nr.: 958 935 420

E-postadr : postmottak@kao.oslo.kommune.no



The Municipality of Oslo  
Office of the City Advocate

EFTA Surveillance Authority  
Rue de Trèves 74  
B-1040 Bruxelles  
Belgium

Your ref.:

Our ref.:  
c0102324-rl-acs  
(Please state in any inquiry)

Date:  
2003-05-14

**Subject: Notification of Sale of Rental apartments – Municipality of Oslo**

- Additional information

1. Introduction

The Municipality of Oslo refers to the letter from the EFTA Surveillance Authority to the Mission of Norway to the European Union dated 9 April 2003. In this, the Authority expresses doubt as to whether the sale of the apartments in question contains elements of an illegal state aid, cf. Article 61 of the EEA Agreement. The Authority also requests certain information and explanations regarding that which has so far been presented by the Municipality of Oslo.

2. The State Aid Guidelines

According to the State Aid Guidelines 18 B there are two ways of handling sales of publicly owned land and buildings that automatically precludes the existence of state aid. One can either carry out the sale through an unconditional bidding procedure, cf clause 18 B.2.1 of the Guidelines, or one can obtain an independent expert evaluation and sell at a minimum of this price, cf clause 18 B.2.2 of the Guidelines.

As regards the first of these procedures, a sale through an unconditional bidding procedure, clause 18 B.2.1 of the Guidelines, the Municipality will not argue that the procedure followed when the apartments were sold were in full compliance with the requirements set out in the Guidelines. The sale of the apartments was not made public in the way prescribed in clause 18 B.2.1 (a) of the Guidelines.

However, in the view of the Municipality the sale was in spite of this, given a great deal of publicity and was carried out in a way that ensured the attainment of the objective behind the provision. The requirement that the sale is to be made public is meant to ensure that all potential

---

Office of the City Advocate

Postal address:  
Rådhuset, NO-0037  
OSLO  
Office address  
Fr. Nansens pl 5

Tel +47 23 46 15 22  
Fax. +47 23 46 15 31

Bank giro: 6004.06.46054  
Bus. Ent. no.: 958 935  
420

E-mail.. postmottak@kao.oslo.kommune.no

buyers are aware of the sale and have the opportunity to assess whether or not they want to buy the object that is for sale. In this case, potential buyers were not notified through advertisements in the media or other publications, but were made aware of the upcoming sale through other channels. We would refer to clause 3.4 of the letter from the Municipality attached to the letter from the Ministry of Trade and Industry dated 7 February 2003. In the Municipality's view, the sale was carried out in a way which ensured that all potential buyers were notified and given the time and opportunity to consider whether or not they wanted to submit a bid. There are thus grounds for the same presumption that the price achieved reflects the market value of the object, as there would have been if the Guidelines had been fully complied with.

The statement on page 3 of the Municipality's letter attached to the letter from the Ministry of Trade and Industry dated 7 February 2003 that: "It is not disputed that the procedural requirements of the State Aid Guidelines have not been fully observed in the present case", refers to clause 18 B.2.1 of the Guidelines.

As regards clause 18 B.2.2 of the Guidelines, the Municipality's view is that the sale was conducted in compliance with this provision. The Municipality refers to its letter to the Ministry of Trade and Industry dated 26 July 2001 and to page 15, paragraph two, of the letter from the Municipality attached to the letter from the Ministry of Trade and Industry dated 7 February 2003.

The Municipality would firstly maintain that the valuation carried out by OPAK was obtained "prior to the sale negotiations". In that regard, the Municipality would point out that the adjustment to the valuation that took place on 14 May 2001, was due to the fact that the Municipality had become aware of certain factual circumstances of which it was not aware when the valuation took place. The most important circumstance was that two of the buildings which formed part of the portfolio were encumbered with a long-lasting lease that was very favourable to the lessee and thereby reduced the value of the portfolio. Based on this new information, OPAK made a purely mathematically calculated reduction in the portfolio's value. Such a rectification of errors in a valuation does not mean that a new valuation has been carried out.

Secondly, the valuation was, in the opinion of the Municipality, carried out according to "generally accepted market indicators and valuation standards". The sale in question was a portfolio sale. When valuing large portfolios, it cannot be required that each individual object in the portfolio is to be inspected. However, the valuer must be required to inspect sufficiently many of the individual objects as to be able to give a valuation of the general state of the portfolio. In this case, 10 apartments were inspected by OPAK itself. In addition, OPAK relied in part on information that is to be found in Catella's valuation and the information provided by the Municipality. The Municipality would emphasise that OPAK is a very well-known and recognized player in the Norwegian property market. The Municipality of Oslo cannot see that the procedure followed by OPAK contravenes the Guidelines.

The Municipality of Oslo is thus of the opinion that the value OPAK arrived at expressed the portfolio's market value. A sale at this price would therefore not imply state aid. In the Municipality's opinion, neither would the price agreed, cf. clause 18 B.2.2 (b) of the Guidelines. The consequence of any breach of the latter provision may only be that the difference between the price agreed and the value stated in the valuation comprises state aid.

The Municipality would also point out that even if the sale of the apartments was not in compliance with the Guidelines, this does not mean that there has to be an element of state aid. It only means that one has to assess whether or not the sale was done at market value, c.f clause 18.B.2.3 of the Guidelines, first sentence. The Municipality can not see that the Authority has done such an assessment.

### 3. Cross-border impact

The Municipality of Oslo has noted that the Authority considers that a sales price below market value favouring Fredensborg Boligutleie ANS, would distort or threaten to distort competition and affect trade between the contracting parties. The Municipality can however not see that the Authority has done an assessment of the market as called for in e.g Case T-155/98, paragraph 71 and Joined Cases 296 and 318/82, paragraph 24.

### 4. Services of general economic interest.

In section 4.3 of the letter from the Authority it is stated that:

”The Competition and State Aid Directorate would appreciate if the Norwegian authorities would clarify whether they consider that Fredensborg Boligutleie ANS is a service provider and whether they consider that the rules concerning services of general economic interest applies.”

Clause 12 of the sales contract states that the Municipality, or a party appointed by the Municipality, has a pre-emptive right to lease the apartments at market rent for ten years. It also states that this pre-emptive right shall be used for the benefit of hospital personnel. The buyer has thus undertaken to provide a service of general economic interest. The compensation for this service has been determined through the market’s assessment of the portfolio’s value. The valuations carried out have also taken into consideration that such an obligation is imposed on the buyer. Due to this, the Municipality has not touched upon the rules stated in Article 59, no. 2 of the EEA Agreement.

Regardless of whether one considers the pre-emptive right to be a service of general economic interest or just a general charge on the property, it has been taken into consideration by the market and through the valuations. Since this question does not seem to be what is disputed in this case, the Municipality will not comment on this any further.

### 5. Private investor test

In a letter to the Authority dated 18 February 2003, Fredensborg Boligutleie ANS argues that one must be able to apply “the private investor test” to the Municipality’s sale of the apartments. Further to this, the Municipality would point out the basic division between governmental and municipal administration levels in Norway. The municipalities are granted a high level of self-government, and are only subject to the government where this is stipulated by law. Local self-government is also secured though The European Charter of Local Self Government of 15th October 1985. The Municipality can not from the arguments presented by the Authority, see that

the time pressure caused by the hospital reform is not relevant when assessing whether the price obtained for the apartments are below market value.

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

Yours sincerely,

OFFICE OF THE CITYADVOCATE

A handwritten signature in cursive script that reads "Camilla Selman".

Camilla Selman  
Lawyer