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EFTAS OVERVÅKNINGSORGAN

Innbydelse til å sende inn merknader i henhold til del I artikkel 1 nr. 2 i protokoll 3 til avtalen mellom EFTA-statene om opprettelse av et overvåkningsorgan og en domstol med hensyn til statsstøtte tildelt Arion Banki og Islandsbanki i form av forlengede låneavtaler **2015/EØS/57/01**

EFTAs overvåkningsorgan har ved vedtak 208/15/COL av 20. mai 2015, gjengitt på det opprinnelige språket etter dette sammendraget, innledet behandling i henhold til del I artikkel 1 nr. 2 i protokoll 3 til avtalen mellom EFTA-statene om opprettelse av et overvåkningsorgan og en domstol. Islandske myndigheter er underrettet ved en kopi av vedtaket.

EFTAs overvåkningsorgan innbyr med dette EFTA-statene, EU-medlemsstatene og berørte parter til å sende sine merknader til det aktuelle tiltaket innen en måned etter at dette ble offentliggjort, til:

EFTAs overvåkningsorgan
Registry
35, Rue Belliard
B-1040 Brussel

Merknadene vil bli oversendt islandske myndigheter. En berørt part som ønsker å få sin identitet holdt fortrolig, kan sende inn en skriftlig, begrunnet anmodning om dette.

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Sammendrag

Framgangsmåte

Overvåkningorganet mottok i september 2013 en klage med påstand om at Íslandsbanki hf. (ISB) og Arion banki hf. (Arion) hadde mottatt ulovlig statsstøtte i form av langsiktig finansiering til gunstige rentebetingelser fra den islandske sentralbanken. Etter anmodninger mottok Overvåkningsorganet opplysninger om de aktuelle tiltakene fra islandske myndigheter ved brev av 17. januar 2014 og 1. april 2015.

Faktiske forhold

Som en del av sin rolle som sentralbank og långiver i siste instans, og i tråd med andre sentralbankers pengepolitikk, tilbyr den islandske sentralbanken kortsiktige kredittfasiliteter til finansforetak i form av lån med sikkerhet.

I 2007 og 2008, da utlån med sikkerhet økte, stilte Glitnir obligasjoner med fortrinnsrett som var sikret av Glitnirs boliglånsportefølje, som sikkerhet for de kortsiktige kredittfasilitetene levert av den islandske sentralbanken. Ved Glitnirs kollaps forfalt den islandske sentralbankens krav til betaling, og sentralbanken ble dermed en mulig kreditor av den konkursrammede banken. Ved vedtak av det islandske finanstilsyn i oktober 2008 ble alle innenlandske aktiva og all innenlandsk gjeld overført fra Glitnir til Íslandsbanki hf., herunder Glitnirs utestående gjeld til den islandske sentralbanken, som beløp seg til rundt 55,6 milliarder ISK, i tillegg til eierskap av underliggende sikkerhet (boliglånsporteføljen). Ettersom gjelden hos den islandske sentralbanken besto av kortsiktig utlån med sikkerhet, ville øyeblikkelig tilbakebetaling ha hatt en betydelig innvirkning på likviditetssituasjonen til Íslandsbanki hf. Íslandsbanki hf. ønsket derfor å reforhandle gjelden for å konvertere den til langsiktig gjeld med en rimelig nedskrivingsprofil. Ved

avtale datert 11. september 2009 utstedte Íslandsbanki hf. en frittstående obligasjon til den islandske sentralbanken pålydende 55,6 milliarder ISK. Obligasjonen hadde sikkerhet i eiendeler med samme boliglånsportefølje som obligasjonene med fortrinnsrett som tidligere var utstedt av Glitnir. Obligasjonen forfaller etter ti år og har en rente på 4,5 % som er knyttet til konsumprisindeksen.

Før starten på finanskrisen i oktober 2008 hadde den islandske sentralbanken også innvilget kortsiktige lån med sikkerhet til Kaupthing, sikret i verdipapirer, herunder boliglånsporteføljen. Da det islandske finanstilsyn vedtok å dele Kaupthing i en tidligere og en ny bank, ble alle innenlandske aktiva og all innenlandsk gjeld, herunder alle krav til boliglånsporteføljen, overført til den nye banken, som senere ble Arion Banki.

I november 2009 inngikk den islandske sentralbanken og bostyret for Kaupthing en oppgjørsavtale der de ble enige om at Arion skulle ta på seg Kaupthings gjeld hos den islandske sentralbanken ved utstedelse av en obligasjon som førte boliglånsporteføljen tilbake til Arion der den skulle brukes som sikkerhet for å sikre tilbakebetaling av lån. Oppgjørsavtalen skulle tre i kraft når Kaupthing vedtok å overta aksjemajoritet i Arion (87 %). I henhold til en avtale inngått mellom Arion og den islandske sentralbanken i januar 2010 ble imidlertid en låneavtale inngått mellom partene i stedet for utstedelse av en obligasjon. I henhold til Arion og islandske myndigheter gjenspeilet låneavtalen vilkårene for obligasjonen bortsett fra at hovedbeløpet var angitt i EUR, USD og CHF i stedet for i ISK på grunn av en valutaubalanse i Arions balanse.

Låneavtalen omfattet et sjuårig lån, med mulighet for to til tre års forlengelse, som beløp seg til 237,5 millioner EUR, 97 millioner USD og 50 millioner CHF. Arion hadde mulighet til å endre valutakombinasjonen ved tilbakebetaling av lånet. Renten som skulle betales var EURIBOR/LIBOR + 300 bp. Den islandske sentralbanken hadde sikkerhet gjennom boliglånsporteføljen.

Med disse tiltakene forsøkte den islandske stat å sikre statens interesser ved å optimalisere mulighetene for å få tilbakebetalt det utestående hos bankene samtidig som bankenes lønnsomhet ble berørt i minst mulig grad.

Vurdering

Overvåkningsorganet tviler på at vilkårene for låneavtalene som ble inngått mellom ISB og Arion er i fullstendig samsvar med framgangsmåten til en hypotetisk privat kreditor som ønsker å få størst mulig utbytte av sin fordringsinndrivelse. I tillegg ser det ut til at tiltakene er selektive av natur og kan vri konkurransen og påvirke samhandelen i EØS. Overvåkningsorganet kan følgelig ikke utelukke mulighetene for at de vurderte tiltakene utgjør statsstøtte i betydningen av EØS-avtalens artikkel 61 nr. 1. Overvåkningsorganet er også i tvil om tiltakene er forenlige med EØS-avtalens artikkel 61 nr. 3.

Konklusjon

I lys av ovennevnte betraktninger har Overvåkningsorganet besluttet å innlede formell gransking i henhold til del I artikkel 1 nr. 2 i protokoll 3 til avtalen mellom EFTA-statene om opprettelse av et overvåkningsorgan og en domstol. Berørte parter innbys til å sende inn sine merknader innen en måned etter at denne kunngjøringen ble offentliggjort i *Den europeiske unions tidende* og EØS-tillegget til *Den europeiske unions tidende*.

EFTA SURVEILLANCE AUTHORITY DECISION

No 208/15/COL

of 20 May 2015

concerning alleged unlawful state aid granted to Íslandsbanki hf. and Arion banki hf. through loan conversion agreements on allegedly preferential terms

(Iceland)

[Non-confidential version]

[The information in square brackets is covered by the obligation of professional secrecy]

The EFTA Surveillance Authority ("Authority"),

HAVING REGARD to the Agreement on the European Economic Area ("EEA Agreement"), in particular to Article 61 and Protocol 26,

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

HAVING REGARD to Protocol 3 to the Surveillance and Court Agreement ("Protocol 3"), in particular to Article 1(2) and (3) of Part I and Articles 4(2) and (4) and Article 6 of Part II,

Whereas:

I. FACTS

1. Procedure

1) On 23 September 2013, the Authority received a complaint alleging that Íslandsbanki hf. ("ISB") and Arion banki hf. ("Arion") had been granted unlawful state aid through long-term funding at favourable interest rates by the Central Bank of Iceland ("CBI").([1])

2) By letter dated 23 October 2013, the Authority sent a request for information to the Icelandic authorities,([2]) to which the Icelandic authorities replied on 17 January 2014.([3])

3) The case was discussed at a meeting on state aid between representatives of the Authority and of the Icelandic authorities in Reykjavík in May 2014. The discussions were followed up with a letter, dated 5 June 2014.([4])

4) Finally, the case was again discussed at a meeting between representatives of the Authority and of the Icelandic authorities, including a representative from the Central Bank of Iceland Holding Company in Reykjavík in February 2015. These discussions were followed up with a letter dated 24 February 2015,([5]) to which the Icelandic authorities replied on 1 April 2015.([6])

2. Description of the measures

2.1 Background

5) The measures complained of are linked to CBI's collateral and securities lending. As part of its role as a central bank and lender of last resort and in line with the monetary policy of other

([1]) Document No 684053.
([2]) Document No 685741.
([3]) The reply from the Icelandic authorities contained letters from the CBI (Document No 696093), Íslandsbanki (Document No 696092) and Arion Banki (Document No 696089).
([4]) Document No.709261.
([5]) Document No 745267.
([6]) The reply from the Icelandic authorities contained letters from the CBI (Document No 753104) and Arion Banki (Document No 753101).

central banks, the CBI provides short-term credit facilities to financial undertakings in the form of collateral loans,([7]) in accordance with the provisions of CBI rules pertaining thereto. Financial institutions have the option of requesting overnight loans or seven-day loans against collateral considered to be eligible by the CBI. Among the debt instruments meeting the requirements of the CBI rules are Treasury instruments and financial undertakings' debt instruments fulfilling minimum criteria, including credit rating criteria.

6) In 2007 and 2008 collateral lending increased steadily, and the CBI became a major source of liquidity for the financial undertakings. At year-end 2007, the balance of collateral loans stood at 302 billion ISK, its highest point until that time. Collateral loans peaked on 1 October 2008, just before the collapse of the banks, when the CBI loaned 520 billion ISK to financial institutions. Thus, at the time of the collapse of the three commercial banks in October 2008, the CBI had acquired considerable claims against domestic financial undertakings, which were backed by collateral of various types. At that time nearly 42% of the collateral for CBI loan facilities took the form of Treasury guaranteed securities or asset-backed securities while some 58% of the underlying collateral consisted of bonds issued by Glitnir, Kaupthing, and Landsbanki.([8])

7) As for securities lending, the Government Debt Management ("GDM"), which is administered by the CBI, offers lending facilities to primary dealers of government securities. The purpose is to improve market functionality and to maintain liquidity in the market for bond series that the GDM is building up. The securities accepted by the GDM as collateral for the Treasury Bonds and Bills are all government bonds and mortgage benchmark bonds traded electronically on the secondary market. Other electronically traded securities may also be accepted depending on criteria specified in the facility. The interest rate for these loans is based on the CBI repo rate. The maximum contract period is 28 days.([9])

2.2 Loan conversion agreement concluded with Íslandsbanki hf.

8) When the financial crisis in Iceland occurred, Glitnir had, in relation to the CBI short-term credit facilities in the form of collateral loans, pledged covered bonds to the CBI that were secured by Glitnir's mortgage loan portfolio.

9) With the collapse of Glitnir, the CBI's claims became due and payable, thus making the CBI a potential creditor of the failed bank. By decision of the Financial Supervisory Authority ("FME") in October 2008, in principle all domestic assets and liabilities of Glitnir were transferred to ISB, including the outstanding debt of Glitnir to the CBI which amounted to approximately ISK 55.6 billion as well as the ownership of the underlying collateral (the mortgage loan portfolio).

10) As the debt with the CBI consisted of short-term collateralised lending, instant repayment would have had a serious impact on ISB's liquidity position. According to the CBI, the alternative would have been for the CBI to collect the debt which would have left the CBI with the mortgage loan portfolio. This would have been difficult for a central bank to manage. Selling the mortgage loan portfolio at the time was also not considered an option taking into account the financial crisis and the very few potential purchasers on the market.

11) Therefore, ISB sought to renegotiate its debt with the CBI in order to convert it into a long-term debt with a reasonable amortization profile, to avoid a further negative impact on ISB's liquidity position. Following negotiations between ISB and the CBI, an agreement was reached on 11 September 2009 resulting in ISB issuing a stand-alone bond (the "bond") to the CBI in the amount of ISK 55.6 billion. The bond was asset-backed with the same, or similar, mortgage loan portfolio as the covered bonds that were issued by Glitnir in the past. The bond is over collateralized with a loan-to-value ("LTV") ratio of 70%.([10]) The bond's maturity date is ten years, with an interest rate of 4,5%, CPI linked (consumer price-indexed).

([7]) Collateral loans are also named repo loans, where repos or repurchase agreements are contracts in which the seller of securities, such as Treasury bills, agrees to buy them back at a specified time and price.

([8]) For an overview of developments in collateral loans, see the CBI's Annual Report 2008, p. 9-11, available at http://www.sedlabanki.is/lisalib/getfile.aspx?itemid=7076

([9]) For further details see Rules on Central Bank of Iceland securities lending facilities on behalf of the Treasury for primary dealers dated 28 November 2008, available at http://www.lanamal.is/assets/nyrlanasysla/regluren08.pdf

([10]) The loan-to-value ratio is a financial term used by lenders to express the ratio of a loan to the value of an asset purchased.

2.3 Loan conversion agreement concluded with Arion banki hf.

12) Before the onset of the financial crisis in October 2008, the CBI granted Kaupthing short-term collateral loans, secured against collateral securities, including the housing loan portfolio. When the FME decided to split Kaupthing into an old and a new bank, in principle all domestic assets and liabilities, including all claims to the housing loan portfolio, were transferred to the new bank, which later became Arion Banki.

13) On 30 November 2009, the Ministry of Finance, the CBI and the Kaupthing Resolution Committee entered into a settlement agreement.

14) According to Section I of the settlement agreement, the parties agreed to settle outstanding claims under other types of loans which had been granted by the CBI, as a lender of last resort, to Kaupthing before its collapse *i.e.* collateral loans which had become due on 22 October and 31 October 2008, and overnight loans, which also had become due on 22 October 2008. The agreement further stated that, in those instances where CBI's claims were higher than the value of the collateral which had been placed as security (as valued by an independent expert), the CBI would take over the collateral and file a claim for the remaining balance against the estate of Kaupthing.

15) With respect to the collateral loans and securities loans, which are covered by Articles 1 and 2 of the settlement agreement, the parties agreed that the CBI's claims amounted to approximately ISK 17.4 billion and ISK 138.3 billion respectively, taking into account the cash flow generated by the collateral and interests for the period from the loans' maturity date until 15 June 2009 (which the parties had agreed would be used as a reference date for the settlement of claims). Subtracting the value of the collateral in each case, the remaining balance amounted to ca. ISK 14 million and ISK 67.8 billion respectively, which were to be filed as claims against the estate of Kaupthing.

16) The settlement of overnight loans was the subject of Article 3 of the settlement agreement. The overnight loans had been granted against collateral in various securities specifically listed in the agreement, including the housing loan portfolio, the value of which the parties agreed was approximately ISK […] billion. The parties also agreed that the outstanding amount of the CBI's claims, accounting for cash flow, interests and subtracting the value of other collateral than the value of the housing loan portfolio, amounted to a total of approximately ISK […] billion. The parties further agreed that Arion Bank would assume Kaupthing's debt towards the CBI by issuing a bond in the amount of approximately ISK […] billion, in a specific form attached to the agreement as Appendix II, with the CBI in turn assigning the housing loan portfolio to Arion Bank. The housing loan portfolio would again be used as collateral to secure repayment of the bond. The settlement agreement furthermore stated that it would become valid upon the approval of the FME and the Competition Authority, and upon Kaupthing deciding to acquire a majority stake in Arion Bank (in the amount of 87%). It was further stated that once the agreement would become valid, the bond would be issued as a part of Kaupthing's contribution towards the acquisition of Kaupthing's majority stake in Arion. Thus, it was the parties' intention to use the difference between the value of the housing loan portfolio and the remaining debt, ca. ISK […] billion (ISK […] billion - ISK […] billion) as part of Kaupthing's payment towards the acquisition of a majority shareholding in Arion Bank, should Kaupthing elect to use its option to acquire the shares.

17) On 1 December 2009, an agreement was reached between the Government, Arion Bank, and Kaupthing on settlements concerning assets and liabilities which had been transferred from Kaupthing to Arion Bank with the FME's decision of 21 October 2008. Furthermore, Kaupthing's Resolution Committee decided on that same day to acquire an 87% stake in Arion Bank, leaving the remaining 13% in the hands of the Icelandic Government. Kaupthing paid for the acquisition by transferring assets from its estate valued at ISK […] billion to Arion Bank, including with the ca. ISK […] billion generated by the assignment of the housing loan portfolio to Arion Bank in accordance with the terms of the settlement agreement. It should be noted that this particular

transaction has already been addressed and approved by the Authority in Decision No 291/12/COL on restructuring aid to Arion Bank.([11])

18) On 22 January 2010, Arion and the CBI concluded a loan agreement, which replaced the bond previously issued by Arion Bank upon Kaupthing's decision to acquire a majority stake in Arion Bank, as agreed by the parties. The loan agreement essentially reflected the terms of the bond, although the principal amount was denominated in EUR, USD and CHF instead of ISK because of currency imbalances within Arion's balance sheet.

19) The loan agreement provided for a seven year loan, extendable by two-three year terms, for an amount of EUR […] million, USD […] million and CHF […] million. Arion was permitted to change the combination of the currencies in which the loan was to be repaid. The interests payable were EURIBOR/LIBOR+300bps. The housing loan portfolio of Arion served as collateral to the CBI.

3. The complaint

20) According to the complainant, the loan agreements between ISB, Arion and the CBI were not assessed in the Authority's decisions approving restructuring aid to ISB and Arion.([12]) Since the measures were not addressed in these cases, the complainant considers it imperative to obtain the opinion of the Authority on (i) the compatibility of these additional aid measures with the EEA Agreement, and (ii) the consequences of the negligence by the Icelandic authorities to notify these measures.

21) The complainant alleges that, at the time the CBI entered into the loan agreements with Arion and ISB, other banks in Iceland were not given the opportunity to receive such financing from the CBI or other government agencies. The aid was therefore selective as it was granted exclusively to certain financial institutions competing on the Icelandic banking market. By granting a loan to ISB, the bank was allegedly granted aid to avoid enforcement by the CBI on the covered bond issue. In Arion's case, the loan was granted to secure an appropriate balance on the bank's currency risk. According to the complainant, other financial institutions which did not receive such aid were forced to sell off assets in markets that favoured buyers. Moreover, the complainant claims that the terms of the funding were very favourable to ISB and Arion and below market terms at the time as long-term funding with relatively low interest rates was not available to other market operators at the time.

22) The complainant refers to the Authority's previous decisions concerning the restructuring aid granted to ISB and Arion, where it found that significant entry barriers to the Icelandic banking market existed having detrimental effects on competition.([13]) The complainant reiterates the Authority's finding that the Icelandic financial market is oligopolistic and that there are impediments for consumers to switch banks, in addition to an exchange rate risk due to the weak national currency. The complainant claims that substantial aid has been given to the largest banks, which have made the smaller banks and saving banks participating in the Icelandic banking market more vulnerable.

23) According to the complainant, the agreements on the housing loan funding from the CBI to both ISB and Arion are sufficiently precise, firm, unconditional and legally binding to be considered state aid within the meaning of Article 61(1) of the EEA Agreement because these measures were granted to certain but not all competing financial institutions on the market and gave ISB and Arion a clear advantage in the form of long-term funding with favourable interest rates below market rates and which were not available to other market participants. According to the complainant, no private investor would have entered into such agreements at this turbulent time

([11]) EFTA Surveillance Authority Decision No 291/12/COL of 27.6.2013 on restructuring aid to Arion Bank (OJ L 144, 15.5.2014, p. 169 and EEA Supplement to the OJ No 28, 15.5.2014, p. 89), paragraphs 86, 149, 168 and 238.

([12]) EFTA Surveillance Authority Decision No 244/12/COL of 27.6.2013 on restructuring aid granted to Íslandsbanki (OJ L 144, 15.5.2014, p. 70 and EEA Supplement to the OJ No 28, 15.5.2014, p. 1) and EFTA Surveillance Authority Decision No 291/12/COL of 27.6.2013 on restructuring aid to Arion Bank (OJ L 144, 15.5.2014, p. 169 and EEA Supplement to the OJ No 28, 15.5.2014, p. 89).

([13]) See Decision No 244/12/COL, paragraph 50, and Decision No 291/12/COL, paragraph 49.

on the financial markets. In order to substantiate its claim that the long-term funding and the interest rates were below market rates at the time, the complainant submitted credit default swap ("CDS") spreads of the Icelandic government in 2009 and interest rates in 2009 on bond issues HFF150224 and HFF150434 by the Icelandic Housing Financing Fund ("HFF"). The complaint maintains that the measures strengthened ISB and Arion on the banking market and therefore affected the position of other market participants.

24) Finally, the complainant argues that the restructuring plans of ISB and Arion, implemented by the Icelandic government and which the Authority found compatible with Article 61(3)(b) of the EEA Agreement, were sufficient to remedy the disturbance in the Icelandic economy. According to the complainant, the additional aid measures implemented by way of the abovementioned agreements were not necessary, appropriate or proportionate to restore the Icelandic banking system and therefore entail incompatible state aid.

4. Comments from the Central Bank of Iceland

25) According to the CBI, the purpose of converting the short-term debt to long-term loans was to strengthen the likelihood of recovery of the collateralised debt and thus to better secure its interests as a lender.

26) The CBI's role in providing liquidity facilities to financial institutions entails a given counterparty risk, which materialised in the autumn of 2008. In the beginning of October 2008, it became apparent that Glitnir and Kaupthing could not be saved. Thus the Icelandic Financial Supervisory Authority (FME) took over the operations of Glitnir on 7 October and Kaupthing on 9 October 2008, using the powers conferred upon it by the Act No 125/2008, on the Authority for Treasury Disbursements due to Unusual Financial Market Circumstances etc. (the "Emergency Act"), which was passed on 6 October 2008.

27) The CBI's claims were rendered due and payable by the collapse of Glitnir and Kaupthing, thus putting the CBI in the position of a creditor of the failed banks because of claims that were backed by various types of collateral.

28) Act No 36/2001 on the Central Bank (the "Central Bank Act") contains no provisions on the CBI's position as a creditor, nor does it provide for processing or satisfaction of claims. The Act requires unequivocally that the CBI only grants loans against collateral that it deems adequate. With the collapse of the financial system, the CBI's position changed from that of a holder of collateral to that of a creditor and owner of assets appropriated from financial undertakings in winding-up proceedings.

29) According to the CBI, the Central Bank Act does not contain any provision regarding the legal effect of the CBI's appropriation of assets used as collateral for loans or guarantees granted on the basis of Article 7 of the Act. On the other hand, it does assume that the CBI grants liquidity facilities to financial institutions, and that, as a result, the Bank acquires claims. Therefore, in matters falling outside the scope of the Central Bank Act, the general principles of law of obligations should apply to the CBI.

30) In the wake of the banks' collapse in the autumn of 2008, the CBI was forced to appropriate collateral assets, convert them, and allocate them to its claims against financial institutions. The fundamental principles of administrative law have limited applicability to the processing and administration of the above-specified assets. The CBI's rights and responsibilities as owner and creditor are determined by the nature and substance of such assets and rely on the civil law rules of obligations and claims satisfaction procedures. The CBI's actions and decisions concerning the handling and allocation of claims and appropriated assets therefore fall under the realm of civil law.

31) According to the CBI, it was in the same position as other creditors with respect to recovery of claims and collateral from the estates of the failed banks. The CBI was independent in its decisions and therefore rejects the complainant's allegation that "*By implementing these measures the Icelandic government in fact replaced the role of private market participants*".

32) On the other hand, the CBI realistically could not be expected to enforce collateral such as the ones in question in the case of Kaupthing (Arion) and Glitnir (ISB). In appropriating such collateral, the CBI would have been taking on the role of a commercial bank with one of the largest household loan portfolios in Iceland, which would have been inconsistent with its role as a central bank. There was also the risk of destabilising the operations of the respective banks, which would have jeopardised financial stability. According to the CBI, it should be borne in mind that the loan portfolios represented a large share of Arion and ISB's customer base.

33) The CBI therefore considered it preferable to aim for receipt of full payment of its claims, with interest and without having to incur administrative expenses, which was the maximum recovery possible at that time. The CBI's agreements with Arion and ISB also provided for minimal disturbance and were of benefit to the individual borrowers under the mortgage loans who continued to be the customers of operating financial institutions. If the loan portfolios had been offered for sale, there was the risk that the borrowers would have cut their business ties with their commercial banks. Furthermore, the CBI would have had no assurance of acceptable recovery, and it was highly unlikely that investors with sufficient capital strength would have been available to buy the portfolios.

34) According to the CBI, the measure entailed in the loan agreement with ISB was a logical continuation of the division of the banks into "new" and "old" pursuant to the Emergency Act and the FME decisions based on it. That measure obviated the need for the CBI to adopt measures *vis-à-vis* ISB that could have threatened its liquidity position.

35) Similarly, the measure entailed in the transfer of the loan portfolio from Kaupthing to Arion through the settlement and loan agreement was a logical continuation of the division of the banks into "new" and "old" pursuant to the Emergency Act and the FME decisions based on it. The loan agreement with Arion contained only one deviation from the terms of the settlement agreement, i.e. that the principal was denominated in EUR, USD and CHF instead of ISK because of currency imbalances within Arion's balance sheet. According to the CBI, this denomination change did not alter the nature of the CBI's claim and therefore cannot be considered to constitute state aid. The CBI emphasises that one of its objectives was to promote financial stability, and one of the components of financial stability was credit institutions' foreign exchange balance. As Arion's foreign exchange balance was in severe disequilibrium, the CBI felt that it was its role to address this and consequently to conclude the loan agreement in foreign currency. Moreover, the CBI mentioned that information on the measures taken by the CBI to correct currency imbalances was included in the Minister of Finance's report on the restructuring of the commercial banks (and presented in March 2011), which was also provided to the Authority as part of its assessment of the restructuring aid that was notified and approved by the Authority in its Decision No 291/12/COL.

36) In light of all the above, the CBI considers it clear that the measures complained of cannot be considered state aid within the meaning of Article 61(1) of the EEA Agreement.

37) Should the measures be found to constitute state aid, or should the measures in question be found to have conferred any advantages, the CBI believes that it is by no means evident that Arion or ISB would be the beneficiaries of such an advantage. The CBI rather advocates that such advantages accrued to Kaupthing and Glitnir as the measures complained of enabled Kaupthing to acquire shares in Arion and made it possible to dissolve the covered bonds that formed the guarantee for Glitnir's debt to the CBI and bring the underlying housing portfolio under the control of ISB.

38) In addition, in its letter of 31 March 2015,([14]) the CBI highlighted that, whereas its original lending to Kaupthing and Glitnir undoubtedly fell within the scope of the monetary policy of the CBI in its role as lender of last resort, its position upon the conclusion of the long-term funding measures was that of a creditor in a similar position to that of a private creditor upon appropriation of collateral assets and in a claim satisfaction process with the debtors. According to the CBI,

([14]) Document No 753104.

the conversion of the short-term credit facilities of Kaupthing and Glitnir, including interests and costs associated with the claim, to a long-term loan on terms that any private creditor would have found to be acceptable in the same circumstances does not amount to relieving the debtors, Kaupthing and Glitnir, of any obligations or conferring any advantages on the assignees of these liabilities.

5. Comments by the alleged beneficiaries

5.1 Comments from Arion Bank

39) As a preliminary point, Arion submits that the measures in question formed an inseparable part of the final capitalization of Arion Bank with the participation of Kaupthing and the assets and liabilities (including the housing loan portfolio) that were assigned formed an integral part of the restructuring of Arion Bank that was submitted, investigated and decided upon by the Authority. Arion refers here to the Ministry of Finance's report on the restructuring of the commercial banks, that was allegedly source material for the Authority's decision No 291/12/COL, and to other communications between the Icelandic authorities and the Authority during which information on the measures complained above allegedly had been provided to the Authority. Arion therefore argues that the measures should not be taken out of context and separated from the overall assessment made by the Authority in Decision No 291/12/COL on restructuring aid to Arion Bank. In addition, the fact that the measures complained of were not specifically identified as state aid involved in the capitalisation of Arion Bank and notified as such in the final notification of the Icelandic Authorities on 20 September 2010 only suggests that it was the common understanding of the Icelandic authorities and the Authority that these particular measures did not constitute state aid.

40) Arion also argues that the funding provided through the loan agreement did not confer upon it any advantage which could be considered state aid, as it was provided on normal market terms at the time and fully in line with the market economy investor principle.

41) Arion notes that other funding provided on or around the same time was comparable to the funding provided under the loan agreement, indicating that the terms of the loan agreement were not unduly favourable. According to Arion, the Authority should mainly consider issued covered bond programs when establishing an appropriate benchmark for determining the market rates and borrowing terms for Arion Bank with reference to the loan agreement, since it is secured with a pledge in a number of Arion Bank's bests quality assets, including municipality loans and mortgages. Arion provided information on all covered bond programs issued worldwide in the period from 1 January 2009 until 31 December 2010. According to Arion, this information clearly shows that the average interest rate, among a total of 357 issued covered bond programs in that period of time, is far below the interest rate of the aforementioned loan agreement.

42) Arion also draws a comparison with a settlement that was negotiated in December 2009 between the "new" Landsbanki (now Landsbankinn hf. ("Landsbankinn"), NBI hf. at that time) and "old" Landsbanki (now LBI hf., Landsbanki Íslands hf.). This settlement entailed the issue of a senior secured bond, denominated in EUR, GBP and USD, in the amount of ISK 247 billion in foreign currency for a term of 10 years by Landsbankinn to LBI. In addition, a contingent bond of ISK 92 billion in foreign currency was issued early in 2013. These senior secured bonds were a consideration for the assets and liabilities transferred from LBI on 9 October 2008 with the decision of the FME on the disposal of assets and liabilities of the "old" Landsbanki to the "new". These senior secured bonds mature in October 2018 and do not have instalment payments during the first 5 years. The interest rates are EURIBOR/LIBOR+175bps for the first 5 years and EURIBOR/LIBOR+290bps for the remaining 5 years. The bonds are secured by pools of loans to customers of Landsbankinn.

43) According to Arion, the terms of this settlement are directly comparable to the terms in the disputed loan agreement with the CBI and any differences that exist between the two are all favourable to the loan agreement, *i.e.* a higher interest rate, a lower principal amount and a stronger collateral pool, in spite of the fact that the lender in the Landsbanki case is a private

party. According to Arion, this clearly indicates that the terms of the funding provided to Arion Bank under the loan agreement are in line with prevalent market terms at the time, and thus no advantage was conferred upon Arion Bank through the loan agreement which can be considered state aid.

44) Arion also argues that the comparison made in the complaint between the terms of the loan agreement and the CDS spreads and the terms of the HFF bonds should by no means be considered relevant in determining whether the funding was provided on terms below market rates. Whereas the loan agreement provides for senior secured funding, a CDS is a swap designed to transfer the credit exposure of a senior unsecured instrument between parties. Therefore, Arion submits that a direct comparison between the interest rates stated in the loan agreement and the CDS spreads submitted by the complainant is not relevant.

45) In line with the arguments put forward by the CBI, Arion also notes that, under the market conditions at the time when the settlement agreement and the loan agreement were entered into, the CBI was effectively left with no other option than to assign the housing loan portfolio to Arion Bank. The settlement agreement provided that Arion would assume the remaining balance of Kaupthing's debt, with the CBI in turn assigning it the housing loan portfolio. According to Arion, by adopting these measures, the CBI tried to secure full recovery of Kaupthing's debt.

46) Had the CBI not entered into the settlement agreement and subsequently the loan agreement, it would have had to enforce the collateral in the housing loan portfolio. According to Arion, the CBI was not in a position to enforce the collateral as, first, it did not have the resources or manpower to service the portfolio itself and, second, the chances of offloading the housing loan portfolio on the open market were very slim or non-existent as there were no market participants to which the portfolio could have been assigned. At that time, all of the three biggest commercial banks were being restructured and ownership of the "new" banks was in the hands of the Icelandic Government. Further, the FME, by the powers conferred upon it under the Emergency Act, had already taken and subsequently took control of many other financial undertakings, such as Straumur-Burðarás hf., Reykjavik Savings Bank hf. (SPRON), Sparisjóðabanki Íslands hf. (Icebank), VBS Investment Bank hf., Keflavík Savings Bank, BYR Savings Bank etc. MP banki hf. was in severe financial difficulties at that time and underwent its own financial restructuring with new shareholders providing it new funding in 2011. Therefore, the assignment of the housing loan portfolio via the settlement agreement and the loan agreement was, under the market conditions prevailing at the time, the only viable option.

47) In addition, Arion notes that the FME had already assigned the housing loan portfolio to Arion Bank via its decision of 21 October 2008, and Arion Bank had subsequently continued to service the portfolio. The housing loan portfolio was also comprised of many of Kaupthing's core clientele with long lasting business relationships with Kaupthing, which had now been transferred to Arion Bank. Assigning the housing loan portfolio to another market participant, even if such a participant had existed (who in addition would not have been as familiar with the portfolio as Arion Bank), could only have taken place at a substantial discount, thus not securing full recovery of CBI's claim against Kaupthing. Therefore, at the time there was no other viable option than to assign the portfolio to Arion Bank.

48) In the event the Authority considers the measures complained of to constitute state aid, Arion further argues that they must be considered compatible with the functioning of the EEA Agreement on the basis of Article 61(3)(b) of the EEA Agreement.

49) According to Arion, the measures were a very necessary part of and directly linked to the restructuring of the bank. Without the settlement agreement, under which the CBI agreed not to enforce the collateral granted in the housing loan portfolio and instead assign it to Arion Bank, the reconstruction of Arion Bank would not have taken place in the manner that it did, i.e. by the creditors of Kaupthing acquiring a majority stake in the new Bank, as a very valuable pool of assets, essential for the continued banking operations of Arion Bank in Iceland, would then not have been transferred to the new Bank. Therefore, Arion argues that the measures complained of were an integral part of measures which were necessary, proportionate and appropriate to remedy

a serious disturbance in the Icelandic economy within the meaning of Article 61(3)(b) of the EEA Agreement.

50) In light of the above, Arion concludes that the measures complained of clearly cannot be considered to constitute state aid within the meaning of Article 61(1) of the EEA Agreement, and in the event they are viewed as state aid, these measures should be considered to be compatible with the functioning of the EEA Agreement pursuant to Article 61(3)(b).

5.2 Comments from Íslandsbanki hf.

51) As a preliminary point, ISB points out that the question of whether comparable funding would have been available to other banks or financial institutions at the time is irrelevant, since this was not a question of new funding being sought from, or offered by, the CBI. Instead, the CBI held a claim on ISB as per the decision of the FME. Paying up the debt would have had a serious impact on the liquidity position of the bank and therefore ISB could have chosen not to pay the debt and leave the CBI with the mortgage loan pool. According to ISB, the CBI was thus left with the choice of renegotiating the claim with ISB or enforcing the security (acquiring the mortgage loan pool).

52) However and in line with the arguments put forward by Arion and the CBI described above, ISB also notes that the enforcement of the security and the acquisition of the mortgage loan pool would have forced the CBI to manage the loan pool and service the underlying loans. This task does not form a part of the CBI's official role and would have involved further costs and risks, especially in view of many of the underlying mortgages needing to be restructured in the near future. It should also be kept in mind that the borrowers under the mortgage loans were not aware of the situation and had always, to the best of their knowledge, been borrowers of Glitnir and later ISB. Chances of the CBI selling off the mortgage loan pool at that point in time were slim and would have entailed a serious risk, as there were few, if any, market participants that were in a position to buy the mortgage loan pool, and if so, then hardly on better terms than the ISB bond offered. Renegotiating with ISB was therefore the financially viable option that best served the interests of the CBI itself.

53) According to ISB, the terms of the long-term funding provided by the CBI to ISB were not favourable. ISB notes that the interest rate is at about 50bp on top of the state guaranteed HFF bonds on the date of issue whereas common rates in Europe at the time for similar asset-backed securities were at 40 to 80bp above state-guaranteed papers. ISB also points out that it paid down 10 billion ISK of its debt on 10 April 2014 because it was able to obtain more favourable funding on the market. Therefore, ISB's outstanding debt with the CBI in May 2014 was reduced to 27 billion ISK.

54) In view of the above, ISB is of the opinion that the bank did not receive any funding which may be considered as state aid in the meaning of Article 61(1) of the EEA Agreement. The funding was granted at market compatible rates and was equal to the benefit of the CBI, ISB and the borrowers under the mortgage loans in the mortgage loan pool.

55) However, should the Authority nevertheless consider the measures complained of to constitute state aid, ISB argues that they must be considered compatible with the functioning of the EEA Agreement on the basis of Article 61(3)(b) of the EEA Agreement.

56) According to ISB, the background of the measures must be taken into consideration. ISB was allocated Glitnir's debt to the CBI and the ownership of the underlying collateral. Paying up a debt of roughly 55 billion ISK would have had a serious impact on the liquidity position of ISB and therefore making the restructuring of the bank all the more difficult to accomplish. According to ISB, it must also be kept in mind that at the time the government sought to have Glitnir take over a majority stake in the bank and provide the majority of the bank's initial capital. By collecting on the CBI claim, ISB's liquidity would have been made too weak to operate a healthy bank that the creditors of Glitnir might see as a viable increase in value and thus increase the creditors return on their claims.

57) According to ISB, the measures were therefore a necessary part in the restructuring of the bank and in line with the measures already approved in the Authority's decision on restructuring aid granted to Íslandsbanki.([15]) The measures were proportionate and appropriate in view of the economic and financial conditions in Iceland at the time, where restructuring of the banking system in Iceland was crucial.

58) In light of the above, ISB maintains that it is clear that the measures complained of cannot be considered state aid within the meaning of Article 61(1) of the EEA Agreement. However, in the event they would be regarded as state aid, ISB argues that they should be declared compatible pursuant to Art 61(3)(b) of the EEA Agreement because the measures aimed to remedy a serious disturbance in the economy of an EFTA State and were necessary, proportionate and appropriate for the restructuring of the bank.

II. ASSESSMENT

1. The presence of state aid

59) 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.*"

60) For a measure to qualify as state aid, all conditions set out in Article 61(1) must be fulfilled. First, there must be an intervention by the State or through State resources; second, the intervention must be liable to affect trade between the Contracting Parties; third it must confer a selective advantage upon the recipient and fourth it must distort or threaten to distort competition.

61) In the following, the Authority will assess whether the measures to convert short-term claims to long-term loans constitute state aid, and if so whether they are compatible with the state aid provisions of the EEA Agreement. However, it is clear that the State's involvement, as a major creditor to the undertakings concerned, derives from earlier measures, namely the CBI's short-term collateral loans to financial undertakings and its securities lending, on behalf of the Treasury, to prime traders of government securities. The background of the conversion loans is obviously the breakdown of the CBI's transactions with financial undertakings which in turn is related to the collapse of the financial system. It is therefore appropriate to consider whether the initial granting by the CBI of short-term credit facilities involved elements of state aid. The Authority will therefore, firstly, consider whether those measures possibly constitute state aid, and, secondly, examine in detail the loan conversion agreements in light of Article 61 of the EEA Agreement.

1.1 The Central Bank of Iceland's short-term credit facilities

62) Paragraph 51 of the Authority's Guidelines on the application of state aid rules to measures taken in relation to financial institutions ("Banking Guidelines") contains provisions on other forms of liquidity assistance and central bank facilities in particular.([16]) On the latter the Guidelines state that "[t]he Authority considers that activities of central banks related to monetary policy, such as open market operations and standing facilities, are not caught by the state aid rules. Dedicated support to a specific financial institution may also be found not to constitute aid in specific circumstances. Following the Commission's decision-making practice, the Authority considers that the provision of central banks' funds to the financial institution in such a case may be found not to constitute aid when a number of conditions are met, such as:

([15]) EFTA Surveillance Authority Decision No 244/12/COL of 27.6.2013 on restructuring aid granted to Íslandsbanki (OJ L 144, 15.5.2014, p. 70 and EEA Supplement to the OJ No 28, 15.5.2014, p. 1).

([16]) The Authority's Guidelines on the application of state aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis (OJ L 17, 20.1.2011, p. 1 and EEA Supplement No 3, 20.1.2011, p. 1), available online at: http://www.eftasurv.int/?1=1&showLinkID=16604&1=1.

– the financial institution is solvent at the moment of the liquidity provision and the latter is not part of a larger aid package,

– the facility is fully secured by collateral to which haircuts are applied, in function of its quality and market value,

– the central bank charges a penal interest rate to the beneficiary,

– the measure is taken at the central bank's own initiative, and in particular is not backed by any counter-guarantee of the state."([17])

63) The Banking Guidelines were adopted on 29 January 2009 and published in the Official Journal of the European Union and in the EEA Supplement thereto on 20 January 2011. The Banking Guidelines were therefore not in effect at the time when the CBI provided the short-term credit facilities to Glitnir and Kaupthing. However, the Banking Guidelines were based on the existing decision-making practice of the European Commission.([18]) The Authority will therefore assess the measures in light of the fundamental principles which are outlined in the Banking Guidelines, and in light of the decisional practice that existed at the time the credit facilities were granted and that has been continued in more recent cases.

64) The CBI has underlined that the short-term credit facilities concerned are part of its regular monetary policy and financial market measures. Looking closer at the measures taken in the run-up to the financial crisis in 2008, it is clear from publicly available information that due to the liquidity squeeze in the markets, the CBI took steps to increase access to liquidity.([19]) In that respect, the CBI pointed out that the European Central Bank, the US Federal Reserve Bank and many other central banks had taken significant steps to respond to deteriorating conditions in the global financial markets by enhancing access to liquidity and relaxing the rules on securities eligible as collateral for financial undertakings' transactions with them. The CBI was simply adapting to more flexible rules already introduced by European and other central banks. This argument finds support in independent sources.([20])

65) The Authority concurs that the CBI measures at issue fall within the scope of monetary policy. The financial institutions were solvent at the time of the liquidity provisions. The collateral lending backed by securities of the failed commercial banks halted automatically once the banks were submitted to public administration. The CBI liquidity facilities were not part of a larger aid package. The transactions were based on the Rules on Central Bank of Iceland Facilities for Financial Undertakings, No 808 of 22 August 2008.([21]) These rules meet the conditions set out above, including the condition that the financial institutions should be solvent at the moment of the liquidity provision, that the facility should be fully secured by collateral to which haircuts are applied and that the financial institutions are required to pay penal interest rates in cases of default. The measures were taken at the initiative of the financial institutions concerned and the CBI and were not, at the time, backed by any counter-guarantee of the state.

66) In view of the above considerations, the Authority concludes that the conditions set out in the Banking Guidelines concerning central bank facilities are fulfilled with regard to the CBI's short-term collateral lending to banks and other financial institutions. Accordingly, the short-term credit facilities provided by the CBI to Glitnir and Kaupthing did not involve state aid.([22])

([17]) The European Commission has rarely deemed central bank operations to constitute aid. However, in particular where the State provided counter-guarantees (such as in Dexia – cf. http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_C9_2009) the presence of aid was established.

([18]) See for instance Commission Decision Case No NN 70/2007 of 5.12.2007 *Northern Rock* (OJ C 43, 16.2.2008, p. 1).

([19]) See the article on Financial Markets and Central Bank measures in the CBI's Monetary Bulletin 2008-1 (April 2008), available at http://www.sedlabanki.is/lisalib/getfile.aspx?itemid=5883

([20]) See for instance Bank State Aid in the Financial Crisis. Fragmentation or level playing field? A CEPS Task force report. October 2010. Centre for European Policy Studies, Brussels. See in particular chapter I, "An Overview of State Aid Provided during the Crisis".

([21]) These rules were replaced on 26 June 2009 by Rules No. 553 on the same subject (currently applicable rules).

([22]) See EFTA Surveillance Authority Decision No 363/11/COL of 23.11.2011 to initiate the formal investigation procedure provided for in Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement with regard to state aid granted to three Icelandic investment banks through rescheduled loans on preferential terms (OJ C 21, 26.1.2012, p. 2 and EEA Supplement No 4, 26.1.2012, p. 10), paragraphs 53-55.

1.2 The loan conversion agreements

1.2.1 Presence of state resources

67) In order to qualify as aid under Article 61(1) EEA, the measure must be granted by the State or through state resources.

68) The measures under examination take the form of agreements between the CBI and Arion and ISB regarding the conversion of short-term claims which were due into long-term loans on allegedly favourable terms.

69) As a preliminary point, it should be reminded that there is no blanket exemption of monetary policy from the application of State aid law.([23]) Indeed, the above-mentioned exclusion of liquidity assistance from the application of state aid law is only limited to measures fulfilling the conditions enumerated in the relevant paragraph of the Authority's Banking Guidelines and does not imply that all actions by central banks are excluded from the application of state aid law.

70) It seems questionable that the provision of long-term loans by the CBI complies with the conditions enumerated in paragraph 51 of the Banking Guidelines as the measures seem to have been part of the larger aid package provided to these banks. In addition, it is questionable whether the interest rates on these loans could be regarded as market-based or of a penal nature. Therefore, in order to determine whether the provision of long-term loans by the CBI involves state aid, it first needs to be determined whether central banks are able to grant state aid and in order to assess this, it needs to be determined whether measures taken by a central bank can be regarded as imputable to the State. Central banks are in general independent from the central government. However, it is generally accepted that they do perform a public task and, in line with well-established case law that financial support granted by an institution serving a public purpose is regarded as a form of state aid,([24]) the public support granted by a central bank could thus also be regarded as being imputable to the State and thus qualify as state aid.([25])

1.2.2 Favouring certain undertakings or the production of certain goods

71) This condition is twofold. Firstly, the measures must confer advantages that relieve the banks, as aid beneficiaries, of charges or mitigate charges that are normally borne by their budgets. Secondly, the measures must be selective in that they favour "certain undertakings or the production of certain goods".

Advantage

72) Repayment of outstanding credit, including interests, and other costs associated with the banks' short-term credit facilities with the CBI are costs normally borne by the banks' budgets. The question of whether the conversion of these credit facilities to long-term loans could be regarded as relieving the debtor of such costs and thus as an advantage will ultimately depend on whether a private investor of a comparable size to that of the public body operating in normal market conditions would have granted a similar loan on similar conditions.

73) The reason for converting the short-term claims to long-term loans was the banks' inability to honour these claims. The question thus arises whether a private investor holding similar short-term claims on the banks would have agreed (1) to a conversion of these short-term claims to long-term loans; and (2) according to the same conditions. In addition, the question also arises whether the initial delay in settling payments of the CBI short term credit facilities, which is understood to have lasted from around October 2008 until late 2009/beginning of 2010, may

([23]) See judgment in *Hellenic Republic* v *Commission*, C-57/86, EU:C:1988:284, paragraph 9.
([24]) Judgment in *Italy* v *Commission,* C-173/73, EU:C:1974:71, paragraph 16; judgment in *Steinicke and Weinling* v *Germany*, C-78/76, EU:C:1977:52
([25]) See Commission Decision 2000/600/EC of 10.11.1999 *Banco di Sicilia and Sicilcassa* [2000] OJ L 256/21, at paragraph 48 and 49, where it is accepted with no further discussion that advances granted by the Banca d'Italia to distressed banks constitute financial assistance provided by the State.

involve state aid. In general, decisions by public bodies to tolerate late payments on a loan may entail an advantage to the debtor and involve state aid. While a temporary deferral of payment would probably correspond to the conduct of a private creditor and thus not involve state aid, such conduct, initially consistent with market conditions, could turn into state aid in cases of protracted delays in payment.([26])

74) The private creditor test, developed and refined by the courts of the European Union,([27]) serves to establish whether the conditions under which a public creditor's claim is to be repaid, possibly by rescheduling payments, constitutes state aid. When the state is in the position, not as an investor or a promoter of a project, but as a creditor trying to maximise the recovery of an outstanding debt, lenient treatment alone, in the form of deferral of payment or favourable interest rates, may not be sufficient to presume favourable treatment in the sense of state aid. In such circumstances the conduct of the public creditor is to be compared with that of a hypothetical private creditor in a comparable factual and legal situation.([28]) As concerns interest rates, the correct term of reference is not the market interest rate but the rate deemed acceptable by a private creditor in similar circumstances. The crucial question is whether a private creditor would have granted similar treatment to a debtor in similar circumstances. Commercial advantage in the sense of Art. 61(1) of the EEA Agreement can be presumed if the amount owed can be paid back to the public creditor on more favourable terms than would be accepted by a private creditor.

75) From the point of view of a private creditor, enforcement of a claim that has become due is the self-evident norm. This also applies if the debtor undertaking is in financial difficulties as well as in the case of insolvency. Private creditors will not normally be willing in such circumstances to accept further deferral of payment if this does not bring them any clear advantage. On the contrary, once a debtor runs into financial difficulty, further loans would only be granted to the debtor under stricter terms, e.g. at a higher interest rate or with more comprehensive securities, as repayment is endangered.

76) Exceptions may be justifiable in individual cases where non-enforcement seems to be the economically more sensible alternative. This would be the case when non-enforcement offers clearly improved prospects of collecting a substantially higher proportion of the claims in comparison with other possible alternatives or if even greater consequential losses can be averted in this way. It can be in the interest of a private creditor to keep the business of the debtor company running instead of liquidating its assets and thus, under certain circumstances, only collecting a part of the debt. When a private creditor accepts to refrain from enforcing his claim in full, he will normally require the debtor to provide additional securities and when this is not available, in cases of debtors in financial difficulty, he will seek assurances of maximum compensation should the financial condition of the debtor later improve. If insufficient securities or commitments are made by the debtor, a private creditor would generally not accept to conclude debt rescheduling agreements or provide the debtor with additional loans.

77) In the wake of Glitnir's and Kaupthing's collapse in the autumn of 2008, the CBI found itself in a position where it was unrealistic to expect to enforce collateral like the ones in question in the case of Arion and ISB. In appropriating such collateral, the CBI would have taken on the role of a commercial bank with one of the largest household loan portfolios in Iceland, which would have been inconsistent with its role as a central bank. Taking into account that the loan portfolios constitute a large share of Arion's and ISB's customer base, appropriating such collateral could also have jeopardised the financial stability of Arion and ISB and would have driven these financial undertakings into bankruptcy.

([26]) See Opinion of Advocate General Jacobs in judgment in *DM Transport,* Case C-256/97, EU:C:1998:436, paragraph 38.

([27]) See judgment in *Spain* v *Commission,* C-342/96, EU:C:1999:210, paragraphs 46 *et seq*.; judgment in *SIC* v *Commission,* T-46/97, EU:T:2000:123, paragraph 98 *et seq*.; judgment in *DM Transport*, C-256/97, EU:C:1999:332, paragraphs 19 *et seq*.; judgment in *Spain* v *Commission,* C-480/98, EU:C:2000:559, paragraphs 19 *et seq*.; judgment in *HAMSA* v *Commission,* T-152/99, EU:T:2002:188, paragraph 167; judgment in *Spain* v *Commission,* C-276/02, EU:C:2004:521, paragraphs 31 *et seq*.; judgment in *Lenzig* v *Commission,* T-36/99, EU:T:2004:312, paragraphs 134 *et seq*.; judgment in *Technische Glaswerke Ilmenau* v *Commission,* T-198/01, EU:T:2004:222, paragraphs 97 *et seq*.; judgment in *Spain* v *Commission,* C-525/04 P, EU:C:2007:698, paragraphs 43 *et seq*.; judgment in *Olympiaki Aeroporia Ypiresies* v *Commission,* T-68/03, EU:T:2007:253; and judgment in *Buzek Automotive* v *Commission*, T-1/08, EU:T:2011:216, paragraphs 65 *et seq*.

([28]) For a helpful exposition of the application of the private creditor test, see also *The EC State Aid Regime: Distortive Effects of State Aid on Competition and Trade*, Michael Sanchez Rydelski (Ed.), Ch. 7.

78) According to the CBI, it therefore chose to enter into the loan conversion agreements because these agreements eventually would ensure the CBI full payment of its claims, with interest and without having to incur administrative expenses, and thus constituted the maximum possible recovery at that time. In addition, the conclusion of these agreements would also lead to minimal disturbance and were of benefit to the borrowers who continued to be the customers of operating financial institutions.

79) The Authority considers that the available evidence so far suggests that the CBI and thus the Icelandic State has in many respects endeavoured to best secure the interests of the State and tried to maximise the Treasury's recovery of the claims. In return for agreeing to a conversion of the short-term credits to long-term loans, the State received consideration in the form of the conditions attached to the loan. The question thus remains whether these conditions, and in particular the applicable interest rates, also would have been sufficiently valuable to a private creditor to meet the requirement of the private creditor test.

80) ISB claims that the interest loans are in line with the interest rates of similar asset-backed bonds at the time. The ISB bond's maturity date is ten years, with an interest rate of 4,5%, CPI linked (consumer price-indexed), and appears to be over collateralized with a loan-to-value ("LTV") ratio of 70%.([29]) The interest rate was thus set at about 50bp on top of the state guaranteed HFF bonds on the date of issue whereas common rates in Europe at the time for similar asset-backed securities were at 40 to 80bp above state-guaranteed papers. ISB also pointed out that it paid down 10 billion ISK of its debt on 10 April 2014 because it was able to obtain more favourable funding in the market.

81) Similarly, as mentioned in paragraphs (40) to (42) above, Arion Bank claims that the terms of its loan agreement with the CBI were on market terms and compares it, *inter alia*, to a similar agreement concluded between the old and new Landsbanki, whereby it appears that the terms of Arion's loan agreement were more stringent than those in the Landbanki agreement, involving a private lender. Indeed, it appears that the Landsbanki agreement required lower interest rates, involved a higher principal amount and had weaker and less diversified collateral than the Arion loan agreement.

82) Although ISB and Arion have put forward evidence demonstrating that the interest rates applied to the loan conversion agreements did not differ substantially from interest rates applied to other similar loan agreements or bonds concluded or issued around the same time as the loan agreements, it is difficult to determine what the appropriate benchmarks for interest rates were during the financial crisis as credit markets were more or less frozen and no credit rating was available yet for the newly founded banks. In the Authority's preliminary view, additional evidence should therefore be collected in order to ascertain whether the lending terms in general, and the interest rates in particular, of the loan agreements would have been equally acceptable by a private creditor. As will be seen in section 3 below, the Authority also has doubts as to whether such terms meet principal requirements of compatibility for remuneration of state aid according to the Authority's temporary rules on aid to financial undertakings in the current financial crisis.

83) In light of the above, the Authority concludes that doubts exist as to whether the measures under assessment are consistent with the conduct of a private creditor finding himself in a comparable legal and factual situation. Therefore, the Authority cannot exclude that the conversion of the short-term credits into long-term loans conferred an advantage upon ISB and Arion.

Selectivity

84) According to established case law, a measure is normally considered to be selective if it favours a particular economic sector or certain undertakings, as opposed to other sectors or other undertakings which do not derive any benefit from it.([30])

([29]) The loan-to-value ratio is a financial term used by lenders to express the ratio of a loan to the value of an asset purchased.

([30]) See for instance judgment in *Belgium* v *Commission (Maribel bis/ter)*, C-75/97, EU:C:1999:311 as well as the judgment in *Commission* v *Government of Gibraltar*, C-106/09 P and C-107/09 P, EU:C:2011:732, paragraph 75.

85) The Icelandic authorities have so far not presented clear evidence that the allegedly favourable loan conversion agreements were effectively made available to all undertakings in a comparable legal and factual situation as ISB and Arion, i.e. to undertakings that were indebted to the CBI due to short-term collateral and securities lending. On the contrary, it appears that MP Banki was not offered the possibility of a favourable loan agreement and that Straumur apparently was also not offered to conclude a loan conversion agreement for payment of its short-term debt to the CBI, since it announced in August 2011 that it had paid in full all loans granted to it by the CBI without the CBI or the Treasury incurring any losses or write-offs.

86) In view of the above the Authority concludes that the loan conversion agreements cannot be considered to represent general measures but must be considered to be selective in nature.

1.2.3 Distortion of competition and effect on trade

87) The contested aid measures must be liable to affect trade and distort competition between the Contracting Parties to the EEA Agreement.([31])

88) Government measures favouring particular banks are liable to distort competition because these measures strengthen the position of the beneficiary banks compared to other financial institutions competing in the EEA. While ISB and Arion today operate mostly on the Icelandic market, they are nevertheless engaged in the provision of financial services which are fully open to competition and trade within the EEA. This condition can therefore be presumed to be fulfilled.

1.2.4 Conclusion regarding presence of state aid

89) In light of the above, the Authority cannot exclude that the conversion of the short-term credit facilities into long-term loans and the terms applied to these loan conversion agreements could constitute state aid within the meaning of Article 61(1) of the EEA Agreement. First, since the contested measures can be qualified as public support granted by a central bank, they could be regarded as being imputable to the State and thus qualify as state aid. Secondly, doubts exist as to whether these measures are consistent with the conduct of a private creditor finding himself in a comparable legal and factual situation. It thus cannot be excluded that these loan conversion agreements conferred an advantage upon ISB and Arion. Third, as these agreements were only available to ISB and Arion, they cannot be qualified as general measures, but must be regarded as selective in nature. Finally, the measures under assessment also seem liable to affect trade and distort competition because they strengthen the banks' position compared to other financial institutions competing with them in the EEA.

2. Procedural requirements

90) Pursuant to Article 1(3) of Part I of Protocol 3, *"the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid […]. The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision"*.

91) The Icelandic authorities did not notify the loan conversion agreements to the Authority before implementing them. Moreover, these loan conversion agreements were neither covered as aid measures nor as potential aid measures in the restructuring plans for the two banks that were notified to the Authority. Moreover, the Icelandic authorities have put these agreements into effect before the Authority has adopted a final decision. The Authority therefore concludes that the Icelandic authorities have not respected their obligations pursuant to Article 1(3) of Part I of Protocol 3. The granting of any aid involved might therefore be considered to be unlawful.

([31]) See Joined Cases E-5/04, E-6/04 and E-7/04, *Fesil and Finnfjord and others* v *EFTA Surveillance Authority* [2005] EFTA Court Report 117, paragraph 93; judgment in *Eventech Ltd* v *Parking Adjudicator*, C-518/13, EU:C:2015:9, paragraphs 64-70 and the case law cited therein.

3. Compatibility of the aid

92) Aid measures that are *prima facie* incompatible with Article 61(1) of the EEA Agreement may qualify for exemption if they fulfil the conditions set out in Article 61(2) or (3) of the EEA Agreement

93) While it is the principal view of the CBI as well as of the beneficiaries ISB and Arion that the loan conversion agreements on potentially preferential terms did not involve any state aid, they also argue that should the Authority consider otherwise, such aid can nevertheless be found compatible. In this context reference is made to Article 61(3)(b) of the EEA Agreement, exceptionally allowing aid to remedy a serious disturbance in the economy of an EFTA State.

94) In the Authority's letters requesting information on the measures, the Icelandic authorities have been invited to submit any information and observations which the Icelandic authorities consider relevant for the Authority to assess the compatibility of the measures with the state aid provisions of the EEA Agreement.

95) The CBI, ISB and Arion have provided information to demonstrate that, in case the Authority were to consider the measures to involve state aid, the measures undertaken by the CBI should be considered to fall under Article 61(3)(b) of the EEA Agreement. Indeed, the CBI mentioned in paragraph (77) and (78) above that it had virtually no other option than to enter into the loan conversion agreements with both banks, if it wished to maximise the possibility of recovering its claims against the banks and cause a minimal disturbance to their viability.

96) Similarly, ISB notes that the measures undertaken were necessary, proportionate and appropriate for the restructuring of the bank because if ISB, who was allocated Glitnir's debt to the CBI and, indirectly, the ownership of the underlying collateral, would have been forced to pay up this debt to the CBI (in the amount of 55 billion ISK), ISB's liquidity position would have suffered tremendously and could have jeopardized the government's efforts to have Glitnir's creditors take over a majority stake in the bank.

97) Arion Bank also puts forward arguments to demonstrate that the conclusion of the loan conversion agreement was a necessary part of the restructuring of the bank. Indeed, Arion states that it could not have been established as a viable bank if the CBI had decided to enforce the collateral, i.e. the housing loan portfolio, and not assign it back to Arion and enter into the long-term loan agreement. Indeed, without the transfer of the Housing Loan portfolio, which constituted a very valuable pool of assets, the creditors of Kaupthing would never have agreed to acquire a majority stake in Arion and the bank's chances of survival would have been slim. Moreover, Arion refers to the Authority's Decision 291/12/COL of 11 July 2012 which Arion claims to have found that the subordinated loan granted to Arion on the terms EURIBOR/LIBOR + 300 to 500 bps did not constitute unlawful aid. Arion therefore suggests that the loan granted to Arion in the current case does not include terms that are unduly favourable to Arion as the terms are set at EURIBOR/LIBOR + 300 bps, whereas it concerns a senior secured loan and thus ranks higher in terms of security than the subordinated loan approved by the Authority. Therefore, a lower interest rate seemed justifiable.

98) While the Icelandic authorities have not submitted any evidence in favour of assessing the compatibility of the measure in line with the Authority's temporary state aid guidelines regarding the financial crisis, it is nevertheless appropriate to briefly consider the loan conversion agreements under those rules.

99) The temporary rules on aid to financial undertakings foresee limitation of aid to the minimum necessary and safeguards against undue distortion of competition. In particular, the guidelines set out rules to secure appropriate and adequate remuneration for state recapitalisation.([32]) Without going into the details of those rules, they underline the importance of the closeness of pricing to

([32]) See for instance the Authority's Guidelines on the recapitalisation of financial institutions in the current financial crisis (OJ L 17, 20.1.2011, p. 1 and EEA Supplement No 3, 20.1.2011, p. 1), available online at: http://www.eftasurv.int/?1=1&showLinkID=16015&1=1.

market prices. Under certain circumstances, the Authority may be prepared to accept the price for recapitalisations at rates below current market rates, if this is likely to favour the restoration of financial stability, but the total expected return to the state should not be too distant from market prices. The entry level price may thus be fairly low, but the price should normally be adjusted upwards to account for the need to encourage the redemption of state capital and prevent undue distortion of competition.

100) Although it is still to be determined to what extent the interest rates applied to the loan agreement with ISB and with Arion could be regarded as close enough to market rates, if these can be determined at the time of the financial crisis, it is notable that no step-up of interest rates was foreseen to encourage redemption of state capital. Any possible upside in the operation of the debtors, which is partly the aim of the measures, would thus not be redeemed by the state to limit state aid, but would accrue to the debtors. Additional evidence should thus be provided to the Authority in order to allow it to determine whether these lending terms could be regarded as compatible with the Authority's state aid guidelines and the functioning of the EEA Agreement.

101) Under those circumstances, the Authority has doubts as to the compatibility of the aid measures.

4. Opening of the formal investigation procedure

102) Based on the information submitted by the Icelandic authorities, the Authority cannot exclude the possibility that the loan conversion agreements on potentially preferential terms constitute state aid within the meaning of Article 61(1) of the EEA Agreement. The Authority also has doubts as to whether these agreements comply with Article 61(3) of the EEA Agreement and thus whether they can be found to be compatible with the functioning of the EEA Agreement.

103) Consequently, and in accordance with Article 4(4) of Part II of Protocol 3, the Authority is obliged to open the formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3. The decision to open a formal investigation procedure is without prejudice to the final decision of the Authority, which may conclude that the measures in question are compatible with the functioning of the EEA Agreement.

104) In light of the foregoing considerations, the Authority, acting under the procedure laid down in Article 1(2) of Part I of Protocol 3, invites the Icelandic authorities to submit their comments within one month of the date of receipt of this Decision.

105) In light of the foregoing considerations, the Authority requests the Icelandic authorities to provide, within one month of receipt of this decision, all documents, information and data needed for the assessment of the compatibility of the loan conversion agreements examined above.

106) The Authority requests the Icelandic authorities to forward a copy of this decision to the potential recipients of the aid immediately.

107) The Authority must remind the Icelandic authorities that, according to Article 14 of Part II of Protocol 3, any incompatible aid unlawfully granted to the beneficiaries will have to be recovered, unless, exceptionally, such recovery would be contrary to a general principle of EEA law.

HAS ADOPTED THIS DECISION:

Article 1

The short-term credit facilities provided by the Central Bank of Iceland to Glitnir and Kaupthing do not involve state aid within the meaning of Article 61(1) of the EEA Agreement.

Article 2

The formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3 is opened regarding the possible state aid granted to Íslandsbanki hf. and Arion banki hf. through loan conversion agreements on potentially preferential terms.

Article 3

The Icelandic authorities are invited, pursuant to Article 6(1) of Part II of Protocol 3, to submit their comments on the opening of the formal investigation procedure within one month from the notification of this Decision.

Article 4

The Icelandic authorities are requested to provide, within one month from notification of this Decision, all documents, information and data needed for assessment of the measures under the state aid rules of the EEA Agreement.

Article 5

This Decision is addressed to Iceland.

Article 6

Only the English language version of this Decision is authentic.

Decision made in Brussels, on 20 May 2015.

For the EFTA Surveillance Authority

Oda Helen Sletnes
President

Frank Büchel
College Member

Innbydelse til å sende inn merknader i henhold til del I artikkel 1 nr. 2 i protokoll 3 til avtalen mellom EFTA-statene om opprettelse av et overvåkningsorgan og en domstol med hensyn til mulig statsstøtte gitt i form av leie av grunn og eiendom i området Gufunes i Reykjavik på Island **2015/EØS/57/02**

EFTAs overvåkningsorgan har ved vedtak 261/15/COL av 30. juni 2015, gjengitt på det opprinnelige språket etter dette sammendraget, innledet behandling i henhold til del I artikkel 1 nr. 2 i protokoll 3 til avtalen mellom EFTA-statene om opprettelse av et overvåkningsorgan og en domstol. Islandske myndigheter er underrettet ved en kopi av vedtaket.

EFTAs overvåkningsorgan innbyr med dette EFTA-statene, EU-medlemsstatene og berørte parter til å sende sine merknader til det aktuelle tiltaket innen en måned etter at dette ble offentliggjort, til:

EFTAs overvåkningsorgan
Registry
35, Rue Belliard
B-1040 Brussel

Merknadene vil bli oversendt islandske myndigheter. En berørt part som ønsker å få sin identitet holdt fortrolig, kan sende inn en skriftlig, begrunnet anmodning om dette.

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Sammendrag

Framgangsmåte

Overvåkningsorganet mottok i april 2014 en klage med påstand om at Íslenska Gámafélagið (”ÍG”) hadde mottatt ulovlig statsstøtte fra Reykjavík kommune i form av leie av eiendom og grunn i området Gufunes i Reykjavík til en leiepris som angivelig var under markedspris. Etter anmodninger mottok Overvåkningsorganet opplysninger om de aktuelle tiltakene fra islandske myndigheter ved brev av 24. juli 2014, 23. januar 2015 og 23. mars 2015.

Faktiske forhold

Gufunes ligger i Grafarvogur i Reykjavík. Fram til 2001 var gjødselsfabrikken Áburðarverksmiðjan i drift i området. I 2002 kjøpte Reykjavíks planleggingsfond (”SR”) fabrikken og området rundt. Da SR kjøpte grunnen og eiendommene i Gufunesområdet, var der flere leietakere (hovedsakelig entreprenører og utviklere), herunder ÍG. I henhold til kjøpekontrakten overtok SR alle forpliktelser og rettigheter fra Áburðarverksmiðjan med hensyn til eksisterende leieavtaler.

I følge Reykjavík kommune var Gufunesområdet ikke enkelt å forvalte, bygningene var i dårlig forfatning, noen leietakere betalte ikke leie og det hadde samlet seg opp skrot på eiendommen, som gamle bilvrak. I lys av denne situasjonen bestemte kommunen seg for ikke å fornye de ulike leieavtalene og heller inngå en avtale med bare én part. SR besluttet derfor å forhandle fram vilkår med hensyn til leie, opprydding og tilsyn med området med ÍG, som da var den største leietakeren, og som i tillegg ikke var på etterskudd med leien. SR og ÍG inngikk 14. oktober 2005 en avtale om leie, opprydding og tilsyn med eiendommen på Gufunes. Samlet månedsleie var fastsatt til 2 000 000 ISK, med månedlig justering i samsvar med konsumprisindeksen. Avtalen var gyldig fram til 31. desember 2009, den har imidlertid blitt forlenget tre ganger og er nå gyldig fram til 31. desember 2018.

Til tross for at ingen av avtalene inneholder opplysninger om verdien av tjenestene ÍG leverer, presenterte kommunen en beregning av ÍGs kostnader fastsatt i hovedavtalen og i senere endringer. I henhold til beregningene er ÍGs gjennomsnittlige månedskostnader 10 815 624 ISK, inkludert leieutgiftene. Leieutgiftene per måned er dermed rundt 25 % av ÍGs samlede månedskostnader.

I følge klager er beregningen av pris i førnevnte avtaler ikke tydelig, det vil si at det er uklart hva kvadratmeterprisen var og hvordan leieprisen ble fastsatt. Klager har imidlertid framlagt at markedspris

for leie av eiendommen burde være mellom 12 og 41 millioner ISK per måned. I følge klager er utleie av eiendom til ÍG til en pris som ligger langt under markedsverdien, i strid med EØS-avtalens statsstøtteregler.

I følge kommunen utgjør ikke avtalene med ÍG statsstøtte i betydningen av EØS-avtalens artikkel 61 nr. 1 ettersom ÍG ikke fikk noen fordeler som ikke var i samsvar med markedsforholdene. I følge kommunen var leieavtalene, datert 22. februar 2005 og 14. oktober 2005, i samsvar med ordinære markedsforhold. Kommunen hevder videre at den dårlige standen området og bygningen var i på kjøpstidspunktet, i tillegg til usikkerhet rundt planleggingen i området, dvs. kommunens framtidige reguleringsplan, hadde innvirkning på leieprisen og begrenset kommunens muligheter med hensyn til å legge utleie av eiendommen ut på anbud. I følge kommunen er det ikke planlagt å forlenge den eksisterende leieavtalen med ÍG når den utløper, ettersom denne type virksomhet ikke vil passe sammen med andre planlagte aktiviteter i området.

Vurdering

Overvåkningsorganet er i tvil om avtalevilkårene som ble inngått mellom kommunen og ÍG vil bestå testen med privat selger som undersøker om en privat selger, under ordinære markedsforhold, ville ha godtatt samme vilkår for leie av nevnte grunn og eiendom. I tillegg ser det ut til at tiltakene er selektive av natur og kan vri konkurransen og påvirke samhandelen i EØS. Overvåkningsorganet kan følgelig ikke utelukke mulighetene for at tiltakene utgjør statsstøtte i betydningen av EØS-avtalens artikkel 61 nr. 1. Islandske myndigheter har på dette tidspunkt ikke framlagt tilfredsstillende argumentasjon for å dokumentere at den mulige statsstøtten kan anses som forenlig på grunnlag av artikkel 59 nr. 2 eller 61 nr. 3 i EØS-avtalen.

Konklusjon

I lys av ovennevnte betraktninger har Overvåkningsorganet besluttet å innlede formell gransking i henhold til del I artikkel 1 nr. 2 i protokoll 3 til avtalen mellom EFTA-statene om opprettelse av et overvåkningsorgan og en domstol. Berørte parter innbys til å sende inn sine merknader innen en måned etter at denne kunngjøringen ble offentliggjort i Den europeiske unions tidende og EØS-tillegget til Den europeiske unions tidende.

EFTA SURVEILLANCE AUTHORITY DECISION

No 261/15/COL

of 30 June 2015

to initiate the formal investigation procedure into potential state aid granted through the rent of land and property in the Gufunes area

(Iceland)

The EFTA Surveillance Authority ("Authority"),

HAVING REGARD to:

The Agreement on the European Economic Area ("EEA Agreement"), in particular to Article 61 and Protocol 26,

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

Protocol 3 to the Surveillance and Court Agreement ("Protocol 3"), in particular to Articles 4(4), 6 and 13(1) of Part II,

Whereas:

I. FACTS

1. Procedure

1) By email dated 2 April 2014, Gámaþjónustan hf. ("GÞ" or "complainant") lodged a complaint with the Authority concerning alleged unlawful state aid granted by the City of Reykjavík ("City") through the rent of property and land in the Gufunes area in Reykjavík, Iceland, to Íslenska Gámafélagið ("ÍG") for a rate which is allegedly below market price.([1])

2) By letter dated 12 May 2014, the Authority requested information from the Icelandic authorities and invited them to comment on the substance of the complaint.([2]) The Icelandic authorities responded to this request by letter dated 24 July 2014.([3])

3) By letter dated 6 November 2014, the Authority requested additional information from the Icelandic authorities.([4]) The second request for information was followed up with a telephone conference with the Icelandic authorities on 19 November 2014. By letter dated 23 January 2015, the Icelandic authorities replied to the request and provided the Authority with the relevant information.([5])

4) Moreover, the matter was discussed during a meeting between the Icelandic authorities and the Authority in Reykjavík on 13 February 2015. Following the meeting, the Icelandic authorities submitted additional clarifications to the Authority on 23 March 2015.([6])

2. Description of the measure

2.1 The Gufunes area

5) The Gufunes area is situated in the Grafarvogur district of Reykjavík, Iceland. Until the year 2001, a fertiliser factory, Áburðarverksmiðjan, was operating in the area. In 2002, the planning

([1]) Documents No 704341-704343.
([2]) Document No 706674.
([3]) Document No 716985.
([4]) Document No 721373.
([5]) Document No 742948.
([6]) Document No 751487.

fund of Reykjavík (Skipulagssjóður Reykjavíkur, "SR") bought the factory and the surrounding area. According to the Icelandic authorities, the plan at the time was to remove all the structures from the area. In 2007, SR was dissolved and a new fund, Eignasjóður, was founded and took over SR's assets and tasks.

6) According to the Reykjavík Municipal Zoning Plan 2001-2024, the Gufunes area is intended for residential purposes and not for industrial activities.([7]) Additionally, the area is intended for the construction of the Sundabraut highway, connecting Laugarnes and Gufunes. Moreover, according to the Reykjavík Municipal plan for 2010-2030, the industrial area of Gufunes is regressing and a mixed urban area of residential units and clean commercial activities is anticipated in the future.([8]) Neither plan foresees that industrial activities will continue to be located in the area in the future. Additionally, it was agreed early in 2014 to establish a steering committee to present a vision for the Gufunes area.([9]) The committee proposed an open idea competition for professionals on the future planning of the Gufunes area. This proposal was later approved by the Reykjavík City Council. The preparatory work regarding the competition has started, but it is uncertain when the competition will be launched.([10])

2.2 Agreements concluded between the City of Reykjavík and Íslenska Gámafélagið

7) In February 2002, when SR purchased the land and the properties in the Gufunes area, the area was occupied by several tenants (mainly contractors and developers). At the time, ÍG had a lease agreement with Áburðarverksmiðjan, which had been concluded 29 October 1999 ("the 1999 Agreement"). The 1999 Agreement set out which properties ÍG rented, how big they were in square meters and the price per square meter for the respective property. The total monthly rental fee in the agreement was set at ISK 159.240.([11]) According to the purchase agreement, SR took over all obligations and rights from Áburðarverksmiðjan regarding the existing lease agreements, including the 1999 Agreement with ÍG.

8) According to the City of Reykjavík, the area was continuingly busy around the clock and difficult to manage. Moreover, the structures were in bad shape, some tenants were not paying rent and there had been an accumulation of scrap, such as car wreckages. It was therefore clear to the City of Reykjavík that in order to serve its role as a landowner, it would have to hire staff to control the area during day and night.

9) In light of that situation, it was not considered realistic to offer the area for rental purposes. It was therefore decided not to renew the current lease agreements and instead conclude an agreement with one party only. Consequently, SR decided to negotiate terms regarding lease, clean-up and supervision of the area with ÍG, which was the largest single tenant at the time, in addition to being on time with its rental payments.([12]) The following is an overview of the agreements concluded between SR and ÍG:

i) **22 February 2005**. SR and ÍG concluded a lease agreement on some of the properties in the area, replacing the 1999 Agreement. The agreement set out which properties ÍG rented and their size in square meters. The total monthly rental fee was set at ISK 960.000 for a total of 4.676 square meters (including a 500 square meter lot).([13])

ii) **14 October 2005**. SR and ÍG concluded an agreement ("Main Agreement"), replacing the previous agreement from 22 February 2005, regarding lease, clean-up and supervision of land in the area of Gufunes. According to the agreement, ÍG had the obligation to carry out all maintenance work and improvements on the property. The agreement was valid until 31 December 2009. The agreement did not set out how many square meters of property ÍG

([7]) Available online at; http://skipulagssja.skipbygg.is/skipulagssja/. See also http://reykjavik.is/sites/default/files/adalskipulag/08_grafarvogur.pdf.
([8]) Ibid.
([9]) Document No 716985.
([10]) Document No 742948.
([11]) Document No 716986, page 17.
([12]) Documents No 716985 and 742948.
([13]) Document No 716986, page 21.

rented. However, as an annex to the agreement, an aerial printout demonstrated which parts of the area were rented to ÍG.([14]) Furthermore, the agreement did not set out the price paid per square meter or the value of ÍG's obligations. The total monthly rental fee was set at ISK 2.000.000, recalculated monthly in accordance with the consumer price index.([15])

iii) **29 December 2006**. The validity of the Main Agreement was extended until 31 December 2011. ÍG was also obliged to demolish specified properties and remove equipment on the ground. ÍG was allowed to keep devices and installations removed from the ground at its own expense.([16])

iv) **21 December 2007**. The validity of the Main Agreement was extended until 31 December 2015. The owner could at any time take over part or all of the leased land if necessary due to changes in land use planning. ÍG also committed to reconnect pipes for electricity, water and heating that had become unusable. Moreover, ÍG withdrew a tort claim against the City.([17])

v) **15 June 2009**. The validity of the Main Agreement was extended until 31 December 2018. ÍG undertook to handle the maintenance of the area, to raise a levee and an existing lease of a boat storage owned by Reykjavík Yacht club was extended. ÍG also committed to withdraw a claim against the City regarding maintenance costs.([18])

10) According to the City, although the size of land rented by ÍG is 130.000 m², only 110.000 m² is usable for their purposes. The total registered size of the buildings is 24.722 m². According to the Icelandic Property Registry, the value of the land previously owned by Áburðarverksmiðjan is 211.000.000 ISK. The value of the land which ÍG rents has not been assessed, but it is estimated at around 137.000.000 ISK. The total registered value of buildings rented by ÍG is 850.323.512 ISK.([19])

11) According to Article 4(2) of the Act on Municipal Income No. 4/1995, the property owner shall pay the property tax except where leased farms, leased lots or other contractual utilization of land are involved, in which case the tax shall be paid by the resident or the user. The land and structures in question are on a defined harbour area which belongs to Faxaflóahafnir sf. and is leased to the City of Reykjavík. The City therefore pays the property tax on the leased land and the properties rented out to ÍG.

12) Although none of the aforementioned agreements include information concerning the value of the services provided by ÍG, the City has provided a table setting out an estimation of ÍG's costs stipulated in the Main Agreement and later amendments from the time when the Main Agreement was concluded and until the end of the lease period in 2018.([20]) The estimation was carried out by the City of Reykjavík's expert analysts. Furthermore, the information provided contains both the cost of finished and unfinished demolition projects. According to the information provided, the average monthly cost borne by ÍG is ISK 10.815.624, including the rental fee. The rental fee per month is therefore approximately 25% of ÍG's total cost per month.

([14]) The Icelandic authorities have later explained that ÍG rents about 130.000 square meters in the area. See Document No 716985.
([15]) Document No 716986, page 25.
([16]) Document No 716986, page 29.
([17]) Document No 716986, page 31.
([18]) Document No 716986, page 33.
([19]) Document No 716985.
([20]) Document No 742948.

Evaluation of ÍG's cost in accordance to ÍG's obligations stipulated in the agreement dated 14 October 2005													
Year	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**
Rental Fee ISK	32,370,315	32,370,315	32,370,315	32,370,315	32,370,315	32,370,315	32,370,315	32,370,315	32,370,315	32,370,315	32,370,315	32,370,315	32,370,315
Employee	11,520,000	11,520,000	11,520,000	11,520,000	11,520,000	11,520,000	11,520,000	11,520,000	11,520,000	11,520,000	11,520,000	11,520,000	11,520,000
Administration	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000
Estimated maintainance	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000
Legal	1,500,000	1,000,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000
Energy costs of others	5,000,000	5,000,000											
Unfinished demolition	21,538,462	21,538,462	21,538,462	21,538,462	21,538,462	21,538,462	21,538,462	21,538,462	21,538,462	21,538,462	21,538,462	21,538,462	21,538,462
Finished demolition	8,835,222	8,835,222	8,835,222	8,835,222	8,835,222	8,835,222	8,835,222	8,835,222	8,835,222	8,835,222	8,835,222	8,835,222	8,835,222
Repairments	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000
Gates and fences	1,000,000	1,000,000	1,000,000	1,000,000	600	600	600	600	600	600	600	600	600
Cleaning	7,000,000	7,000,000	7,000,000	7,000,000	3,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000
Painting	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000
Restoration	30,000,000	10,000,000	10,000,000	8,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000
Wiring, heating- and waterpipe installations	7,500,000	8,000,000	9,000,000	12,000,000	9,500,000	7,200,000	6,500,000	5,000,000	4,000,000	3,000,000	3,000,000	3,000,000	3,000,000
Sewage system									10,600,000	10,600,000	10,600,000	10,600,000	
Breakwater						6,000,000	6,000,000						
Disposal	500,000	500,000	500,000	7,200,000	6,500,000	2,000,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000
Asphalt	8,000,000	8,000,000	8,000,000	8,000,000	6,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000
Soil	10,000,000	10,000,000	10,000,000	10,000,000	5,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000
Fire alarm system	10,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
Total obligation	**138,393,684**	**109,393,684**	**104,893,684**	**112,593,684**	**95,394,284**	**91,594,284**	**89,394,284**	**81,894,284**	**91,494,284**	**90,494,284**	**90,494,284**	**90,494,284**	**79,894,284**
Total ISK	**170,763,999**	**141,763,999**	**137,263,999**	**144,963,999**	**127,764,599**	**123,964,599**	**121,764,599**	**114,264,599**	**123,864,599**	**122,864,599**	**122,864,599**	**122,864,599**	**112,264,599**
Average per month	14,230,333	11,813,667	11,438,667	12,080,333	10,647,050	10,330,383	10,147,050	9,522,050	10,322,050	10,238,717	10,238,717	10,238,717	9,355,383
Average ISK	**10,815,624**												

Figure 1. Source: City of Reykjavík

13) At the time when the lease agreement dated 22 February 2005 was concluded, SR did not impose any obligations on ÍG. ÍG's obligations, according to the Main Agreement, were determined in light of the proposed demolitions and estimated costs of cleaning, disposal and supervision of the area. The scope was determined by the City of Reykjavík's expert analysts in the year 2005. The cleaning and disposal obligations were considered an extensive procedure in light of the area's condition.

3. The complaint from Gámaþjónustan hf. to the Icelandic Competition Authority

3.1. The Complaint to the Icelandic Competition Authority

14) On 18 February 2013, GÞ sent a complaint to the Icelandic Competition Authority ("ICA") regarding the above mentioned agreements between SR and ÍG. The complaint concerned the allegedly low rental price for the land and property and the fact that the City had not tendered out the lease of the property to the highest bidder.

15) The complainant noted that the rental price was set at ISK 2 million in the Main Agreement from 14 October 2005, with annual increases in accordance with the consumer price index. Furthermore, ÍG had specific maintenance obligations which are considered as being a part of the rental price, although the approximate costs of those obligations are not to be found in the agreements. Moreover, the agreements do not forbid ÍG from subleasing the land to third parties. The complainant stressed that there was no evaluation to be found in the agreements concerning the possible income from subletting parts of the property, and whether this effected the rental price.

16) The complainant also mentioned that the price estimation was not clear, *i.e.* it was unclear what the price per square meter was and how the rental price was determined. According to the complainant, it was therefore impossible to measure the value of the agreements and the market price for the lease.

17) According to the complainant, the renting of the property to ÍG at a price that is far below market value is contrary to the rules regarding public procurement, Icelandic competition law and EEA state aid rules.

3.2. The conclusion of the Icelandic Competition Authority

18) On 7 March 2014, ICA sent a letter to the City of Reykjavík where it noted that the competitors of ÍG had not been able to negotiate the rent of the property or the services which the City

of Reykjavík considered to be required in the area. Therefore, the conditions in ICA Opinion No 1/2012 on public tendering had not been fulfilled.

19) According to ICA, it might be a possibility that ÍG was the only party that could or would have been interested in negotiating the above mentioned agreements, but due to the lack of a call of interest or a tender this could not be confirmed. However, it was clear that other parties were, at least at a later stage, interested in the area. According to the City of Reykjavík, the rental price is reasonable and does not confer an advantage on ÍG. Moreover, the gross margin of the agreements was positive although the profits were limited. The ICA noted that it is difficult to determine the market price for the lease in light of the special characteristics of the buildings situated in the area. Therefore, public tendering is the only appropriate way to determine the correct market price for the land and the properties.

20) Since ICA does not have the competence to apply the EEA state aid rules, it could not rule on that matter. However, ICA, on the basis of Article 8(1)(c) of the Icelandic Competition Act No 44/2005,([21]) suggested that the City of Reykjavík would initiate a public tender for the lease of the property not later than 31 January 2015. Furthermore, it requested that the City of Reykjavík would inform the ICA before 30 June 2014 on how it intended to respond to those instructions.([22])

3.3. Response by the City of Reykjavík

21) By letter dated 5 June 2014, the City of Reykjavík responded to ICA's suggestion. In its reply, the City stated that it was not clear how the area would be developed in the future. However, according to the City, it is clear that the agreements with the current tenants would not be extended, since their activities are not in line with the City's future zoning plans. Furthermore, the City stated that it would comply with competition rules when deciding on the future of the area, and that it would make sure that scarce resources will be equally available to all interested parties by way of a tender.([23])

3.4. Response by the Icelandic Competition Authority to the complainant

22) By letter dated 13 November 2014, the ICA informed the complainant that the case had been formally closed with the letter dated 7 March 2014.([24]) Moreover, ICA informed the complainant that the City had responded to the ICA by letter dated 5 June 2014.

23) ICA noted in its letter dated 7 March 2014 that it had instructed the City to initiate a public tender for the land and property in the Gufunes area before 31 January 2015 since the market value is not clear. However, as the City explained, since the activities in the area are not in line with the City's future zoning plans, the area will not be tendered out for similar activities and the current lease agreements will not be extended. ICA therefore concluded that there were not sufficient grounds for further pursuing the case, citing Article 8(3) of the Icelandic Competition Act No 44/2005, which concerns the prioritisation of cases.

4. The complaint to the EFTA Surveillance Authority

24) According to GÞ, the City has granted unlawful state aid to ÍG through the rent of property and land in the Gufunes area at prices which are below market rate. In its complaint to the Authority, GÞ states that although it is difficult to pinpoint the exact aid amount, the price is clearly far below reasonable market price. Since ÍG is not paying normal market price, the company enjoys a competitive advantage. Furthermore, the land at Gufunes is of interest for many companies that need spacious land for their operations, for instance transport hubs and storages.

25) The complainant noted that the rental price was set at ISK 2 million in the Main Agreement, with annual increases in accordance with the consumer price index (the property tax, which is not paid

([21]) Act No 44/2005, Competition Law, English version available online at: http://en.samkeppni.is/media/en-news/Competition_law_no_44_2005.pdf.
([22]) Document No 704343.
([23]) Document No 718590.
([24]) Document No 730017.

by ÍG but by the owner of the property (Reykjavík), amounts to 41% of the yearly rental amount). Furthermore, ÍG has certain maintenance obligations, which are considered as being a part of the rental price, although the approximate costs of those obligations are not to be found in the agreements. Moreover, the agreements do not forbid ÍG from subleasing the land to third parties. The complainant stressed that there is no evaluation in the agreements concerning the possible income from subletting parts of the property, and whether this effected the rental price.

26) The complainant also mentioned that the price estimation is not clear, *i.e.* it is unclear what the price per square meter is and how the rental price was determined. According to the complainant, it is therefore impossible to measure the value of the agreements and the market price of the lease. The complainant suggested three methods which could be used in order to determine the market price for the lease of the property:

27) The complainant firstly noted that ÍG was ready to sublease a 300 square meter storage building with a 100 square meter outside area for ISK 300.000 per month. ÍG therefore estimates the price per square meter to be around ISK 1000 and consequently, according to the complainant, the agreements with SR should be valued at around ISK 27 million per month (excluding the outside area).

28) Moreover, according to the complainant, the rental price per square meter for similar land (though in a more rural area) was around ISK 40-80 per square meter. The complainant has pointed out that the Gufunes land is 173.000 square meters and therefore the minimum rent for the land should be at least ISK 6.9 to 14 million per month. Moreover, it was stated that Efnamóttakan hf., a company which handles hazardous waste, was renting land in the Gufunes area, with the equivalent of some 2.9% of the building area occupied by ÍG, but paying around 41% of the price that ÍG pays. The complainant therefore claims that in order to pay market price for the property (including the land) ÍG should pay around ISK 44-66 million per month.

29) Lastly, the complainant stated that a common way to determine rental price is to collect at least 1% of the estimated market value of the property per month. The Icelandic Housing Financing Fund (i. Íbúðalánasjóður) base their evaluation on 1% of rateable property value. The rateable property value of the area is 1.2 billion ISK, which would amount to ISK 12 million per month, and according the complainant the market value is supposedly higher.

30) Therefore, according to the complainant the market price for the lease of the property should be from ISK 12 to 41 million per month. According to the complainant, the renting of the property to ÍG at a price that is far below market value is contrary to EEA state aid rules.

5. Comments by the City of Reykjavík

31) According to the City, the agreements with ÍG do not involve state aid within the meaning of Article 61(1) of the EEA Agreement since ÍG did not receive any advantage that was not in accordance with market conditions. According to the City, the lease agreements, dated 22 February 2005 and 14 October 2005, were in accordance with normal market conditions, since the rental fee was based on the rental fee determined following an open advertising process towards the end of the year 2003 and was in line with analyses/estimations conducted by the City's experts.

32) The poor condition of the area and the buildings at the time of purchase in addition to the uncertainty of the planning of the area, *i.e.* the City´s future zoning plans, affected the price of the rent and limited the City's options with regard to tendering out the lease of the property. Moreover, according to the City there is no intention of extending the existing rental agreements with ÍG at the end of its term since this kind of activity would not coincide with other planned activities in the area. Furthermore, the City of Reykjavík was not in the position of assigning lease rights for longer period than until the year 2019 since Faxaflóahafnir sf., a general partnership owned by five municipalities, has taken over all rights and obligations concerning all ports previously owned by the respective municipalities, including the land of Gufunes.

33) According to the City, a public tender was not initiated because of the exceptional circumstances relating to the area in question, *i.e*. the distinct nature of the Gufunes area. It was therefore decided to conclude an agreement with ÍG, which was the largest lessee and therefore the best placed to supervise and manage the area for a short period of time. The City also noted that commercial property leasing agreements in Iceland are generally made for much longer periods than what was possible in this case, *i.e*. from 20 to 25 years.

34) The City emphasised that the agreements in question are lease agreements and therefore there was not a legal obligation to conduct an open tender procedure. In October 2005, when the Main Agreement with ÍG was concluded, the applicable rules concerning public procurement were the Public Procurement Act No 94/2001 ("PPA")([25]) and the Reykjavík Public Procurement Rules, adopted by the Reykjavík City Council on 17 February 2005.([26]) According to Paragraph 1 and 5(a) of Article 4 of the PPA, lease agreements fell outside the scope of the PPA. In paragraph 5(a) of Article 4 of the PPA, it is stipulated that contracts for the purchase or rental of land, existing buildings or other real estate or rights to same, shall not be considered supply, service or work contracts. The main objective of the aforementioned agreements was the leasing of land and existing buildings and therefore the contract fell outside the scope of the PPA.

35) The reason for extending the Main Agreement three times was, according to the City, the uncertainty concerning the zoning plans for the Gufunes area, the main factor being the construction of Sundabraut, a traffic road between Laugarnes and Gufunes. This road has been on the schedule since 1984 and in 2005 all preparations were under way. However, in 2008, the Icelandic government postponed all major constructions due to the economic crisis, but according to the Ministry's Transport Plan 2013-2016, the preparatory work is scheduled to start again in the near future.

36) Furthermore, according to the City, the rental fee was determined by SR with regard to other rental fees in the area, the lease agreement previously made between SR and ÍG and taking into account the tasks that ÍG undertook. The City emphasised that if it would be proven that the rental fee was not determined in accordance with market price, then the cost of ÍG due to the obligations imposed in the agreements must be taken into account, such as cleaning and maintenance of the area etc. Additionally, ÍG has the obligation to return part of the land upon request with 12 months' notice and in light of the substantial uncertainty of the planning of the area this obligation affected the value of the property and the rental price.

37) The City further explained that the average property evaluation of all the properties rented by ÍG is 850 million ISK. The average rental fee per month, over the period of the validity of the Main Agreement and its amendments, is therefore 1.27% of the average property evaluation.

6. The position of Íslenska Gámafélagið

38) By letter dated 11 June 2013, ÍG submitted comments regarding GÞ's complaint to the ICA.([27]) ÍG noted that the company's operations in the Gufunes area started in 1999 with an agreement with Áburðarverksmiðjan. In 2003, ÍG and SR started negotiating for an extended lease agreement. Shortly after the lease agreement was concluded, in light of the issues at hand, SR contacted ÍG offering the company to lease the whole area, since it was the biggest single lessee at the time.

39) ÍG emphasized that when they concluded the agreement, there were many tenants which were not paying rent and the area needed considerable clean-up. At the time, there were around 2-3 full time employees tasked with the maintenance of the area. The condition of the rental properties was poor and the assignment of lease agreements was encumbering for ÍG. For instance, the buildings were not heated, without power and water etc.

40) Each time the agreement was extended, more obligations were imposed on ÍG regarding development in the area and other concessions. According to ÍG, the company has been

([25]) Act No 94/2001 was later repealed and replaced by Act No 84/2007.
([26]) Document No 742953.
([27]) Document No 704341.

responsible for demolition and restoration of buildings, raising a levee and labelling the parking lot. Additionally, ÍG has encountered costs resulting from disposal and soil work among other things. The average cost per month, relating to these obligations, was estimated by ÍG to be around 19 million ISK.

II. ASSESSMENT

1. The presence of state aid

41) 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.*"

42) This implies that a measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement if the following conditions are cumulatively fulfilled: the measure: (i) is granted by the State or through state resources; (ii) confers a selective economic advantage on the beneficiary; (iii) is liable to have an impact on trade between Contracting Parties and to distort competition.

43) In the following, the agreements between the City of Reykjavík and ÍG will be assessed with respect to these criteria.

1.1. Presence of state resources

44) According to Article 61(1) of the EEA Agreement, a measure must be granted by the State or through State resources in order to constitute state aid.

45) The State, for the purpose of Article 61(1) covers all bodies of the state administration, from the central government to the city level or the lowest administrative level as well as public undertakings and bodies.([28])

46) The land in question was owned by SR, a former municipal fund in charge of purchase and sale of real estate on behalf of the City of Reykjavík. In 2007, SR was dissolved and a new fund, Eignasjóður, was founded which took over SR's assets and tasks. The land rented by ÍG is located on a larger land fully owned Faxaflóahafnir, which is a general partnership owned by five municipalities, one of them being the City of Reykjavík. Any discount on rental price would therefore constitute a transfer of state resources.

1.2. Undertaking

47) In order to constitute state aid within the meaning of Article 61(1) of the EEA Agreement, the measure must confer an advantage upon an undertaking. Undertakings are entities engaged in an economic activity, regardless of their legal status and the way in which they are financed.([29]) Economic activities are activities consisting of offering goods or services on a market.([30])

48) The alleged beneficiary of the measure is ÍG. The company is active on the waste collection market, providing such services in Iceland. Accordingly, any advantage involved in the leasing by the City of Reykjavík of the land in question would be conferred upon an undertaking.

([28]) Judgment in *Germany v Commission,* Case 248/84, EU:C:1987:437, paragraph 17.
([29]) Judgment in *Höfner and Elser v Macroton*, Case C-41/90, EU:C:1991:161, paragraphs 21-23 and Case E-5/07 *Private Barnehagers Landsforbund v EFTA Surveillance Authority* [2008] EFTA Ct. Rep. 61, paragraph 78.
([30]) Judgment in *Ministero dell'Economica e delle Finanze v Cassa di Risparmio di Firenze SpA*, C-222/04, EU:C:2006:8, paragraph 108.

1.3. Favouring certain undertakings or the production of certain goods

49) Firstly, the aid measure must confer on the beneficiary undertaking an economic advantage. An economic advantage, within the meaning of Article 61(1) of the EEA, is any economic benefit which an undertaking would not have obtained under normal market conditions,([31]) thus placing it in a more favourable position than its competitors.([32]) For it to constitute aid, the measure must confer on ÍG advantages that relieve it of charges that would normally be borne from its budget. If the transaction was carried out under favourable terms, in the sense that ÍG was paying a lease price below market price, the company would therefore be receiving an advantage within the meaning of the state aid rules. To examine this question closer the Authority must apply the "private vendor test"([33]) whereby the conduct of states or public authorities when selling or leasing assets is compared to that of private economic operators.

50) To assess whether a public authority has acted like a private economic operator, the European Courts have developed the "market economy investor principle",([34]) which in essence provides that state aid is granted whenever a state makes funds available to an undertaking which, in the normal course of events, would not be provided by a private investor applying ordinary commercial criteria and disregarding other considerations of a social, political or philanthropic nature.([35]) A closely related concept is the private vendor test, the purpose of which is to assess whether a sale or leasing of assets carried out by a public body involves state aid, by examining whether a private vendor, under normal market conditions, would have accepted the same terms. In both cases the public authority must disregard public policy objectives and instead focus on the single objective of obtaining a market rate of return or profit on its investments and a market price for the sale or leasing of assets.([36])

51) An open, transparent and unconditional bidding procedure as an appropriate means to ensure that the sale or leasing by national authorities of assets is consistent with the private vendor test and that a fair market value has been paid for the goods and services in question.([37]) This is also reflected in the Authority's guidelines on State aid elements in sales of land and buildings by public authorities([38]) as well as in its decision-making practice. However, this does not automatically mean that the absence of an orderly bidding procedure justifies a presumption of state aid. Indeed, public procurement law and state aid law exist in parallel and there is no reason that the violation of, for example, a public procurement rule should automatically mean that state aid rules have been infringed.([39])

52) Compliance with market conditions, and whether the rental charge corresponds to market price, can be established through certain proxies. In the case at hand, the organisation of an open, transparent, non-discriminatory and unconditional tender procedure could be seen as such a proxy. As stated in the Land Burgenland case: *"where a public authority proceeds to sell an undertaking belonging to it by way of an open, transparent and unconditional tender procedure, it can be presumed that the market price corresponds to the highest offer, provided that it is established, first, that the offer is binding and credible and, secondly, that the consideration*

([31]) Judgment in *France v Commission*, C-301/87, EU:C:1990:67, paragraph 41; judgment in *De Gezamenlijke Steenkolenmijnen v High Authority of the European Coal and Steel Community*, Case 30/59, EU:C:1961:2, paragraph 19; judgment in *France v Commission (Kimberly Clark)*, C-241/94, EU:C:1996:353, paragraph 34, judgment in *Fleuren Compost*, T-109/01, EU:T:2004:4, paragraph 53 and judgment in *Land Burgenland and Others v Commission*, C-214/12 P, C-215/12 P and C-223/12 P, EU:C:2013:682.

([32]) See for instance judgment in *Commission v EDF*, C-124/10 P, EU:C:2012:318, paragraph 90; judgment in *Banco Exterior de España*, C-387/92, EU:C:1994:100, paragraph 14, and judgment in *Italy v Commission*, C-6/97, EU:C:1999:251, paragraph 16.

([33]) For the application of the "*private vendor test*", see judgment in *Land Burgenland and Others v Commission*, cited above, EU:C:2013:682.

([34]) See, for instance, judgment in *Neue Maxhütte Stahlwerke and Lech-Stahlwerke v Commission*, T-2/96 and T-97/96, EU:T:1999:7, paragraph 104, and judgment in *Westdeutsche Landesbank Girozentrale and Land Nordrhein-Westfalen v Commission*, T-228/99 and T-233/99, ECR, EU:T:2003:57.

([35]) See for example, the Opinion of Advocate-General Jacobs in *Kingdom of Spain v Commission*, C-278/92, C-279/92 and C-280/92, EU:C:1994:112, paragraph 28. See also judgment in *Belgium v Commission*, 40/85, EU:C:1986:305, paragraph 13; judgment in *France v Commission*, C-301/87, cited above, paragraphs 39-40, and judgment in *Italy v Commission*, C-303/88, EU:C:1991:136, paragraph 24.

([36]) See judgment in *Land Burgenland and Others v Commission*, cited above.

([37]) See Case E-1/13 *Míla ehf. v EFTA Surveillance Authority* [2014] EFTA Ct. Rep. 4, paragraph 97 and judgment in *Land Burgenland and Others v Commission*, cited above, paragraph 94.

([38]) Available on the Authority's website at: http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/.

([39]) Judgment in *SIC v Commission*, T-442/03, EU:T:2008:228 paragraph 147. By analogy, see judgment in *Matra v Commission*, C-225/91, EU:C:1993:239, paragraph 44.

of economic factors other than the price is not justified."([40]) In the Authority's view, the same principle applies in the case of leasing of assets. A private operator leasing his assets would normally try to obtain the best offer with an emphasis on price, and, for example, not consider elements that would relate to the intended use of such assets, unless they might affect the value of the assets after the lease period. Therefore, assuming that the said pre-conditions are met, it can be presumed that the market price is the highest price which a private operator acting under normal competitive conditions is ready to pay for the use of the assets in question.([41])

53) It follows from the above that a conditional sale or lease of assets may involve state aid, even when it is effected through a competitive procedure. This occurs when obligations imposed on the buyer result in a lower price. The kind of obligations which have such an effect are those that are imposed for the pursuit of public policy objectives, and thus make operations more costly. Such obligations would normally not be imposed by a private operator because they reduce the maximum amount of revenue that can be obtained from the sale or lease of the assets.([42])

54) It has been confirmed that no public tendering was initiated regarding the area in question. Additionally, an independent evaluation has not been performed. The City of Reykjavík stated that the rental fee was determined in line with other rental fees in the area, the previous agreement between SR and ÍG, and the tasks ÍG undertook.

55) The City has stated that there are several issues that affect the market rental price for the Gufunes area. Firstly, the structures were in poor shape, some tenants were not paying rent and there had been accumulation of scrap which needed clean-up. Secondly, uncertainty has reigned concerning the zoning plans for the Gufunes area. Industrial activity is retreating in the area according to previous and current Municipal Plans and it is therefore impossible for the City to conclude a long term rental agreement for the property. Thirdly, ÍG has the obligation to return part of the land upon request upon 12 months' notice.

56) Whereas the rental price is known, the value of the services provided by ÍG are uncertain. Moreover, it is not clear how ÍG's rental income affects the rental price. It is therefore challenging to determine the total value of the agreements and whether they are set at a market price. This raises difficulties determining whether the agreements are in line with the private vendor principle.

57) The competitors of ÍG were not able to negotiate as to the rent or the services that the City of Reykjavík considered needed in the area. It is possible that ÍG was the only party that could or would have been interested in negotiating the above mentioned agreements, but due to the lack of a call of interest or a tender this cannot be confirmed. However, it is clear that other parties were later interested in the area. Moreover, it is also likely that other operators would have been interested in delivering the services entrusted to ÍG, if they had been tendered out, and it cannot be ruled out that they could have delivered those services at a lesser cost.

58) Furthermore, the Authority notes that it stated in the case of *Haslemoen Leir*,([43]) that when deciding on how to take account of a price reduction resulting from a new obligation on a buyer of a land where a municipality was the seller: *"[...] in the absence of any supporting documentation as to the economic impact of this obligation, i.e. the possible loss for Haslemoen AS in not being able to lease out that building for one year, the Authority cannot accept any price reducing effect as such"*.([44])

59) Bearing in mind that the rental charge was not determined on the basis of a tender nor by means of an *ex ante* evaluation of an independent expert, especially since there are several factors of uncertainty in this case, it cannot be excluded that an advantage may have been granted in favour of ÍG.

([40]) See judgment in *Land Burgenland v European Commission*, cited above, paragraph 94.
([41]) See for example judgment in *Banks,* C-390/98, EU:C:2001:456, paragraph 77 and judgment in *Germany v Commission*, C-277/00, EU:C:2004:238, paragraph 80.
([42]) Case E-1/13 *Míla ehf. v EFTA Surveillance Authority*, cited above, paragraph 99.
([43]) Decision 090/12/COL EFTA Surveillance Authority Decision of 15 March 2012 on the sale of certain buildings at the Inner Camp at Haslemoen Leir. Available at: http://www.eftasurv.int/media/decisions/90-12-COL.pdf.
([44]) Ibid, paragraph 81.

60) Secondly, the aid measure must be selective, in that it must favour "*certain undertakings or the production of certain goods*". The City of Reykjavík only concluded a rental agreement for the lease of the Gufunes area with ÍG. No other companies had the opportunity to negotiate with the City for the lease of the land and the properties. In light of the above, the Authority preliminarily concludes that the measure appears to be selective.

1.4. Distortion of competition and effect on trade between Contracting Parties

61) The measure must be liable to distort competition and affect trade between the Contracting Parties to the EEA Agreement to be considered state aid within the meaning of Article 61(1) of the EEA Agreement.

62) According to settled case-law, it is not necessary to establish that the aid has a real effect on trade between the Contracting Parties to the EEA Agreement and that competition is actually being distorted, but only to examine whether the aid is liable to affect such trade and distort competition. ([45]) Furthermore, it is not necessary that the aid beneficiary itself is involved in intra-EEA trade. Even a public subsidy granted to an undertaking, which provides only local or regional services and does not provide any services outside its state of origin, may nonetheless have an effect on trade if such internal activity can be increased or maintained as a result of the aid, with the consequence that the opportunities for undertakings established in other Contracting Parties are reduced.([46])

63) Furthermore, when aid granted by an EFTA State strengthens the position of an undertaking compared with other undertakings competing in intra-EEA trade, the latter must be regarded as influenced by that aid.([47])

64) With regard to the particulars of this case, and the waste collection industry, it should be recalled that the Authority has previously found that, *"the practice of tendering out waste collection means that undertakings from other EEA States may compete for contracts with other municipalities.* ([48]) *Furthermore, in practice, waste collection and processing is increasingly an international industry."*([49])

65) Any aid granted to ÍG, in the form of a discounted rent, would in theory have allowed the company to increase or at least maintain its activities as a result of the aid. The aid is thus liable to limit the opportunities for undertakings established in other Contracting Partie, whichs might have wanted to compete with ÍG on the Icelandic waste collection market.

66) In light of the foregoing considerations, the measure appears to be liable to distort competition and affect trade between the Contracting Parties.

1.5. Conclusion on the existence of state aid

67) With reference to the above considerations the Authority cannot, at this stage and based on its preliminary assessment, exclude that the measure under assessment may involve state aid within the meaning of Article 61(1) of the EEA Agreement. Under these conditions, it is thus necessary to consider whether the measure can be found to be compatible with the functioning of the EEA Agreement.

2. Procedural requirements

68) Pursuant to Article 1(3) of Part I of Protocol 3: "*the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. .... The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision*".

([45]) Case E-6/98 *The Government of Norway* v *EFTA Surveillance Authority* [1999] EFTA Ct. Rep. 76.
([46]) Judgment in *Libert and Others,* Joined cases C-197/11 and C-203/11, EU:C:2013:288, paragraphs 76-78.
([47]) Ibid, paragraph 141.
([48]) Judgment in *Altmark Trans and Regierungspräsidium Magdeburg*, C-280/00, EU:C:2003:415, paragraphs 78 and 79.
([49]) Decision 91/13/COL EFTA Surveillance Authority Decision of 27 February 2013 on the financing of municipal waste collectors [2013], paragraph 41. Available at: http://www.eftasurv.int/media/decisions/91-13-COL.pdf.

69) The Icelandic authorities did not notify to the Authority the rent of land and property to ÍG. Moreover, the Icelandic authorities have, by concluding agreements with ÍG for the rent of land and property, put the measure in effect before the Authority has adopted a final decision. The Authority therefore concludes that the Icelandic authorities have not respected their obligations pursuant to Article 1(3) of Part I of Protocol 3. The granting of any aid involved would therefore be unlawful.

3. Compatibility of the aid

70) Support measures caught by Article 61(1) of the EEA Agreement are generally incompatible with the functioning of the EEA Agreement, unless they qualify for a derogation under Article 61(2) or (3) or Article 59(2) of the EEA Agreement and are necessary, proportional and do not cause undue distortion of competition. The derogation in Article 61(2) of the EEA Agreement is, however, clearly not applicable to the aid in question, which is not designed to achieve any of the aims listed in this provision.

71) According to established case law, it is up to the Contracting Party concerned to invoke possible grounds of compatibility and to demonstrate that the conditions for such compatibility are met.([50])

72) The Icelandic authorities have not at this stage put forward any arguments demonstrating that the potential state aid involved could be considered compatible on the basis of Article 59(2) or 61(3) of the EEA.

73) Consequently, following its preliminary assessment, the Authority has doubts at this stage as to whether the agreements are compatible with the functioning of the EEA Agreement. The Authority therefore invites the Icelandic authorities to provide arguments and evidence to demonstrate that the lease could be considered to compatible on the basis of either Article 59(2) or Article 61(3)(c) of the EEA Agreement.

4. Conclusion

74) As set out above, the Authority has doubts as to whether the agreements concluded between the City of Reykjavík and ÍG concerning the lease of the Gufunes area constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

75) The Authority also has doubts as to whether the agreements in question are compatible with the functioning of the EEA Agreement.

76) Consequently, and in accordance with Articles 4(4) and 13(1) of Part II of Protocol 3, the Authority is obliged to open the formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3. The decision to open a formal investigation procedure is without prejudice to the final decision of the Authority, which may conclude that the measure in question is compatible with the functioning of the EEA Agreement.

77) The Authority, acting under the procedure laid down in Article 1(2) of Part I of Protocol 3, invites the Icelandic authorities to submit within one month from notification of this Decision, their comments and to provide all documents, information and data needed for the assessment of the measure in light of the state aid rules.

78) The Authority requests the Icelandic authorities to forward a copy of this decision to the potential aid recipient.

79) The Authority must remind the Icelandic authorities that, according to Article 14 of Part II of Protocol 3, any incompatible aid unlawfully granted to the beneficiaries will have to be recovered, unless (exceptionally) this recovery would be contrary to a general principle of EEA law

([50]) Judgment in *Italy* v *Commission,* C-372/97, EU:C:2004:234, paragraph 44.

HAS ADOPTED THIS DECISION:

Article 1

The formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3 is opened into the agreements concluded between the City of Reykjavík and Íslenska Gámafélagið concerning the lease of the Gufunes area.

Article 2

The Icelandic authorities are invited, pursuant to Article 6(1) of Part II of Protocol 3, to submit their comments on the opening of the formal investigation procedure, within one month from notification of this Decision.

Article 3

The Icelandic authorities are requested to provide, within one month from notification of this Decision, all documents, information and data needed for assessment of the compatibility of the aid measure.

Article 4

This Decision is addressed to Iceland.

Article 5

Only the English language version of this decision is authentic.

Done in Brussels, on 30 June 2015

For the EFTA Surveillance Authority

Oda Helen Sletnes
President

Frank Büchel
College Member

EU-ORGANER

KOMMISJONEN

Tilbakekalling av forhåndsmelding om en foretakssammenslutning **2015/EØS/57/03**

(Sak M.7419 – TeliaSonera/Telenor/JV)

Rådsforordning (EF) nr. 139/2004

Kommisjonen mottok 27. februar 2015 forhåndsmelding om en planlagt foretakssammenslutning mellom foretakene TeliaSonera AB og Telenor ASA. Partene underrettet 11. september 2015 Kommisjonen om at de trekker tilbake forhåndsmeldingen.

Forhåndsmelding om en foretakssammenslutning **2015/EØS/57/04**

(Sak M.7612 – Hutchison 3G UK/Telefónica UK)

1. Kommisjonen mottok 11. september 2015 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004([1]) om en planlagt foretakssammenslutning der foretaket CK Hutchison Holdings Limited (”CKHH”, Hongkong, Kina) ved kjøp av aksjer overtar kontroll, gjennom sitt indirekte datterselskap Hutchison 3G UK Investments Limited (”Three”, Det forente kongerike), i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b), over hele foretaket Telefónica Europe Plc (”O2 UK”, Det forente kongerike).

2. De berørte foretakene har virksomhet på følgende områder:

   – CKHH: multinasjonalt konsern med hovedkontor i Hongkong og børsnotert på Hongkong-børsen (Hong Kong Stock Exchange Limited). CKHH har sin hovedvirksomhet på fem områder: havner og tilknyttede tjenester, detaljhandel, infrastruktur, energi og telekommunikasjon.

   – Three: virksomhet i Det forente kongerike og leverandør av mobile teletjenester til sluttkunder, opprinnelses- og termineringstjenester knyttet til mobilanrop og engrosadgangstjenester, internasjonal roaming og andre mobile teletjenester.

   – O2 UK: virksomhet i Det forente kongerike og leverandør av mobile teletjenester til sluttkunder, opprinnelses- og termineringstjenester knyttet til mobilanrop og engrosadgangstjenester, internasjonal roaming og andre mobile teletjenester.

3. Etter en foreløpig undersøkelse finner Kommisjonen at den meldte foretakssammenslutningen kan komme inn under virkeområdet for fusjonsforordningen. Det er imidlertid ikke gjort endelig vedtak på dette punkt.

4. Kommisjonen innbyr berørt tredjemann til å framlegge eventuelle merknader til den planlagte foretakssammenslutningen for Kommisjonen.

   Merknadene må være Kommisjonen i hende senest ti dager etter at dette ble offentliggjort i EUT C 310 av 19.9.2015. Merknadene sendes til Kommisjonen, med referanse M.7612 – Hutchison 3G UK/Telefónica UK, per faks (+32 (0)2 296 43 01), per e-post (COMP-MERGER-REGISTRY@ec.europa.eu) eller per post til følgende adresse:

   European Commission
   Directorate-General for Competition
   Merger Registry
   B-1049 Brussels

([1]) EUT L 24 av 29.1.2004, s. 1 (”Fusjonsforordningen”).

Forhåndsmelding om en foretakssammenslutning **2015/EØS/57/05**

(Sak M.7688 – Intel/Altera)

1. Kommisjonen mottok 9. september 2015 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004([1]) om en planlagt foretakssammenslutning der foretaket Intel Corporation (”Intel”, USA) ved kjøp av aksjer overtar kontroll i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b) over foretaket Altera Corporation (”Altera”, USA).

2. De berørte foretakene har virksomhet på følgende områder:

   – Intel: utvikling og framstilling av data- og kommunikasjonskomponenter som mikroprosessorer, datachips, hovedkort, trådløse og trådbaserte tilkoblingsprodukter samt plattformer som inneholder slike komponenter.

   – Altera: utvikling og salg av ulike halvlederprodukter, f.eks. programmerbare logiske komponenter (PLD), en produktkategori som omfatter både feltprogrammerbare grindmatriser (FPGA) og komplekse programmerbare logiske komponenter (CPLD).

3. Etter en foreløpig undersøkelse finner Kommisjonen at den meldte foretakssammenslutningen kan komme inn under virkeområdet for fusjonsforordningen. Det er imidlertid ikke gjort endelig vedtak på dette punkt.

4. Kommisjonen innbyr berørt tredjemann til å framlegge eventuelle merknader til den planlagte foretakssammenslutningen for Kommisjonen.

   Merknadene må være Kommisjonen i hende senest ti dager etter at dette ble offentliggjort i EUT C 310 av 19.9.2015. Merknadene sendes til Kommisjonen, med referanse M.7688 – Intel/Altera, per faks (+32 (0)2 296 43 01), per e-post (COMP-MERGER-REGISTRY@ec.europa.eu) eller per post til følgende adresse:

   European Commission
   Directorate-General for Competition
   Merger Registry
   B-1049 Brussels

([1]) EUT L 24 av 29.1.2004, s. 1 (”Fusjonsforordningen”).

Forhåndsmelding om en foretakssammenslutning **2015/EØS/57/06**

(Sak M.7708 – ALSO/PCF)

1. Kommisjonen mottok 18. september 2015 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004([1]) om en planlagt foretakssammenslutning der foretaket ALSO Holding AG (Sveits), kontrollert av foretaket Droege International Group AG (Tyskland), ved kjøp av aksjer overtar kontroll i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b) over hele foretaket PC Factory S.A. (Polen).

2. De berørte foretakene har virksomhet på følgende områder:

   – ALSO Holding AG: grossist- og logistikkvirksomhet med produkter, løsninger og tjenester innen IT, kommunikasjon og forbrukerelektronikk i Europa.

   – Droege International Group AG: konsulenttjenester innen ledelse og organisering, med majoritetseierskap i foretak innen legemidler, sikkerhetssystemer, helse, personalforvaltning og IKT-distribusjon.

   – PC Factory S.A.: grossistvirksomhet med produkter innen IT, kommunikasjon og forbruker-elektronikk, hovedsakelig i Polen.

3. Etter en foreløpig undersøkelse finner Kommisjonen at den meldte foretakssammenslutningen kan komme inn under virkeområdet for fusjonsforordningen. Det er imidlertid ikke gjort endelig vedtak på dette punkt.

4. Kommisjonen innbyr berørt tredjemann til å framlegge eventuelle merknader til den planlagte foretakssammenslutningen for Kommisjonen.

   Merknadene må være Kommisjonen i hende senest ti dager etter at dette ble offentliggjort i EUT C 319 av 26.9.2015. Merknadene sendes til Kommisjonen, med referanse M.7708 – ALSO/PCF, per faks (+32 (0)2 296 43 01), per e-post (COMP-MERGER-REGISTRY@ec.europa.eu) eller per post til følgende adresse:

   European Commission
   Directorate-General for Competition
   Merger Registry
   B-1049 Brussels

([1]) EUT L 24 av 29.1.2004, s. 1 (”Fusjonsforordningen”).

Forhåndsmelding om en foretakssammenslutning **2015/EØS/57/07**

(Sak M.7715 – BNP Paribas/GE Capital (European Fleet Leasing Business))

Sak som kan bli behandlet etter forenklet framgangsmåte

1. Kommisjonen mottok 14. september 2015 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004([1]) om en planlagt foretakssammenslutning der foretaket BNP Paribas SA (”BNP Paribas”, Frankrike), gjennom sitt heleide datterforetak Arval Service Lease SA, ved kjøp av sikkerhet og aktiva overtar kontroll i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b) over General Electric Capital Corporations (”GE”, USA) europeiske leasing av kjøretøypark (”Målforetaket”).

2. De berørte foretakene har virksomhet på følgende områder:

   – BNP Paribas: morselskapet til BNP Paribas Group. Gruppens virksomhet kan deles inn i to hovedgreiner: i) banktjenester til privatkunder og detaljhandelstjenester, og ii) banktjenester til foretakskunder og institusjoner. Innen den første grenen, i tillegg til sin virksomhet innen banktjenester til privatkunder, leverer foretaket også andre tjenester som kjøretøyparkleasing og forvaltningstjenester via Arval Service Lease SA.

   – Målforetaket: virksomt innen langtidsleasing av kjøretøyparker samt forvaltningstjenester i 12 europeiske land.

3. Etter en foreløpig undersøkelse finner Kommisjonen at den meldte foretakssammenslutningen kan komme inn under virkeområdet for fusjonsforordningen. Det er imidlertid ikke gjort endelig vedtak på dette punkt. Det gjøres oppmerksom på at denne saken kan bli behandlet etter framgangsmåten fastsatt i kommisjonskunngjøringen om forenklet framgangsmåte for behandling av visse foretakssammenslutninger etter rådsforordning (EF) nr. 139/2004.([2])

4. Kommisjonen innbyr berørt tredjemann til å framlegge eventuelle merknader til den planlagte foretakssammenslutningen for Kommisjonen.

   Merknadene må være Kommisjonen i hende senest ti dager etter at dette ble offentliggjort i EUT C 312 av 22.9.2015. Merknadene sendes til Kommisjonen, med referanse M.7715 – BNP Paribas/GE Capital (European Fleet Leasing Business), per faks (+32 (0)2 296 43 01), per e-post (COMP-MERGER-REGISTRY@ec.europa.eu) eller per post til følgende adresse:

   European Commission
   Directorate-General for Competition
   Merger Registry
   B-1049 Brussels

([1]) EUT L 24 av 29.1.2004, s. 1 (”Fusjonsforordningen”).
([2]) EUT C 366 av 14.12.2013, s. 5.

Forhåndsmelding om en foretakssammenslutning **2015/EØS/57/08**

(Sak M.7747 – PGA/MSA)

1. Kommisjonen mottok 11. september 2015 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004([1]) om en planlagt foretakssammenslutning der foretaket PGA Motors SAS (”PGA”, Frankrike), kontrollert av Volkswagen AG (”VW”, Tyskland) ved kjøp av aksjer overtar kontroll i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b) over hele foretaket MSA Groupe SAS (”MSA”, Frankrike).

2. De berørte foretakene har virksomhet på følgende områder:

   – PGA: distribusjon av personbiler og lette nyttekjøretøyer fra ulike produsenter, distribusjon av reservedeler og reparasjonstjenester for disse kjøretøyene og andre kjøretøytilknyttede tjenester i Frankrike.

   – VW: verdensomspennende virksomhet knyttet til utvikling, produksjon, markedsføring og salg av personbiler, lette nyttekjøretøyer og andre kjøretøy samt reservedeler og kjøretøytilknyttede tjenester.

   – MSA: distribusjon av personbiler og lette nyttekjøretøyer samt reservedeler og andre kjøretøytilknyttede tjenester i ni departementer i Frankrike.

3. Etter en foreløpig undersøkelse finner Kommisjonen at den meldte foretakssammenslutningen kan komme inn under virkeområdet for fusjonsforordningen. Det er imidlertid ikke gjort endelig vedtak på dette punkt.

4. Kommisjonen innbyr berørt tredjemann til å framlegge eventuelle merknader til den planlagte foretakssammenslutningen for Kommisjonen.

   Merknadene må være Kommisjonen i hende senest ti dager etter at dette ble offentliggjort i EUT C 310 av 19.9.2015. Merknadene sendes til Kommisjonen, med referanse M.7747 – PGA/MSA, per faks (+32 (0)2 296 43 01), per e-post (COMP-MERGER-REGISTRY@ec.europa.eu) eller per post til følgende adresse:

   European Commission
   Directorate-General for Competition
   Merger Registry
   B-1049 Brussels

([1]) EUT L 24 av 29.1.2004, s. 1 (”Fusjonsforordningen”).

Forhåndsmelding om en foretakssammenslutning **2015/EØS/57/09**

(Sak M.7768 – Exor/PartnerRe)

Sak som kan bli behandlet etter forenklet framgangsmåte

1. Kommisjonen mottok 11. september 2015 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004([1]) om en planlagt foretakssammenslutning der foretaket Exor S.p.A. ("Exor", Italia) ved kjøp av aksjer overtar kontroll i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b) over hele foretaket PartnerRe Ltd ("PartnerRe", Bermuda).

2. De berørte foretakene har virksomhet på følgende områder:

   – Exor: foretaket er notert på den italienske børsen (Borsa Italiana) og virksomheten er rettet mot langsiktige investeringer i ulike sektorer i EØS og USA, blant annet bilindustrien, der foretaket kontrollerer Fiat Chrysler Automobiles N.V. og CNH Industrial N.V, og i begrenset omfang i skadeforsikringsbransjen.

   – PartnerRe: foretaket er notert på New York-børsen og leverer hovedsakelig gjenforsikringer og i mer begrenset omfang visse spesielle forsikringstyper, innen blant annet luft- og romfart, energi, konstruksjon, sjøfart samt særlige skadeforsikringer og særlige eiendomsforsikringer i hele verden.

3. Etter en foreløpig undersøkelse finner Kommisjonen at den meldte foretakssammenslutningen kan komme inn under virkeområdet for fusjonsforordningen. Det er imidlertid ikke gjort endelig vedtak på dette punkt. Det gjøres oppmerksom på at denne saken kan bli behandlet etter framgangsmåten fastsatt i kommisjonskunngjøringen om forenklet framgangsmåte for behandling av visse foretakssammenslutninger etter rådsforordning (EF) nr. 139/2004.([2])

4. Kommisjonen innbyr berørt tredjemann til å framlegge eventuelle merknader til den planlagte foretakssammenslutningen for Kommisjonen.

   Merknadene må være Kommisjonen i hende senest ti dager etter at dette ble offentliggjort i EUT C 310 av 19.9.2015. Merknadene sendes til Kommisjonen, med referanse M.7768 – Exor/PartnerRe, per faks (+32 (0)2 296 43 01), per e-post (COMP-MERGER-REGISTRY@ec.europa.eu) eller per post til følgende adresse:

   European Commission
   Directorate-General for Competition
   Merger Registry
   B-1049 Brussels

([1]) EUT L 24 av 29.1.2004, s. 1 ("Fusjonsforordningen").
([2]) EUT C 366 av 14.12.2013, s. 5.

Forhåndsmelding om en foretakssammenslutning **2015/EØS/57/10**

(Sak M.7769 – Gilde Fund IV/Parcom Fund IV/Koninklijke Ten Cate)

Sak som kan bli behandlet etter forenklet framgangsmåte

1. Kommisjonen mottok 14. september 2015 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004([1]) om en planlagt foretakssammenslutning der foretaket Gilde Buy-Out Fund IV C.V. og foretaket Gilde Buy Out-Fund IV Coöperatief U.A. (Nederland, sammen kalt "Gilde Fund IV") og foretaket Parcom Buy-Out Fund IV B.V. ("Parcom Fund IV", Nederland) i fellesskap overtar kontroll i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b) og artikkel 3 nr. 4 over foretaket Koninklijke Ten Cate N.V. (Nederland).

2. De berørte foretakene har virksomhet på følgende områder:

   – Gilde Fund IV: uavhengige investeringer i mellomstore foretak med en portefølje som spenner over flere ulike bransjer hovedsakelig i Benelux-landene, Tyskland, Sveits og Østerrike.

   – Parcom Fund IV: risikokapitalinvesteringer hovedsakelig i mellomstore foretak i Benelux-landene.

   – Koninklijke Ten Cate N.V.: leverandør av halvfabrikat og komponenter på området tekniske tekstiler og kompositttmaterialer, geosyntetiske materialer og gressbaner.

3. Etter en foreløpig undersøkelse finner Kommisjonen at den meldte foretakssammenslutningen kan komme inn under virkeområdet for fusjonsforordningen. Det er imidlertid ikke gjort endelig vedtak på dette punkt. Det gjøres oppmerksom på at denne saken kan bli behandlet etter framgangsmåten fastsatt i kommisjonskunngjøringen om forenklet framgangsmåte for behandling av visse foretakssammenslutninger etter rådsforordning (EF) nr. 139/2004.([2])

4. Kommisjonen innbyr berørt tredjemann til å framlegge eventuelle merknader til den planlagte foretakssammenslutningen for Kommisjonen.

   Merknadene må være Kommisjonen i hende senest ti dager etter at dette ble offentliggjort i EUT C 314 av 23.9.2015. Merknadene sendes til Kommisjonen, med referanse M.7769 – Gilde Fund IV/Parcom Fund IV/Koninklijke Ten Cate, per faks (+32 (0)2 296 43 01), per e-post (COMP-MERGER-REGISTRY@ec.europa.eu) eller per post til følgende adresse:

   European Commission
   Directorate-General for Competition
   Merger Registry
   B-1049 Brussels

([1]) EUT L 24 av 29.1.2004, s. 1 ("Fusjonsforordningen").
([2]) EUT C 366 av 14.12.2013, s. 5.

Forhåndsmelding om en foretakssammenslutning **2015/EØS/57/11**

(Sak M.7770 – Vitol/VTTI)

Sak som kan bli behandlet etter forenklet framgangsmåte

1. Kommisjonen mottok 14. september 2015 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004([1]) om en planlagt foretakssammenslutning der foretaket Vitol Holding B.V. ("Vitol", Nederland), ved overtakelse av 50 % av aksjene i foretaket VTTI B.V. ("VTTI", Nederland) gjennom sitt investeringsverktøy VIP Terminals Finance B.V., overtar kontroll i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b) over hele foretaket VTTI, som det i dag kontrollerer delvis.

2. De berørte foretakene har virksomhet på følgende områder:

   – Vitol: handel med råvarer og finansielle instrumenter tilknyttet olje- og gassektoren.

   – VTTI: eierskap og drift av terminaler for lagring av oljeprodukter.

3. Etter en foreløpig undersøkelse finner Kommisjonen at den meldte foretakssammenslutningen kan komme inn under virkeområdet for fusjonsforordningen. Det er imidlertid ikke gjort endelig vedtak på dette punkt. Det gjøres oppmerksom på at denne saken kan bli behandlet etter framgangsmåten fastsatt i kommisjonskunngjøringen om forenklet framgangsmåte for behandling av visse foretakssammenslutninger etter rådsforordning (EF) nr. 139/2004.([2])

4. Kommisjonen innbyr berørt tredjemann til å framlegge eventuelle merknader til den planlagte foretakssammenslutningen for Kommisjonen.

   Merknadene må være Kommisjonen i hende senest ti dager etter at dette ble offentliggjort i EUT C 312 av 22.9.2015. Merknadene sendes til Kommisjonen, med referanse M.7770 – Vitol/VTTI, per faks (+32 (0)2 296 43 01), per e-post (COMP-MERGER-REGISTRY@ec.europa.eu) eller per post til følgende adresse:

   European Commission
   Directorate-General for Competition
   Merger Registry
   B-1049 Brussels

([1]) EUT L 24 av 29.1.2004, s. 1 ("Fusjonsforordningen").
([2]) EUT C 366 av 14.12.2013, s. 5.

Forhåndsmelding om en foretakssammenslutning **2015/EØS/57/12**

(Sak M.7771 – Parcom/Pon/Imtech Marine/JV)

1. Kommisjonen mottok 14. september 2015 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004([1]) om en planlagt foretakssammenslutning der foretaket Parcom Capital Management B.V. (”Parcom”, Nederland) og foretaket Pon Holdings B.V. (”Pon”, Nederland) ved kjøp av aksjer i fellesskap overtar kontroll i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b) over foretaket Imtech Marine Group BV (”Imtech Marine”, Nederland).

2. De berørte foretakene har virksomhet på følgende områder:

   – Parcom: oppkjøpsfond.

   – Pon: leverandør av diverse produkter og tjenester, herunder elektroteknologi til sjøfartsindustrien.

   – Imtech Marine: leverandør av konsulenttjenester innen elektroteknologi til sjøfartsindustrien.

3. Etter en foreløpig undersøkelse finner Kommisjonen at den meldte foretakssammenslutningen kan komme inn under virkeområdet for fusjonsforordningen. Det er imidlertid ikke gjort endelig vedtak på dette punkt.

4. Kommisjonen innbyr berørt tredjemann til å framlegge eventuelle merknader til den planlagte foretakssammenslutningen for Kommisjonen.

   Merknadene må være Kommisjonen i hende senest ti dager etter at dette ble offentliggjort i EUT C 312 av 22.9.2015. Merknadene sendes til Kommisjonen, med referanse M.7771 – Parcom/Pon/Imtech Marine/JV, per faks (+32 (0)2 296 43 01), per e-post (COMP-MERGER-REGISTRY@ec.europa.eu) eller per post til følgende adresse:

   European Commission
   Directorate-General for Competition
   Merger Registry
   B-1049 Brussels

([1]) EUT L 24 av 29.1.2004, s. 1 (”Fusjonsforordningen”).

Forhåndsmelding om en foretakssammenslutning **2015/EØS/57/13**

(Sak M.7783 – Hellman & Friedman/Securitas Direct Group)

Sak som kan bli behandlet etter forenklet framgangsmåte

1. Kommisjonen mottok 16. september 2015 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004([1]) om en planlagt foretakssammenslutning der foretaket Hellman & Friedman Capital Partners VII, L.P. med tilknyttede og parallelle fond (samlet kalt "HFCP VII", USA) ved kjøp av aksjer overtar kontroll i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b) over hele foretaket Dream Luxco SCA med sine direkte og indirekte datterforetak (samlet kalt "Securitas Direct", Sverige) og sitt forvaltningsforetaket Dream G.P. S.à.r.l.

2. De berørte foretakene har virksomhet på følgende områder:

   – HFCP VII: oppkjøpsfond.

   – Securitas Direct: levering av sikkerhetstjenester.

3. Etter en foreløpig undersøkelse finner Kommisjonen at den meldte foretakssammenslutningen kan komme inn under virkeområdet for fusjonsforordningen. Det er imidlertid ikke gjort endelig vedtak på dette punkt. Det gjøres oppmerksom på at denne saken kan bli behandlet etter framgangsmåten fastsatt i kommisjonskunngjøringen om forenklet framgangsmåte for behandling av visse foretakssammenslutninger etter rådsforordning (EF) nr. 139/2004.([2])

4. Kommisjonen innbyr berørt tredjemann til å framlegge eventuelle merknader til den planlagte foretakssammenslutningen for Kommisjonen.

   Merknadene må være Kommisjonen i hende senest ti dager etter at dette ble offentliggjort i EUT C 316 av 24.9.2015. Merknadene sendes til Kommisjonen, med referanse M.7783 – Hellman & Friedman/Securitas Direct Group, per faks (+32 (0)2 296 43 01), per e-post (COMP-MERGER-REGISTRY@ec.europa.eu) eller per post til følgende adresse:

   European Commission
   Directorate-General for Competition
   Merger Registry
   B-1049 Brussels

([1]) EUT L 24 av 29.1.2004, s. 1 ("Fusjonsforordningen").
([2]) EUT C 366 av 14.12.2013, s. 5.

Melding fra den polske regjering vedrørende europaparlaments- og rådsdirektiv 94/22/EF om vilkårene for tildeling og bruk av tillatelser til å drive leting etter og utvinning av hydrokarboner i Zakrzewo-området **2015/EØS/57/14**

Anbudsprosedyren gjelder tildeling av tillatelse til utvinning av naturgass fra Zakrzewo-forekomstene i regionen Wielkopolskie:

Navn	Blokk nr.	1992 koordinatsystem	
		X	Y
Zakrzewo	del av konsesjonsblokk nr. 266	424 724,18	353 344,85
		425 538,75	353 401,38
		426 332,07	353 465,92
		426 674,24	353 485,66
		426 630,43	353 919,68
		426 593,55	354 168,91
		426 510,03	354 492,49
		426 397,50	354 772,59
		426 272,63	354 988,00
		426 143,64	355 132,03
		426 017,58	355 238,30
		425 808,12	355 332,77
		425 605,18	355 350,77
		425 378,95	355 329,30
		425 118,69	355 222,88
		424 536,28	354 819,71
		423 909,40	354 276,98
		423 525,08	353 823,41
		423 065,92	353 212,85

Søknader må dekke området over.

Søknader om tillatelser skal inngis til det polske miljøverndepartementet senest kl. 12.00 midt på dagen sentraleuropeisk tid den siste dagen av 90-dagersperioden som starter dagen etter at denne meldingen ble kunngjort i *Den europeiske unions tidende* (EUT C 303 av 15.9.2015, s. 4).

Mottatte søknader vil bli vurdert ut fra følgende kriterier:

a) foreslått teknologi (40 %),
b) søkerens tekniske og økonomiske ressurser (50 %),
c) foreslått avgift for etablering av bruksrettigheter til gruvedrift (10 %).

Minsteavgiften for etablering av bruksrettigheter til gruvedrift for Zakrzewo-området er:

1. ved leting etter naturgassforekomster:

   – i en treårig grunnperiode: PLN 10 000,00 per år,
   – for det fjerde og femte året av en avtale om bruksrettigheter til gruvedrift: PLN 10 000,00 per år,
   – for det sjette og etterfølgende år av en avtale om bruksrettigheter til gruvedrift: PLN 10 000,00 per år,

2. ved utvinning av naturgassforekomster:

   – i en treårig grunnperiode: PLN 20 000,00 per år,
   – for det fjerde og femte året av en avtale om bruksrettigheter til gruvedrift: PLN 20 000,00 per år,
   – for det sjette og etterfølgende år av en avtale om bruksrettigheter til gruvedrift: PLN 20 000,00 per år,

3. ved leting etter og utvinning av naturgassforekomster:

   – i en femårig grunnperiode: PLN 30 000,00 per år,
   – for det sjette, sjuende og åttende året av en avtale om bruksrettigheter til gruvedrift: PLN 30 000,00 per år,
   – for det niende og etterfølgende år av en avtale om bruksrettigheter til gruvedrift: PLN 30 000,00 per år. Behandlingen av søknadene vil være ferdigstilt innen seks måneder etter søknadsfristens utløp. Søkerne vil bli informert skriftlig om resultatet av søknadsbehandlingen.

Søknadene skal skrives på polsk.

Bevilgende myndighet vil gi tillatelser til leting etter og/eller utvinning av metan i kullag til den utvalgte søkeren etter å ha innhentet uttalelse fra vedkommende myndigheter, og vil inngå en avtale om bruksrettigheter til gruvedrift med denne søkeren.

For å kunne utøve virksomhet som omfatter leting etter og/eller utvinning av hydrokarbonforekomster i Polen, må aktøren inneha både bruksrettigheter til gruvedrift og en tillatelse.

Søknadene sendes til følgende adresse:

Ministry of the Environment
Departament Geologii i Koncesji Geologicznych [Geology and Geological Concessions Department]
Wawelska 52/54
00-922 Warsaw
Poland

Ytterligere opplysninger kan fås på følgende steder:

– Det polske miljøverndepartementets nettsted: www.mos.gov.pl
– Geology and Geological Concessions Department
  Ministry of the Environment
  Wawelska 52/54
  00-922 Warsaw
  Poland

  Tlf.: +48 223692449, faks: +48 223692460
  E-post: dgikg@mos.gov.pl