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EFTIRLITSSTOFNUN EFTA

Ákvörðun nr. 085/19/COL frá 4. desember 2019 um að hefja formlega rannsókn á mögulegri ríkisaðstoð við Remiks Group í tengslum við meðhöndlun úrgangs (mál 84370) **2020/EES/8/01**

Auglýst eftir athugasemdum, í samræmi við ákvæði 2. mgr. 1. gr. I. hluta bókunar 3 við samning milli EFTA-ríkjanna um stofnun eftirlitsstofnunar og dómstóls, sem varðar ríkisaðstoð

Eftirlitsstofnun EFTA tilkynnti norskum stjórnvöldum með ákvörðuninni sem vísað er til að ofan og sem birt er á upprunalegu, fullgiltu tungumáli á eftir þessu ágripi, um ákvörðun sína um að hefja málsmeðferð skv. 2. mgr. 1. gr. I. hluta bókunar 3 við samning milli EFTA-ríkjanna um stofnun eftirlitsstofnunar og dómstóls, að því er varðar ofangreinda ráðstöfun.

EFTA Surveillance Authority

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Athugasemdum sem berast verður komið á framfæri við norsk stjórnvöld. Áhugaaðilum sem leggja fram athugasemdir er heimilt að óska nafnleyndar og skulu slíkar óskir vera skriflegar og rökstuddar.

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Ágrip

Málsmeðferð

1) Eftirlitsstofnun EFTA barst kvörtun frá viðskiptastofnuninni „Norsk Industri“ 16. ágúst 2016.

2) Eftirlitsstofnuninni bárust samkvæmt beiðni þar að lútandi upplýsingar frá norskum stjórnvöldum 5. október 2016, 28. febrúar, 20. mars., 22. ágúst, 31. október og 20. nóvember 2017 og 5. mars 2018.

Lýsing á ráðstöfununum

3) Meintir aðstoðarþegar eru Remiks Miljøpark AS, Remiks Næring AS og Remiks Produksjon AS.

4) Sveitarfélagið Tromsø á 99,99% hlut í Remiks Miljøpark AS. Remiks Miljøpark AS fer með 100% eignarhlut í Remiks Næring AS og Remiks Produksjon AS.

5) Remiks Miljøpark AS fer einnig með 100% eignarhlut í Remiks Huholdning AS. Fyrirtækið annast hins vegar alfarið þjónustu fyrir sveitarfélagið Tromsø og starfar ekki á markaði. Kaup Remiks Husholdning AS tilreiknast sveitarfélaginu.

6) Sveitarfélagið Tromsø keypti úrgangssöfnunarþjónustu af Remiks Næring AS vegna iðnaðarúrgangs frá ársbyrjun 2010 til 1. febrúar 2017.

7) Sveitarfélagið Tromsø hefur, á grundvelli óbeinna yfirráða sinna, falið Remiks Husholdning AS að hirða heimilissorp í sveitarfélaginu Tromsø, samfellt frá ársbyrjun 2010. Frá 1. febrúar hefur sveitarfélagið Tromsø einnig falið Remiks Husholdning AS hirða iðnaðarúrgang sveitarfélagsins. Remiks Husholdning AS annast þessa þjónustu fyrir hönd sveitarfélagsins á grundvelli útlagðs kostnaðar, sem þýðir að fyrirtækið fær greitt sem samsvarar öllum kostnaði, að undanskildum hagnaði. Remiks Husholdning AS annast söfnun úrgangsins en kaupir nauðsynlega meðhöndlunarþjónustu af systurfyrirtæki sínu Remiks Produksjon AS.

8) Árin 2010 og 2012 yfirfærði sveitarfélagið Tromsø hlutafé, skuldir, lausafé og fasteignir til móðurfyrirtækisins Remiks Miljøpark AS, í tengslum við stofnun Remiks Group.

9) Ákvörðunin varðar þrennar ráðstafanir: i) kaup sveitarfélagsins Tromsø á úrgangssöfnunarþjónustu af Remiks Næring AS, ii) kaup Remiks Husholdning AS á úrgangsmeðhöndlunarþjónustu af Remiks Produksjon AS, iii) og viðskipti sveitarfélagsins Tromsø og Remiks Group 2010 og 2012.

Mat á ráðstöfunum

10) Eftirlitsstofnun EFTA hefur efasemdir um, hvað varðar ráðstafanir i) og ii) að framan, að sveitarfélagið Tromsø og Remiks Husholdning AS hafi, hvort um sig, greitt markaðsverð fyrir keypta þjónustu. Að því er varðar ráðstöfun iii) efast eftirlitsstofnunin um að viðskipti sveitarfélagsins Tromsø og Remiks Group hafi farið fram á markaðskjörum, í samræmi við meginregluna um rekstraraðila í markaðshagkerfi.

11) Ef ráðstafanirnar fela í sér ríkisaðstoð, hefur sú skylda skv. 3. mgr. 1. gr. I. hluta bókunar 3 við samninginn milli EFTA-ríkjanna um stofnun eftirlitsstofnunar og dómstóls, að tilkynna aðstoðina til eftirlitsstofnunarinnar áður en hún kemur til framkvæmda, ekki verið virt. Slík ríkisaðstoð yrði því talin ólögmæt.

12) Norsk stjórnvöld hafa ekki fært fram rök sem renna stoðum undir að ráðstafanirnar, að því marki sem þær fela í sér ríkisaðstoð, geti talist samrýmast framkvæmd EES-samningsins. Því efast Eftirlitsstofnun EFTA um að allar þrjár ráðstafanirnar geti talist í samræmi við framkvæmd samningsins.

Brussels, 4 December 2019

Case No: 84370

Document No: 1087621

Decision No: 085/19/COL

Ministry of Trade, Industry and Fisheries

P.O. Box 8090 Dep

0032 Oslo

Norway

Subject: Waste handling in Tromsø

1. Summary

(1) The EFTA Surveillance Authority (the 'Authority') wishes to inform Norway that, having assessed a complaint relating to (i) Tromsø municipality's purchase of waste collection services from Remiks Næring AS, (ii) Remiks Husholdning AS' purchase of waste treatment services from Remiks Produksjon AS, and (iii) transactions from Tromsø municipality to the Remiks Group in 2010 and 2012 (the 'measures'), the Authority has doubts as to whether the measures constitute state aid within the meaning of Article 61(1) of the EEA Agreement, and as to the compatibility of the measures with the EEA Agreement. Therefore, the Authority is required to open a formal investigation procedure ([1]).

(2) The complainant has also submitted a separate complaint about alleged violations of the public procurement rules. This decision, however, concerns the state aid complaint only, and remains without prejudice to the ongoing investigation concerning public procurement handled by the Authority's Internal Market Affairs Directorate ([2]).

(3) The Authority has based its decision on the following considerations.

2. Procedure

(4) By letter dated 16 August 2016, Norsk Industri, the Federation of Norwegian Industries, (the 'complainant') lodged a complaint against the measures ([3]).

(5) The Norwegian authorities submitted comments to the complaint on 5 October 2016 ([4]). The Authority requested further information from the Norwegian authorities on 18 January 2017 ([5]), which was provided by letters dated 28 February ([6]) and 20 March 2017 ([7]).

(6) The Authority provided the complainant with a preliminary view on the complaint by letter dated 24 May 2017 ([8]). The Authority received further information from the complainant on 22 June 2017 ([9]), and from the Norwegian Authorities on 22 August 2017 ([10]).

([1]) Reference is made to Article 4(4) of Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.
([2]) Case No 78085.
([3]) Document No 814858.
([4]) Document No 821154.
([5]) Document No 840687.
([6]) Document No 844198.
([7]) Document No 848555.
([8]) Document No 854974.
([9]) Document No 862433.
([10]) Document No 870978.

(7) By letter dated 31 August 2017, the Authority requested further information from the Norwegian authorities ([11]). By letters dated 31 October and 20 November 2017, the Norwegian authorities replied to the information request ([12]).

(8) By letter dated 16 January 2018, the Authority requested further information from the Norwegian authorities ([13]), and the Norwegian authorities provided information by letter dated 5 March 2018 ([14]).

(9) The complainant sent additional information by emails of 14 December 2016; 15 September and 13 November 2017; and 12 January, 31 January and 22 May 2018 ([15]).

3. Background

3.1 Historical development

(10) In Norway, waste handling services are regulated by the Pollution Control Act ([16]). The Act makes a distinction between household waste, which is all waste from the municipalities' households, and industrial waste, which is the waste from public and private enterprises.

(11) Up until 2009, Tromsø municipality organised its waste management services in-house through municipal units and enterprises. In 2009, the municipal council decided to organise the municipality's waste management in a group of limited liability companies ([17]). This was done to put an "arm's length" between the municipality and the activities exposed to competition ([18]).

(12) In June 2009, the municipal council converted the municipal enterprise Tromsø Miljøpark KF ([19]), which had previously performed waste management services for Tromsø municipality, into Remiks Miljøpark AS ([20]). In December 2009, three subsidiaries were established under Remiks Miljøpark AS ([21]): Remiks Husholdning AS ('Remiks Husholdning'), Remiks Næring AS ('Remiks Næring') and Remiks Produksjon AS ('Remiks Produksjon'). Collectively the companies are referred to as the 'Remiks Group'.

3.2 Transactions involving the Remiks Group in 2010 and 2012

(13) On 23 June 2010, Tromsø municipal council made the formal decision to transfer the capital and liabilities that were left in the municipal enterprises Tromsø Miljøpark KF and Remiks Tromsø KF to Remiks Miljøpark AS ([22]). The transactions involved movables, capital, liabilities, and real estate, including the waste handling facility Remiks Miljøpark (the same name as the parent company) where the Remiks Group companies have their business. The assets were converted into share capital in Remiks Miljøpark AS ([23]).

([11]) Document No 870978.
([12]) Documents No 880582 and 884931.
([13]) Document No 882703.
([14]) Document No 901145.
([15]) Documents No 831575, 873959, 882172, 896066, 895954 and 914528.
([16]) *Forurensningsloven*, LOV-1981-03-13-6.
([17]) Attachments 2, 3 and 4b to letter dated 3.5.18, Documents No 901215, 901211 and 901203; Tromsø municipality's letter dated 31.10.2017, Document No 880582, and Attachment 7 to the letter, Document No 880592.
([18]) Preparatory papers from Tromsø municipality's administration to the municipality council, Attachment 2 to letter dated 5.3.18, Document No 901215.
([19]) A municipal enterprise (in Norwegian: *kommunalt foretak*, shortened KF) is an administrative branch of the central municipality, and not a separate legal entity. Municipal enterprises are regulated by the Local Government Act chapter 11.
([20]) Tromsø municipality's letter, dated 31.10.2017, Document No 880582, and Attachments 6 and 7 to the letter, Documents No 880590 and 880592.
([21]) Letter from Tromsø municipality, dated 5.3.2018, Document No 901145, and Attachment 4 to the letter, Document No 901219, and Tromsø municipality's letter dated 31.10.2017, Document No 880582 and Attachment 7 to the letter, Document No 880592.
([22]) Attachment 8a to Tromsø municipality's letter dated 5.3.2018, Document No 901189. The transfers were decided on in 2010, but backdated to the establishment of Remiks Miljøpark AS in 2009.
([23]) Attachments 4, 4c and 8a to Tromsø municipality's letter dated 5.3.2018, Documents No 901219, 901205 and 901189.

(14) In 2012, Tromsø municipal council decided to transfer real estate and a loan to Remiks Miljøpark AS, in addition to adjusting the value of the real estate transferred in 2010 ([24]). In both the preparatory paper ([25]) and the decision ([26]), Tromsø municipality specified a requirement for a 9% return on the investment.

3.3 The current company structure

(15) Per November 2019, the Remiks Group is organised as follows ([27]):

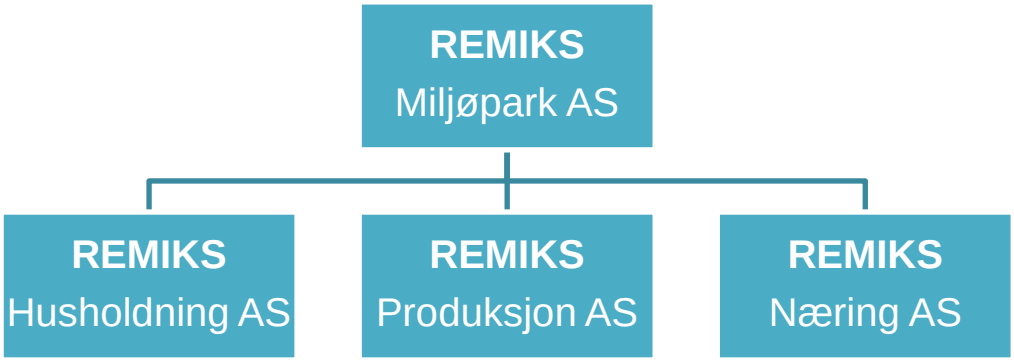
- Remiks Miljøpark AS is the parent company in the Remiks Group. It is owned 99.99% by Tromsø municipality and 0.01% by Karlsøy municipality ([28]). It provides services and rents out property to its subsidiaries.

- Remiks Husholdning is owned 100% by Remiks Miljøpark AS. Until 2017, it only collected household waste for Tromsø municipality. As of 1 February 2017, it also collectes Tromsø municipality's own industrial waste.

- Remiks Næring is owned 100% by Remiks Miljøpark AS. Remiks Næring specialises in the collection of industrial waste, and offers such services on the market. Until 1 February 2017, it had an agreement with Tromsø municipality for the collection of Tromsø municipality's own industrial waste.

- Remiks Produksjon is owned 100% by Remiks Miljøpark AS. It provides waste treatment services on the market, primarily to its sister companies.

(16) Below is an illustration of the Remiks Group's structure:



3.4 Household waste

(17) The Norwegian Pollution Control Act, section 27a, first paragraph, defines household waste as waste from private households, including large objects such as furniture, etc.

([24]) Letter from Tromsø municipality, dated 5.3.2018, Document No 901145, and attachments 8, 8b, 8c, 8d and 9 to the letter, Documents No 901183, 901181, 901177, 901179 and 901175.
([25]) In Norwegian: *saksfremlegg*.
([26]) Attachment 9 to the letter from Tromsø municipality, dated 5.3.2018, Document No 901175.
([27]) Based on information obtained at www.purehelp.no 21.11.2019.
([28]) The 0.01% ownership by Karlsøy municipality seems to be related to intentions that Tromsø and Karlsøy would cooperate on waste handling, but this seems not to have materialised. See letter from Tromsø municipality, dated 5.3.2018, Document No 901145.

(18) Under the Pollution Control Act, sections 29 and 30, the municipalities are obliged to collect and have facilities to treat household waste ([29]). The costs associated with the waste management are to be covered by a fee, levied on the inhabitants ([30]). The municipal waste fee are to be calculated based on a self-cost principle; covering the total costs of collecting and handling the waste on behalf of the municipality, without generating a profit for the municipality, in accordance with the Waste Regulation, chapter 15 ([31]).

(19) When Tromsø municipality reorganised its waste handling services and established the Remiks Group in 2010, by way of its control in Remiks Husholdning it instructed Remiks Husholdning to collect the household waste on behalf of the municipality, based on the self-cost principle. Remiks Husholdning collects and sorts the waste. However, it purchases the waste treatment services, consisting of incineration, depositing and recycling, from its sister company Remiks Produksjon.

3.5 Industrial waste

(20) The Norwegian Pollution Control Act, section 27a, second paragraph, defines industrial waste as waste from public and private enterprises and institutions.

(21) The Norwegian Pollution Control Act does not oblige the municipalities to organise the collection or handling of industrial waste. Any operator can therefore offer these services on the market. However, all producers of industrial waste are obliged to ensure the proper disposal and handling of their waste. Tromsø municipality, as a producer of industrial waste, is therefore obliged to ensure the proper collection and treatment of its own industrial waste, produced by the different municipal units (kindergartens, hospitals, nursing homes, municipal offices, etc.) ([32]).

(22) Before 2010, Tromsø municipality ensured the collection of its own industrial waste through a municipal enterprise ([33]). When Tromsø municipality reorganised its waste handling services and established the Remiks Group, Remiks Næring took over the collection of the municipality's own industrial waste ([34]). Therefore, the agreements for the services were not tendered out or renegotiated. From 2010, Remiks Næring merely continued to provide the same services to the municipality as the municipal enterprise had done before the reorganisation. The only thing that changed was the invoicing system, from internal and centralised to external and decentralised. This meant that each municipal unit (municipal offices, kindergarten, etc.) paid for the service from their budget, and Remiks Næring treated them as individual customers ([35]).

(23) Because of this continuation of the collection services, Remiks Næring and Tromsø municipality never entered into a formal contract for the waste collection services ([36]). The Norwegian authorities have described the arrangement as an unwritten framework agreement where each municipal unit decided its need for waste collection, and was invoiced separately ([37]). The Authority will refer to the arrangement between Tromsø municipality and Remiks Næring, regarding the collection of industrial waste, simply as an agreement.

(24) In 2016, Tromsø municipality decided to terminate the agreement with Remiks Næring, and concluded a new framework agreement with Remiks Husholdning for the collection of the municipality's industrial waste, starting 1 February 2017. The agreement was awarded directly, and based on a self-cost principle, meaning that the compensation covers the full costs, but no profits ([38]).

([29]) This means that any private operator needs an explicit permission from the municipality, in order to provide the service.
([30]) The Pollution Control Act, section 34. The fees can be secured through a statutory charge pursuant to the Mortgage Act (*panteloven*, LOV-1980-02-08-2).
([31]) The Waste Regulation (*avsfallsforskriften*, FOR-2004-06-01-930), chapter 15.
([32]) The Pollution Control Act, section 32, first paragraph.
([33]) Letter from Tromsø municipality, dated 5.3.2018, Document No 901145.
([34]) Letter from Tromsø municipality, dated 5.3.2018, Document No 901145.
([35]) Letter from Tromsø municipality, dated 5.3.2018, Document No 901145.
([36]) Letter from Tromsø municipality, dated 5.3.2018, Document No 901145.
([37]) Letter from Tromsø municipality, dated 5.3.2018, Document No 901145, and letter of 31.10.2017, Document No 880582.
([38]) Letter from Tromsø municipality, dated 5.3.2018, Document No 901145, and attachment 16 to the letter, Document No 901161.

(25) Remiks Husholdning foresaw a total price for the services in 2017 of approximately NOK 8.2 million. This was NOK 3.2 million less than the combined total price all the individual municipal units paid to Remiks Næring in 2016 ([39]).

4. Measures covered by the complaint

(26) The complainant has complained about three separate measures:

(27) First, alleged overpayment under the agreement between Tromsø municipality and Remiks Næring for collection of industrial waste for the period running from 2010 until 1 February 2017.

(28) Second, alleged overpayment in relation to Remiks Husholdning's purchase of waste treatment services from its sister company Remiks Produksjon. This agreement has been in force since the establishment of Remiks Husholdning in 2010 and is ongoing.

(29) Third, certain transactions from Tromsø municipality to the Remiks Group in 2010 and 2012, which allegedly were not conducted on market terms.

5. Presence of state aid

5.1 Introduction

(30) Article 61(1) of the EEA Agreement stipulates that:

'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.'

(31) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be granted by the State or through state resources; (ii) it must confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.

5.2 Presence of state resources

5.2.1 Introduction

(32) For the measure to constitute aid, it must be granted by the State or through state resources. State resources include all resources of the public sector, including resources of intra-state entities (decentralised, federated, regional or other) ([40]).

(33) The transfer of state resources may take many forms, such as direct grants, loans, guarantees, direct investment in the capital of companies and benefits in kind. A positive transfer of funds does not have to occur; waiving revenue that would otherwise have been paid to the state constitutes a transfer of state resources ([41]).

5.2.2 Tromsø municipality's purchase of industrial waste collection services

(34) The remuneration Tromsø municipality paid to Remiks Næring for the collection of industrial waste came from the budget of Tromsø municipality, as does the remuneration which Remiks Husholdning is currently receiving for the same services. The remuneration therefore constitutes state resources.

([39]) This is based on calculations conducted by the complainant in letter from the complainant dated 22.6.17, Document No 862433.

([40]) See the Authority's Guidelines on the notion of state aid ('NoA'), OJ L 342, 21.12.2017, p. 35, and EEA Supplement No 82, 21.12.2017, p. 1, para. 48.

([41]) NoA, para. 51.

5.2.3 Remiks Husholdning's purchase of waste treatment services from Remiks Produksjon

(35) The notion of state aid as expressed in Article 61(1) of the EEA Agreement is to be interpreted widely, therefore it covers not only aid granted directly via the state budget but also compulsory contributions imposed by state legislation. Measures financed through parafiscal charges or compulsory contributions imposed by the State and managed and apportioned in accordance with the provisions of public rules imply a transfer of state resources, even if not administered by the public authorities ([42]).

(36) Remiks Husholdning is financed through the waste fee, which is fixed in accordance with the principles laid down in section 34 of the Pollution Control Act and chapter 15 of the Waste Regulation. The fee is collected by the municipality and disbursed via the municipal budget ([43]). Thus, the public authorities determine both the size and use of the fee. Further, its legal basis and the way it is collected indicates that it is under the permanent control of public authorities. The fee must therefore be considered to constitute state resources. This Assessment is in line with the Authority's conclusion in its decision on the financing of municipal waste collectors in Norway in 2013 ([44]).

(37) Further, it must be considered whether Remiks Husholdning's purchase of waste treatment services from Remiks Produksjon is imputable to Tromsø municipality. That is, whether Tromsø municipality must be regarded as having been involved in the adoption of the measures ([45]).

(38) Remiks Husholdning is indirectly owned by Tromsø municipality and subject to public law, such as the public procurement rules ([46]). The purchase of waste treatment services from Remiks Produksjon is conducted under the control and instruction of Tromsø municipality, in accordance with the Pollution Control Act. Furthermore, as Remiks Husholdning has been granted an exclusive right to collect the household waste by Tromsø municipality it is not subject to competition on the market, but rather operating under a monopoly ([47]).

(39) Based on this, Remiks Husholdning's purchase of waste treatment services from Remiks Produksjon appears imputable to Tromsø municipality, so as to constitute state resources for the purposes of Article 61(1) EEA.

5.2.4 The transactions involving the Remiks Group in 2010 and 2012

(40) If public authorities or public undertakings provide goods or services at a price below market rates, or invest in an undertaking in a manner that is inconsistent with the market economy operator ('MEO') principle, this implies foregoing state resources (as well as the granting of an advantage) ([48]).

(41) Therefore, if the transactions from Tromsø municipality to the Remiks Group in 2010 and 2012 were not conducted on market terms, state resources within the meaning of Article 61(1) of the EEA might have been involved.

5.3 Undertaking

(42) Only advantages granted to 'undertakings' are subject to state aid law. The concept of an undertaking covers any entity that engages in an economic activity regardless of its status and the way it is financed. Hence, the public or private status of an entity, or the fact a company is partly or wholly publicly owned, has no bearing on whether or not the entity is an 'undertaking' ([49]).

([42]) See NoA, para. 58; Decision No 306/09/COL of 8.7.2009 on the Norwegian Broadcasting Corporation, section 1.2.1, and judgment in *Italy* v *Commission*, 173/73, EU:C:1974:71, para. 16.
([43]) The fifth paragraph of section 34 of the Pollution Control Act.
([44]) Decision No 91/13/COL of 27.2.2013, on the financing of municipal waste collectors, para. 26.
([45]) Judgment in *France* v *Commission*, C-482/99, EU:C:2002:294, para. 52.
([46]) Letter from Tromsø municipality, dated 5.3.2018, Document No 901145.
([47]) Letter from Tromsø municipality, dated 5.3.2018, Document No 901145. See also NoA, para. 43.
([48]) NoA, para. 52.
([49]) Judgment in *Congregación de Escuelas Pías Provincia Betania*, C-74/16, EU:C:2017:496, para. 42.

(43) An activity is economic in nature where it consists in offering goods and services on a market ([50]). The assessment of the activity must be based on the factual evidence, and the question is whether there is a market for the services concerned ([51]). In this regard, it is relevant to consider whether the entities receive compensation for the services, at what level, and whether they face competition from other undertakings ([52]).

(44) Remiks Næring has, since its establishment in 2010, been providing services for collection of industrial waste for remuneration in competition with other undertakings. Based on this, Remiks Næring appears to engage in economic activity so as to constitute an undertaking.

(45) Remiks Produksjon offers waste treatment services. The services are offered on the market for remuneration and in competition with other providers. Remiks Produksjon thus appears to engage in economic activity so as to constitute an undertaking.

(46) In relation to the transfers from Tromsø municipality to the Remiks Group in 2010 and 2012, the Group must be considered to form one economic unit ([53]). An entity which, owning controlling shareholdings in a company, actually exercises that control by involving itself directly or indirectly in the management thereof must be regarded as taking part in the economic activity carried on by the controlled undertaking ([54]).

(47) The subsidiaries in the Remiks Group are fully owned by Remiks Miljøpark AS, and the Authority does not have any indications that Remiks Miljøpark AS is not involved in the management of its fully owned subsidiaries. The Authority has preliminarily concluded that both Remiks Næring and Remiks Produksjon undertake economic activity (see immediately above). With this, it is also the Authority's preliminary conclusion that the Remiks Group, as one economic unit, constitutes an undertaking for the purposes of the application of state aid rules, in so far as it is engaged in the economic activities of Remiks Næring and Remiks Produksjon ([55]).

5.4 Advantage

5.4.1 Introduction

(48) The qualification of a measure as state aid requires that it confers an advantage on the recipient. An advantage, within the meaning of Article 61(1) of the EEA Agreement, is any economic benefit that an undertaking could not have obtained under normal market conditions ([56]).

(49) The measure constitutes an advantage not only if it confers positive economic benefits, but also in situations where it mitigates charges normally borne by the budget of the undertaking. This covers all situations in which economic operators are relieved of the inherent costs of their economic activities ([57]).

(50) Economic transactions carried out by public bodies are considered not to confer an advantage on the counterpart of the agreement, and therefore not to constitute aid, if they are carried out in line with normal market conditions ([58]). This is assessed pursuant to the MEO principle ([59]). Therefore, when public authorities purchase a service, it is generally sufficient, to exclude the presence of an advantage, that they pay market price.

([50]) NoA, section 2.1.
([51]) Judgment in *Havenbedrijf Antwerpen and Maatschappij van de Brugse Zeehaven* v *Commission*, T-696/17, EU:T:2019:652, para. 56.
([52]) Case E-29/15 *Sorpa* [2016] EFTA Ct. Rep. 825, paras 51–64.
([53]) NoA, para. 11.
([54]) Judgment in *AceaElectrabel Produzione* v *Commission*, C-480/09 P, EU:C:2010:787, para. 49.
([55]) NoA, para. 11.
([56]) NoA, para. 66.
([57]) NoA, para. 68.
([58]) Judgment in *SFEI and others*, EU:C:1996:285, C-39/94, paras 60–62.
([59]) NoA, para. 76.

(51) Whether a transaction is in line with market conditions can be established on the basis of a generally accepted, standard assessment methodology, relying on the available objective, verifiable and reliable data, which should be sufficiently detailed and should reflect the economic situation at the time at which the transaction was decided, taking into account the level of risk and future expectations ([60]).

5.4.2 Tromsø municipality's purchase of waste collection services from Remiks Næring

5.4.2.1 Introduction

(52) According to the MEO principle, the decision to carry out a transaction must have been taken on the basis of economic evaluations comparable to those which, in similar circumstances, a rational MEO (with characteristics similar to those of the public body concerned) would have carried out to determine the profitability or economic advantage of the transaction ([61]). When examining compliance with the principle it is only the information known at the time of the decision which is relevant ([62]).

(53) The purchase of the services through a competitive tender is only one of several methods for ensuring that a transaction does not confer an advantage within the meaning of Article 61(1) of the EEA Agreement. To establish whether a transaction is in line with market conditions, that transaction can be assessed in the light of the terms on which comparable transactions carried out by comparable private operators have taken place in comparable situations (benchmarking) ([63]) or through a qualified financial assessment ([64]).

(54) Below, the Authority examines the different lines of reasoning that the complainant has brought forward in support of its assertion that Remiks Næring has been overcompensated.

5.4.2.2 Benchmarking

(55) The complainant alleges that Tromsø municipality has paid disproportionally more than Bodø municipality for similar waste collection services in the same period.

(56) The complainant states that Tromsø municipality in 2016 paid to Remiks Næring five times what Bodø municipality paid to Retura Iris AS for collection of industrial waste. Both Tromsø and Bodø are municipalities in the North of Norway, located by the coast, and with a road network interrupted by fjords. The complainant argues that the two municipalities are comparable in size and population density. While there are 5 100 people working in Tromsø municipality at 160 municipal locations, there are 3 100 people working in Bodø municipality, at 100 locations. On that basis, the complainant argues that the price paid in Tromsø should not exceed a price which is proportionally higher (approximately 60–65% higher) than that paid in Bodø for similar services ([65]).

(57) The Norwegian authorities argue that the agreements in Tromsø and Bodø are different in both size and nature, and that the agreement with Bodø municipality therefore cannot serve as an appropriate benchmark. The municipality of Tromsø has paid a fixed price for waste collection services, based on the size of the bins, regardless of the actual weight. Thus, Remiks Næring carried the risk of the municipality disposing of more waste than budgeted for. The fixed price also covered additional services such as picking up waste that had fallen outside of the bins and additional bags placed next to the bins – in addition to educating the public, raising climate and environmental awareness ([66]). The municipality of Bodø had an agreement where it paid a price

([60]) NoA, para. 101.
([61]) NoA, para. 79.
([62]) NoA, para. 78.
([63]) NoA, paras 98–100.
([64]) NoA, paras 101–105.
([65]) The Complaint, dated 15.8.2016, Document No 814858, and Annexes IV–VII to the complaint, Documents No 818909–818911.
([66]) Letter from Remiks Group, dated 30.10.2017, Document No 880602.

based on the actual weight of waste collected, which means the municipality carried the risk of disposing of more waste than budgeted for. Thus, the scope of and risk allocation under the two agreements are different.

(58) Further, the Norwegian authorities argue that the difference in geography, the population density, and municipal locations, including the number of municipal employees, justify different prices for the collection of industrial waste in Tromsø and Bodø.

(59) Based on the above, it is the Authority's preliminary conclusion that benchmarking against Bodø municipality is not an appropriate way to evaluate the market price for the waste collection services ([67]).

5.4.2.3 Negotiating a better price

(60) The complainant argues that the municipality of Tromsø is the largest purchaser of waste collection services in the area concerned, and that it therefore should have been able to negotiate a better price ([68]).

(61) An advantage, within the meaning of Article 61(1) of the EEA Agreement, is any economic benefit, which an undertaking could not have obtained under normal market conditions ([69]). To establish whether a transaction complies with market conditions, the transaction can be assessed in the light of the terms under which comparable transactions carried out by a comparable private operator would have taken place in a comparable situation ([70]).

(62) The Norwegian authorities have provided documentation indicating that a number of private undertakings have purchased comparable products at the same or a higher price than Tromsø municipality ([71]). However, it is not clear whether the list includes the majority of Remiks Næring's other customers, or only a smaller selection. The Authority invites the Norwegian authorities to provide further information on the proportion of other customers that have purchased comparable products to a price equal to or higher that paid by Tromsø municipality.

5.4.2.4 Increase in remuneration during the contract period

(63) The complainant further points out that the total compensation paid to Remiks Næring for the relevant services increased from NOK 7.7 million in 2010 to NOK 11.4 million in 2016, so almost 50% over six years.

(64) The Norwegian authorities have provided documentation showing that the number of inhabitants and municipal employees has increased in the same period, and that the municipality has made several investments in new municipal buildings and units, which has led to an increase in the production of waste. The increase in remuneration to Remiks Næring is also mirrored in a corresponding increase in operating expenditure ([72]).

(65) The Authority, however, has doubts as to whether the information provided can explain a 50% increase in price over a period of six years. The Authority therefore invites the Norwegian authorities to provide further information on the basis for the increases in the total remuneration paid.

5.4.2.5 Difference compared to the price budgeted by Remiks Husholdning for 2017

(66) As of 1 February 2017, Tromsø municipality terminated the agreement with Remiks Næring, and instructed Remiks Husholdning to collect the municipal industrial waste on an in-house basis, at a price not exceeding the costs (self-cost). Remiks Husholdning estimated budget for 2017 was

([67]) See also the Authority's letter dated 24.5.2017, Document No 854974.
([68]) Letter from the complainant, dated 15.12.2016, Document No 831575.
([69]) NoA, para. 66.
([70]) NoA, para. 98.
([71]) Letter from Remiks Næring, dated 29.9.2016, Document No 821156.
([72]) Letter from Tromsø Municipality, dated 5.3.2018, Document No 901145.

NOK 8.2 million, which is NOK 3.2 million less than the NOK 11.4 million that Remiks Næring received for the services in 2016.

(67) The complainant argues that, provided the costs for the waste collection services were the same in 2016 and 2017, Remiks Næring would have had a profit of NOK 3.2 million for the services it provided in 2016. This would entail a margin on these services of 30%, which is considerably higher than the market standard, which the complainant estimates at 0–8% ([73]).

(68) The Norwegian authorities argue that the services provided by Remiks Næring under the 2016 agreement and the services provided by Remiks Husholdning under the 2017 agreement are materially different. Under the agreement with Remiks Næring, Tromsø municipality had a fixed price agreement whereby Remiks Næring carried the risk of the municipality disposing of more waste than budgeted for ([74]). Under the self-cost agreement with Remiks Husholdning, Tromsø municipality entered into an agreement based on the actual weight disposed, which means that the municipality carries the risk of disposing of more waste than budgeted for. The Norwegian authorities argue that the allocation of risk under the two agreements is thus not comparable, and justifies different prices.

(69) Further, the Norwegian authorities argue that Remiks Husholdning has been able to take advantage of synergies and efficiency gains when coordinating the collection of industrial waste with the collection of household waste, leading to lower overall costs. It is also argued that Remiks Husholdning is currently at its most efficient, and therefore able to take full advantage of its resources. In the view of the Norwegian authorities, this justifies the difference in price between the remuneration paid to Remiks Næring in 2016 and Remiks Husholdning's budget for 2017.

(70) While the Norwegian authorities have provided explanations seeking to justify the difference in remuneration in 2016 and 2017, the Authority has not been provided with documentation underlying these explanations. The Authority therefore invites the Norwegian authorities to provide documentation evidencing the efficiency gains and synergies said to justify the difference.

5.4.2.6 Conclusion

(71) Based on the above, the Norwegian authorities have not at present time provided sufficient evidence showing that the price paid to Remiks Næring for collection of industrial waste, complies with the MEO principle.

(72) In light of the above, and in particular in light of the absence of sufficient evidence supporting that the price paid for the collection of industry waste in the period from 2010 to 1 February 2017 was determined in line with normal market conditions, the Authority has formed the preliminary view that Remiks Næring may have received an advantage, within the meaning of Article 61(1) of the EEA Agreement.

5.4.3 Remiks Husholdning's purchase of waste treatment services from Remiks Produksjon

(73) The Norwegian authorities argue that it is impossible for Remiks Husholdning to purchase waste treatment services from any other undertaking than Remiks Produksjon. The reason being that for Remiks Husholdning to purchase waste treatment services from such a third party, the waste that goes through Remiks Husholdning's optical sorting machine would have to be transported out of Remiks Miljøpark, through Remiks Produksjon's business area. Remiks Produksjon has not consented to allowing third parties to enter its business area, let alone transport waste through it. This explains why Remiks Husholdning has been purchasing waste treatment services from Remiks Produksjon without tendering out the services ([75]).

([73]) Letter from the complainant, dated 13.11.2017, Document No 882862.
([74]) Further explained in section 7.4.2.2.
([75]) Letter from Tromsø municipality, dated 5.3.18, Document No 901145.

(74) The complainant intimates that the purchase of these services, without a tender, has led to Remiks Husholdning paying a price above market price for waste treatment services.

(75) The Norwegian authorities argue that the services Remiks Husholdning purchase from Remiks Produksjon are provided on market terms and in accordance with the arm's length principle in the Limited Liability Companies Act, section 3-9 ([76]).

(76) In determining an appropriate price for Remiks Husholdning's purchase of waste treatment services from Remiks Produksjon, the two parties looked at the price Remiks Næring paid to Remiks Produksjon for waste treatment services. Remiks Husholdning and Remiks Næring considered that the services Remiks Husholdning purchased were comparable in type and volume to those purchased by Remiks Næring, and that the costs for treating household and industrial waste are similar.

(77) The Authority is, however, not convinced that the prices paid by another company in the same group is an appropriate benchmark for establishing market price.

(78) In light of the above, and in particular in light of the absence of evidence supporting that the compensation paid to Remiks Produksjon did not lead to overcompensation, the Authority has formed the preliminary view that Remiks Produksjon may have received an advantage within the meaning of Article 61(1) of the EEA Agreement.

(79) The Authority invites the Norwegian authorities to provide documentation to substantiate that the compensation paid to Remiks Produksjon in line with normal market conditions ([77]).

5.4.4 Transactions to the Remiks Group in 2010 and 2012

(80) The complainant argues that Tromsø municipality did not require a sufficient return on the transactions from Tromsø municipality to the Remiks Group in 2010 and 2012.

(81) With the establishment of the Remiks Group in 2010, Tromsø municipality transferred (a) capital, (b) debt, (c) movables and (d) real estate to the Remiks Group ([78]). The assets were converted into share capital. The preparatory paper drafted for the purpose of the transactions ([79]) underlined the importance of complying with the MEO principle. However, it is not clear how the municipality actually ensured compliance with the principle.

(82) In 2012, Tromsø municipality transferred (a) real estate and (b) debt to Remiks Miljøpark AS, in addition to (c) adjusting the value of the real estate transferred in 2010 ([80]). The Tromsø municipal board decided to require a 9% return. The preparatory paper prepared for the purpose of the transactions underlined the need to determine an appropriate level of return on the basis of the MEO principle. The preparatory paper included a discussion on whether the fact that only 40% of the Remiks Group's activities are conducted in a competitive market, while the remaining 60% are activities for which the municipality cannot obtain a profit, is relevant for the MEO principle, but does not seem to reach a conclusion on this point ([81]). The preparatory paper found a 9% return appropriate ([82]), but did not set out the economic assessment explaining why.

(83) The complainant further argues that the 9% level of return set in 2012 was determined based on only 40% of the Remiks Group's turnover originating from the group's commercial activities (Remiks Næring and Remiks Produksjon). According to the complainant, the division between commercial and non- commercial activity shifted, and in 2016, 58% of the turnover was linked

([76]) *Lov om aksjeselskaper*, LOV-1997-06-13-44.
([77]) NoA, para. 74.
([78]) Attachment 8a to letter dated 5.3.2018, Document No 901189.
([79]) Attachments 4, 4a, 4b and 4c to the letter from Tromsø municipality dated 5.3.2018, Documents No 901219, 901213, 901203 and 901205.
([80]) Attachment 9 to letter dated 5.3.2018, Document No 901175.
([81]) The same assessment is included in the preparatory paper in relation to the 2010 transfer, Attachment 4 to the letter from Tromsø municipality dated 5.3.2018, Document No 901219.
([82]) Attachments 8, 8b, 8c, 8d to letter dated 5.3.18, Documents No 901183, 901181, 901177 and 901197.

to the commercial activities in Remiks Næring and Remiks Produksjon ([83]). Allegedly, as the conditions for setting the relevant rate of return changed, Tromsø municipality should have adjusted the level of return ([84]).

(84) Whether a transaction complies with the MEO principle must be examined on an *ex ante* basis, having regard to the information available at the time the transactions were decided. The relevant evidence is the information which was available, and the developments which were foreseeable, at the time when the investment decision was made ([85]).

(85) The question is therefore whether, based on the information available at the time, a rational market economy operator (with characteristics similar to Tromsø municipality) would have carried out similar transactions.

(86) In relation to the transactions referred to in paragraph (81) above, the Authority invites the Norwegian authorities to provide further information on the transfers and how these comply with the MEO principle.

(87) In relation to the transactions referred to in paragraph (82) above, the Authority invites the Norwegian authorities to provide documentation for, and further elaborate on, the assessments forming the basis for an assessment of compliance with the MEO principle, and the relevant level of return.

5.5 Selectivity

(88) To be characterised as state aid within the meaning of Article 61(1) of the EEA Agreement, the measure must also be selective in that it favours 'certain undertakings or the production of certain goods'. Not all measures which favour economic operators fall under the notion of aid, only those which grant an advantage in a selective way to certain undertakings, categories of undertakings or to certain economic sectors.

(89) The purchase of services from Remiks Næring and Remiks Produksjon are specific transactions benefitting the two undertakings respectively.

(90) Similarly, the transfers to the Remiks Group are specific transactions benefitting the company group.

(91) Accordingly, the alleged measures must be considered selective in the sense of Article 61(1) of the EEA Agreement.

5.6 Effect on trade and distortion of competition

(92) In order to constitute state aid within the meaning of Article 61(1) of the EEA Agreement, the measures must be liable to distort competition and affect trade between EEA States.

(93) Measures granted by the State are considered liable to distort competition when they are liable to improve the position of the recipient compared to other undertakings with which it competes. A distortion of competition within the meaning of Article 61(1) of the EEA Agreement is generally found to exist when the State grants a financial advantage to an undertaking in a liberalised sector where there is, or could be, competition ([86]).

(94) Public support may be liable to distort competition even if it does not help the recipient undertaking to expand or gain market share. It is enough that the aid allows it to maintain a stronger competitive position than it would have had if the aid had not been provided ([87]).

([83]) Note that some of the revenues in Remiks Produksjon stem from treating household waste from Remiks Husholdning. The complainant has not explained whether or how this affects the calculations.
([84]) The complainant's letter dated 22.5.2018, Document No 914528.
([85]) Judgment in *Commission* v *EDF*, C-124/10 P, EU:C:2012:318, paras 83–85 and 105; judgment in *France* v *Commission*, C-482/99, EU:C:2002:294, paras 71–72.
([86]) NoA, para. 187.
([87]) NoA, para. 189.

(95) To the extent that the relevant measures have not been carried out in line with normal market conditions, they have conferred an advantage on the relevant undertakings which may have strengthened the undertakings' position compared to other undertakings competing with them.

(96) The measures must also be liable to affect trade between EEA States. Where state aid strengthens the position of an undertaking compared with other undertakings competing in intra-EEA trade, this is assumed to have effect on trade between EEA States ([88]).

(97) The Authority has previously found that public support to waste collection services in Norway is liable to distort competition and affect trade between EEA States ([89]). Waste collection and treatment is increasingly an international industry. In 2017, Norway exported 1.7 million tons of waste ([90]). The practice of tendering out waste services also means that undertakings from other EEA States can compete for waste handling contracts in other municipalities ([91]).

(98) The competitive situation is also highlighted in one of the preparatory papers in relation to the establishment of the Remiks Group in 2010. The paper notes an increasing number of undertakings competing on the markets for collection and handling of industrial waste, and highlights that the competition includes both national companies and companies with international owners ([92]).

(99) Thus the Authority cannot exclude that the measures are liable to distort competition and affect trade within the EEA.

5.7 Conclusion

(100) Based on the information provided by the Norwegian authorities and the complainant, the Authority cannot exclude that the measures described above may entail state aid within the meaning of Article 61(1) of the EEA Agreement.

6. Procedural requirements

(101) Pursuant to Article 1(3) of Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ('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.'

(102) The Norwegian authorities did not notify the measures before putting them into effect. The Authority therefore concludes that, if the measures constitute state aid, the Norwegian authorities will not have respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.

7. Compatibility of the aid measure

(103) The Norwegian authorities have not provided any arguments substantiating why the measures, if they were to constitute state aid, should be considered compatible with the functioning of the EEA Agreement. The Authority has also not identified any clear grounds for compatibility.

(104) Thus, if the measures constitute state aid, the Authority has doubts as to their compatibility with the functioning of the EEA Agreement

([88]) Judgment in *Eventech*, C-518/13, EU:C:2015:9, para. 66.
([89]) Decision No 91/13/COL of 27.2.2013, on the financing of municipal waste collectors, para. 41.
([90]) Report from the Nordic Competition Authorities, Competition in the waste management sector, section 3.2.4: https://konkurransetilsynet.no/wp-content/uploads/2018/08/Nordic-Report-2016-Waste-Management-Sector.pdf
([91]) Judgment in *Altmark*, C-280/00, EU:C:2003:415, paras 78–79.
([92]) Preparatory paper 29.4.2009, attachment 2 to letter dated 5.3.2018, Document 901215. The Authority's office translation.

8. Conclusion

(105) As set out above, the Authority has doubts as to whether the measures constitute state aid within the meaning of Article 61(1) of the EEA Agreement, and as to their compatibility with the functioning of the EEA Agreement.

(106) Consequently, and in accordance Article 4(4) of Part II of Protocol 3, the Authority hereby opens 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 do not constitute state aid, or are compatible with the functioning of the EEA Agreement.

(107) The Authority, acting under the procedure laid down in Article 1(2) of Part I of Protocol 3, invites the Norwegian authorities to submit, by **6 January 2020,** their comments and to provide all documents, information and data needed for the assessment of the measures in light of the state aid rules.

(108) The Norwegian authorities are requested to immediately forward a copy of this decision to the Remiks Group.

(109) If this letter contains confidential information which should not be disclosed to third parties, please inform the Authority by **13 December 2019**, identifying the confidential elements and the reasons why the information is considered to be confidential. In doing so, please consult the Authority's Guidelines on Professional Secrecy in State Aid Decisions ([93]). If the Authority does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter on the Authority's website: http://www.eftasurv.int/state-aid/state-aid-register/.

For the EFTA Surveillance Authority,

Yours faithfully,

Bente Angell-Hansen	Frank J. Büchel	Högni Kristjánsson
President	*College Member*	*College Member*
Responsible College Member		

Carsten Zatschler

Countersigning as Director,

Legal and Executive Affairs

([93]) OJ L 154, 8.6.2006, p. 27 and EEA Supplement No 29, 8.6.2006, p. 1.

Ákvörðun nr. 86/19/COL frá 5. desember 2019 um að opna formlega rannsókn á hugsanlegri ríkisaðstoð við Gagnaveitu Reykjavíkur. **2020/EES/8/02**

Auglýst eftir athugasemdum, í samræmi við ákvæði 2. mgr. 1. gr. I. hluta bókunar 3 við samning milli EFTA-ríkjanna um stofnun eftirlitsstofnunar og dómstóls, sem varða ríkisaðstoð

Eftirlitsstofnun EFTA tilkynnti íslenskum stjórnvöldum með ákvörðuninni sem vísað er til að ofan og sem birt er á upprunalegu, fullgiltu tungumáli á eftir þessu ágripi, um ákvörðun sína að hefja málsmeðferð skv. 2. mgr. 1. gr. I. hluta bókunar 3 við samning milli EFTA-ríkjanna um stofnun eftirlitsstofnunar og dómstóls, að því er varðar ofangreinda ráðstöfun.

Frestur áhugaaðila til að gera athugasemdir að því er varðar ráðstafanirnar sem um ræðir er einn mánuður frá birtingu. Viðtakandi:

EFTA Surveillance Authority
Registry
Rue Belliard 35
1040 Brussels
BELGIUM
registry@eftasurv.int

Athugasemdunum verður komið á framfæri við íslensk stjórnvöld. Áhugaaðilum sem leggja fram athugasemdir er heimilt að óska nafnleyndar og skulu slíkar óskir vera skriflegar og rökstuddar.

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Ágrip

Málsmeðferð

Hinn 26. október 2016 barst Eftirlitsstofnun EFTA kvörtun frá íslenska fjarskiptafyrirtækinu Símanum hf. um meinta ríkisaðstoð Orkuveitu Reykjavíkur („OR“) við dótturfyrirtæki þess síðarnefnda Gagnaveitu Reykjavíkur („GR“). Eftirlitsstofnuninni bárust viðbótarupplýsingar og athugasemdir frá kvartendum með bréfum og tölvupóstum dags. 23. nóvember 2016, 16. janúar 2017, 28. mars 2017, 1. janúar 2018, 20. apríl 2018, 21. september 2018, 26. mars 2019 og 13. september 2019.

Eftirlitsstofnuninni bárust upplýsingar frá íslenskum stjórnvöldum, samkvæmt beiðni, með bréfum dags. 7. febrúar 2017, 22. júní 2017, 25. maí 2018 og 4. júní 2019.

Lýsing á ráðstöfununum

Kvörtunin varðar breiðbandsfjárfestingar OR frá árinu 1999, þegar forveri GR, Lína.Net var stofnuð, til dagsins í dag. Einkum er um að ræða tímabilið frá 1. janúar 2007 og síðar, eftir stofnun GR. Nánar tiltekið er um að ræða meinta ríkisaðstoð OR við GR eftir ýmsum leiðum, s.s. með eiginfjárframlagi og lánveitingum sem ekki fóru fram á markaðskjörum.

OR var stofnað 1. janúar 1999 með ákvörðun borgarstjórnar Reykjavíkur um að sameina starfsemi raf- og vatnsveitufyrirtækja í eigu borgarinnar. OR er í eigu þriggja sveitarfélaga, i) Reykjavíkurborgar (93,5%), ii) Akraness (5,5%) og iii) Borgarbyggðar (1%). Borgarstjórn Reykjavíkur tilnefnir fimm stjórnarmenn í OR og bæjarstjórn Akraness tilnefnir einn.

GR er fjarskiptafélag og var stofnað árið 2007. GR er sjálfstæður lögaðili og var sett á laggirnar til þess að uppfylla kröfur Póst- og fjarskiptastofnunar (PFS) um aðskilnað samkeppnisrekstrar OR frá öðrum rekstri. GR er að fullu í eigu OR. Hlutverk GR, samkvæmt samkvæmt stofnsamþykktum, er rekstur fjarskipta- og gagnaflutningskerfis.

GR er skráður rekstraraðili (gagnaflutningur og þjónusta) og starfar samkvæmt lögum um fjarskipti nr. 81/2003 („fjarskiptalög“). Ákvæði 36. gr. fjarskiptalaga er ætlað að tryggja að samkeppnisrekstur á sviði fjarskipta sé ekki niðurgreiddur með tekjum af einkaleyfisstarfsemi eða eftir öðrum leiðum.

Samkvæmt 36. gr. fjarskiptalaga er það hlutverk PFS að tryggja að tekjur af annarri starfsemi niðurgreiði ekki samkeppnisrekstur fjarskiptahlutans. Því er PFS falið að hafa eftirlit með fjárfestingum OR á fjarskiptamarkaðinum og viðskiptasambandi GR og OR. Athugun getur hafist að frumkvæði PFS eða í kjölfar kvartana hagsmunaaðila. GR er einnig skylt að tilkynna PFS um sérstakar ráðstafanir.

PFS hefur tekið níu formlegar ákvarðanir sem varða fjárhagslegan aðskilnað OR og GR á tímabilinu frá 2006 til 2019. Athuganir PFS hafa m.a. falist í úttekt á viðskiptaáætlun GR, sem ber að endurnýja árlega, til samræmis við raunupplýsingar um fjárhag. PFS skoðar m.a. í athugun sinni hvort arðsemi fjárfestis (OR) sé í samræmi við aðstæður á fjarskiptamarkaði almennt, sem og fjármagnsuppbyggingu, og hvort verð í skiptum milli OR og GR sé í samræmi við markaðskjör.

PFS hefur í þremur málum leitt í ljós tiltekin brot á 36. gr. fjarskiptalaga. Í tveimur málanna krafðist PFS þess að ráðstafanirnar gengju til baka og í þriðja tilvikinu var ekki um að ræða kröfur um endurheimtur á ívilnunum.

Íslensk stjórnvöld halda því fram að framferði OR hafi í öllum samskiptum við GR verið í samræmi við meginregluna um rekstraraðila í markaðshagkerfi og að GR hafi ekki verið veitt aðstoð. Í því sambandi vekja íslensk stjórnvöld athygli á því að PFS hefur lagt mat á allar ráðstafanirnar, sem kvartanir lúta að, og varða fjárhagstengsl OR og GR, á grundvelli 36. gr. fjarskiptalaga. Að sögn íslenskra stjórnvalda er mælikvarði PFS sambærilegur þeim viðmiðunum sem Eftirlitsstofnun EFTA styðst við þegar hún sker úr um hvort ráðstöfun sé í samræmi við markaðskjör (þ.e. markaðsaðilaprófið). Íslensk stjórnvöld hafa einnig vakið athygli á því að eftirlitsstofnunin hafi þegar hafnað staðhæfingum kvartanda að því er varðar fjárfestingar OR í fyrirtækinu Lína.Net í ákvörðun nr. 300/11/COL frá 5. október 2011.

Mat á ráðstöfunum

Í ljósi réttarstöðu OR, samstarfssamnings fyrirtækisins og skipanar stjórnar fyrirtækisins getur Eftirlitsstofnun EFTA ekki útilokað að rekja megi ráðstafanirnar til ríkisins og að í þeim felist yfirfærsla ríkisfjármuna, ef og að því leyti sem um er að ræða ívilnanir í þágu GR.

Þó að GR selji ekki eigin þjónustu í gegnum ljósleiðarakerfi sitt veitir það öllum fyrirtækjum á sviði fjarskiptaþjónustu sem hafa áhuga frjálsan og opinn aðgang. Eftirlitsstofnunin telur að veiting netaðgangs til þjónustuveitenda, sem eru þriðju aðilar, gegn föstu gjaldi, sé efnahagsleg starfsemi og því virðist GR starfa sem fyrirtæki í skilningi 1. mgr. 61. gr. EES-samningsins.

Er það bráðabirgðaálit eftirlitsstofnunarinnar, að teknu tilliti til ákvarðanaframkvæmdar PFS á grundvelli 36. gr. fjarskiptalaga að því er varðar fjármögnun GR og hins stranga eftirlits sem mat á ráðstöfununum felur í sér, að mælikvarðinn sem PFS beitir skv. 36. gr. sé almennt til þess fallinn að tryggja að öll viðskipti milli GR og OR eða annarra tengdra fyrirtækja fari fram á markaðskjörum. Þó að aðferðir PFS séu ekki fyllilega sambærilegar markaðsaðilaprófinu sem eftirlitsstofnunin beitir í samræmi við ríkisaðstoðarreglur, eru þær samt sem áður leið að sama markmiði, þ.e. að koma í veg fyrir viðskipti sem ekki fara fram á markaðskjörum. Því er það bráðabirgðaálit eftirlitsstofnunarinnar að mat PFS sé jafngilt markaðsaðilaprófi eftirlitsstofnunarinnar.

Ef niðurstaða PFS er sú að brot gegn 36. gr. hafi átt sér stað, eftirá, þ.e. kemst að því að tiltekin viðskipti hafi ekki farið fram á markaðskjörum, hefur hún heimild til þess að fela aðilunum að uppræta hvers kyns hugsanlega ívilnun sem af því leiðir með því að samþykkja viðeigandi ráðstafanir. Hins vegar verður hin ósamrýmanlega ráðstöfun að vera skýrt afmörkuð og óumdeilanleg, t.d. tiltekin fjárhæð, skilyrði í lánssamningi, o.s.frv., svo PFS geti krafist þess að hún gangi til baka. Auk þess hefur PFS ekki krafist vaxta á endurgreiðslur þegar hún hefur gert kröfu um að ívilnanir í þágu GR gangi til baka.

Þrjú dæmi eru um að PFS hafi sýnt fram á tiltekin brot gegn 36. gr. fjarskiptalaga. Í tveimur tilvikanna krafðist PFS þess að ráðstafanirnar gengju til baka og í þriðja málinu gerði PFS enga kröfu um að ívilnanirnar gengju tilbaka. Var það niðurstaða eftirlitsstofnunarinnar að ráðstafanirnar sem PFS lagði mat á í þessum málum hafi leitt til ívilnunar í þágu GR sem það hefði ekki notið við eðlilegar markaðsaðstæður. Enn fremur hefðu þessar ráðstafanir ekki verið endurheimtar að fullu frá GR.

Því er það bráðabirgðaálit eftirlitsstofnunarinnar að GR hafi notið ívilnunar í skilningi 1. mgr. 61. gr. EES-samningsins með því i) að greiða ekki markaðsvexti af ívilnun sem það naut með tímabundinni frestun á vaxtagreiðslum, ii) með móttöku fjármuna óbeint frá OR vegna lagningar ljósleiðaranets í sveitarfélaginu Ölfusi, iii) með skammtímaláni frá OR, og iv) og með því skilyrði í lánssamningum GR við einkalánveitendur að OR verði áfram meirihlutaeigandi GR.

Er það bráðabirgðaálit eftirlitsstofnunarinnar að þessar ráðstafanir séu sértækar þar sem um er að ræða einstakar ráðstafanir sem eingöngu beinast að GR. Enn fremur virðast ráðstafanirnar líklegar til þess að raska samkeppni og hafa áhrif á viðskipti á EES-svæðinu.

Ef ráðstafanirnar fela í sér ríkisaðstoð, hefur sú skylda, skv. 3. mgr. 1. gr. I. hluta bókunar 3 við samninginn milli EFTA-ríkjanna um stofnun eftirlitsstofnunar og dómstóls, að tilkynna aðstoðina til eftirlitsstofnunarinnar áður en hún kemur til framkvæmda, ekki verið virt. Slík ríkisaðstoð yrði því talin ólögmæt.

Íslensk stjórnvöld hafa ekki fært fram rök sem renna stoðum undir að ráðstafanirnar, að því marki sem þær fela í sér ríkisaðstoð, geti talist samrýmast framkvæmd EES-samningsins. Því leikur vafi á því að mati Eftirlitsstofnunar EFTA að ráðstafanirnar fjórar geti talist í samræmi við framkvæmd EES-samningsins.

Subject: Gagnaveita Reykjavíkur

1 Summary

(1) The EFTA Surveillance Authority ('the Authority') wishes to inform the Icelandic authorities that some measures covered by the complaint related to Gagnaveita Reykjavíkur ('GR') might entail state aid within the meaning of Article 61(1) of the EEA Agreement. Furthermore, the Authority has doubts concerning the compatibility of these measures with the functioning of the EEA Agreement. Therefore, the Authority is required to open a formal investigation procedure into these measures ([1]).

(2) The Authority has based its decision on the following considerations.

2 Procedure

(3) By a letter dated 26 October 2016 ([2]), Síminn hf. ('the complainant') made a complaint regarding alleged state aid granted by Orkuveita Reykjavíkur ('OR') to its subsidiary GR. By letter dated 7 November 2016, the Authority acknowledged receipt of the complaint ([3]). By email of 23 November 2016, the complainant submitted further information ([4]).

(4) By letter dated 28 November 2016 ([5]), the Authority forwarded the complaint and the additional information received to the Icelandic authorities, and invited them to submit information and observations. By email dated 16 January 2017, the Authority received additional information from the complainant ([6]). By letter dated 7 February 2017, the Icelandic authorities submitted their comments to the Authority ([7]).The complainant submitted further information by email of 28 March 2017 ([8]).

(5) On 7 June 2017, the Authority discussed the complaint with the Icelandic authorities at the annual package meeting in Reykjavík. On 22 June 2017, the Icelandic authorities provided the Authority with copies of various decisions of the Post and Telecom Administration in Iceland ('PTA'), concerning the financing of GR ([9]).

(6) On 25 September 2017, the Authority met with the complainant, at its request, in Reykjavík. On 1 January 2018, the complainant submitted further comments ([10]).

(7) By letter dated 13 March 2018 ([11]), the Authority informed the complainant about its preliminary assessment that the financing of GR did not raise concerns concerning potential state aid within the meaning of Article 61(1) of the EEA Agreement. By letter dated 20 April 2018 ([12]), the complainant submitted its response to the Authority's preliminary assessment.

(8) By letter dated 27 April 2018 ([13]), the Authority forwarded the complainant's response and additional information received to the Icelandic authorities, and invited them to submit their observations. By letter dated 25 May 2018 ([14]), the Icelandic authorities submitted their comments.

(*) The information in square brackets is covered by the obligation of professional secrecy.
([1]) Reference is made to Article 4(4) of Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.
([2]) Document No 825150, and Annexes 1–43 (Document Nos 825151, 825152, 825152, 825153 and 825156).
([3]) Document No 825249.
([4]) Document No 827877.
([5]) Document No 828509.
([6]) Document No 835622 and three attachments (Document Nos 835623, 835624 and 835625).
([7]) Document Nos 840228 and 840229, and Annex 1 (Document No 840230).
([8]) Document No 850420.
([9]) Document No 862626 and eight attachments (Document Nos 862628, 862635, 862639, 862641, 862645, 862648, 862651 and 862655).
([10]) Document No 892188.
([11]) Document No 882024.
([12]) Document No 910552 and Annexes 1 and 2 (Document No 910554).
([13]) Document No 911001.
([14]) Document No 915072.

(9) On 6 June 2018, the Authority discussed the complaint with the Icelandic authorities and received a presentation from the PTA at the annual package meeting in Reykjavík ([15]). By letter dated 21 September 2018 ([16]), the complainant submitted further information.

(10) By letter dated 26 March 2019 ([17]), the Authority received additional information concerning new developments from the complainant. On 29 April 2019, the Authority requested additional information and clarifications from the Icelandic authorities ([18]). By letter dated 4 June 2019 ([19]), the Icelandic authorities replied to the information request and provided the requested information and clarifications. Finally, the complainant submitted additional comments and information by letter dated 13 September 2019 ([20]).

3 The complaint

3.1 The complainant - Síminn hf.

(11) The complainant is a telecommunications company which provides communication solutions to private and corporate clients in Iceland. It offers a range of services, such as: (i) mobile services on its 2G/3G/4G network, (ii) fixed line telephony, (iii) fixed broadband, and (iv) television. The complainant also offers communications and IT solutions for companies of all sizes. The complainant's subsidiary, Míla ehf., owns and operates a telecommunications network covering the entire country, which builds mostly on fibre optic cables, but also on copper lines and microwave connections. Míla sells its services at a wholesale level to companies with a telecommunications licence in Iceland.

3.2 Scope of the complaint

(12) The complaint concerns OR's investments in fixed broadband from 1999, when GR's predecessor Lina.Net was established, until today. However, the complaint predominantly concerns the period from 1 January 2007 onwards, following the establishment of GR. In particular, the complaint concerns alleged state aid granted by OR to GR through various means, such as capital injections and lending that was not on market terms.

(13) Moreover, the complaint concerns the terms of loans GR has obtained from […]. According to the complainant, the interest rates on GR's loans are not on market terms that reflect the credit risk inherent in an undertaking such as GR, with a very high debt to EBITDA ratio ([21]). The complainant maintains that the interest rates offered to GR are directly connected to its ownership, as no market lender would have offered GR such rates without a direct link to its public ownership.

3.3 Arguments brought forward by the complainant

(14) The complainant maintains, in general terms, that GR's activities represent a political rather than a commercial project. It alleges that the company has been operated with a view to enhance competition on the telecommunications market, and that a private investor would not have acted in the same way as OR, when providing loans and capital injections to GR. The complainant moreover alleges that OR has provided GR with several capital injections and loans to finance their operations, which have not been on market terms, as well as more favourable access to OR infrastructure than other market players could receive.

(15) According to the complainant, a major part of the alleged unlawful state aid has been in the form of interest rates for loans granted by OR to GR, which have not corresponded to market terms. Furthermore, after the majority of GR's loans were gradually replaced by loans financed by

([15]) Document No 919903.
([16]) Document Nos 931137, 931138 and 931139.
([17]) Document No 1060941.
([18]) Document No 1066345.
([19]) Document No 1073306 and Annexes 1–5 (Document Nos 1073308, 1073310, 1073312, 1073314 and 1073316).
([20]) Document No 1087462 and Annexes 1–5 (Document Nos 1087456–1087460).
([21]) Earnings before interest, tax, depreciation and amortization (EBITDA) is a measure of a company's operating performance.

private lenders (with full replacement at the end of 2017), the interest rates have continued to not correspond to normal market conditions, as OR has provided lenders with a guarantee that it would maintain its majority ownership of GR. The complainant considers that this must be considered as state aid that is incompatible with the functioning of the EEA Agreement.

(16) The complainant puts forward that the assessment performed by the PTA under Article 36 of the Electronic Communications Act is substantially different from the assessment conducted by the Authority under the state aid rules. According to the complainant, the application of the said rule by the PTA has consisted in assessing the return on equity. It seems that PTA has not made a detailed comparison with other market investors. The focus has rather been on assessing the financing generally, concentrating on whether the measures provide a direct loss for OR, as opposed to assessing whether the financing would have been provided by an investor operating on the market.

4 Description of the measures

4.1 Background

4.1.1 OR – Orkuveita Reykjavíkur

(17) OR was established on 1 January 1999 as a public undertaking with the decision of the City Council of Reykjavík to merge the operations of the electricity and heat utilities owned by the city. A year later, the water utility was also incorporated into the new company. The company was operated on the basis of Regulation No 793/1998, issued by the Ministry of Industry and the City Council of Reykjavik, with reference to legislative Act No 38/1940 on the Reykjavik Heating Utility, and the Power Act No 58/1967. OR currently provides the following services through its three subsidiaries: electricity (Orka Náttúrunar), geothermal water for heating, cold water, sewage services (Veitur) and fibre-optic data connections (GR).

(18) On 1 December 2001, OR merged with a utility company owned by several small municipalities in the western part of Iceland. After the merger, the City of Reykjavík owns 93.5% of the company, the municipality of Akranes owns 5.5% and the municipality of Borgarbyggð 1%. Five members of the board of directors are appointed by the City Council of Reykjavík and one is appointed by the Municipality Council of Akranes ([22]). OR currently operates as a public partnership company, *sameignarfélag* ([23]), on the basis of Act No 136/2013 on OR ([24]) and Regulation No 297/2006 ([25]).

4.1.2 GR – Gagnaveita Reykjavíkur

(19) GR is a telecommunications company established in 2007 as an independent legal entity, in order to comply with the requirements of the PTA on separation between the competitive and non-competitive operations of OR. GR is fully owned by OR. The purpose of GR, according to its articles of association, is the operation of a telecommunication and data transmission network. It provides wholesale access to its fibre optic network, for a number of retail service providers that operate in the residential and businesses markets with different fixed broadband and data transmission services. GR also offers services on the household market, where it charges end-users directly for the use of the access network.

(20) OR began investing in the telecommunications market in 1999, when it established the subsidiary Lina.Net, with the purpose of providing general telecommunication services with emphasis on data transmission and internet connections in urban areas in Iceland. Its operations were later expanded into the setting up of an electronic telecommunications network using fibre optic cables. The Authority investigated several capital injections into Lina.Net during the years 1999–2001 in its Decision No 300/11/COL and found that they were in line with the actions of a private investor such that no state aid was granted ([26]).

([22]) https://www.or.is/um-or/skipulag-og-stjornhaettir/stjorn/.
([23]) https://www.rsk.is/fyrirtaekjaskra/leit/kennitala/5512983029.
([24]) https://www.althingi.is/lagas/nuna/2013136.html.
([25]) https://www.reglugerd.is/reglugerdir/allar/nr/297-2006.
([26]) OJ C 10, 12.1.2012, p. 6 and EEA Supplement No 2, 12.1.2012, p. 4.

(21) Lina.Net invested considerable sums in its fibre optic networks and, since 2007, GR has continued to expand the network. In total, the investments between 2002 and 2010 amounted to around ISK 8 billion.

4.2 National legal basis

(22) GR is a registered operator (data transmission and service) ([27]) under the Electronic Communications Act No 81/2003. Article 36 of the Electronic Communications Act, on separation of concession activities from electronic communications activities, provides:

'Electronic communications undertakings or consolidations operating public communications networks or publicly available electronic communications services, which enjoy special or exclusive rights in sectors other than electronic communications, must keep their electronic communications activities financially separate from other activities as if they were two separate undertakings. Care shall be taken to ensure that competitive operations are not subsidised by activities enjoying exclusive rights or protected activities'. (emphasis added)

(23) According to the legislative proposal (*frumvarp*) of the Electronic Communications Act, Article 36 is meant to ensure that competitive telecommunication operations are not subsidised through income from operations that are protected by exclusive rights or by other means ([28]).The proposal also makes it clear that the provision is applicable regardless of the undertaking's market share and regardless of whether the telecommunications operations are carried out within the same undertaking or by a separate legal entity which it controls ([29]).

4.3 The PTA's monitoring role

4.3.1 General

(24) The PTA operates according to the Act on Post and Telecom Administration No 69/2003, which implements the provisions of the EU's regulatory framework for electronic communications ([30]). As a supervisory authority, the PTA, *inter alia*, ensures, in accordance with Article 36 of the Electronic Communications Act, that revenues stemming from non-competitive sectors do not subsidise operations in the competitive telecommunications sector. Therefore, the PTA is entrusted with scrutinising OR's investments in the telecommunications market and the business relations between GR and OR. Such investigations can start at the PTA's own initiative or through complaints from interested parties. GR is also obligated to notify specific measures, such as increase in share capital ([31]), to the PTA to obtain prior approval and interested parties can be parties to such cases, if they demonstrate that they have a legitimate interest in the result of the case ([32]).

(25) An interested party can challenge decisions of the PTA before the Rulings Committee for Electronic Communications and Postal Affairs ([33]). This includes decisions taken on the basis of Article 36 of the Electronic Communications Act ([34]).

([27]) Based on a general authorisation to operate telecommunication networks and services in accordance with Art. 4 of The Electronic Communications Act No 81/2003, see https://www.pfs.is/english/telecom-affairs/registration-and-licences/.

([28]) Submitted to Parliament in the 128 parliamentary session 2002–2003; http://www.althingi.is/altext/128/s/0960.html.

([29]) Ibid.

([30]) The framework is made up of a package of primarily five Directives and two Regulations: Framework Directive 2002/21/EC (*OJ L 108, 24.4.2002, p. 33*); Access Directive 2002/19/EC (*OJ L 108, 24.4.2002, p. 7*); Better Regulation Directive 2009/140/EC (*OJ L 337, 18.12.2009, p. 37*); Authorisation Directive 2002/20/EC (*OJ L 108, 24.4.2002, p. 21*); the Universal Service Directive 2002/22/EC (*OJ L 108, 24.4.2002, p. 51*); the Regulation on Body of European Regulators for Electronic Communications (BEREC) (*OJ L 337, 18.12.2009, p. 1*); and the Regulation on roaming on public mobile communications networks (*OJ L 172, 30.6.2012, p. 10*).

([31]) PTA Decision No 14/2010 of 21.5.2010.

([32]) PTA Decision No 20/2013 of 10.10.2013.

([33]) Article 13 of the Act on The Post and Telecom Administration No 69/2003.

([34]) See for example Ruling of the Ruling Committee of 17 July 2006 in Case No 8/2006.

(26) The following is a brief summary of the PTA's main decisional practice concerning OR's investments in the telecommunications market and the business relations between GR and OR to which the complainant has referred.

4.3.2 OR's purchase of the fibre-optic network from Lina.Net

(27) In October 2002, OR purchased the fibre-optic network from Lina.Net for ISK 1 758 811 899. In early 2003, after the enactment of the Electronic Communications Act, the PTA sent OR an inquiry regarding how the company intended to fulfil the conditions for separation of activities stipulated by Article 36 of the Electronic Communications Act ([35]).

(28) In the ensuing PTA procedure, the PTA requested two expert reports , from the two consultancies KPMG and Rafhönnun ([36]), on the fair market value of the Lina.Net fibre-optic network ([37]). Both reports concluded that there was no indication that the purchase price was below market value. Moreover, the audit firm KPMG analysed certain parts of the operational and financial separation ([38]). The PTA accepted the results of the expert reports.

4.3.3 The establishment and financing of GR as a separate legal entity

(29) As part of the aforementioned procedure, the PTA required OR to submit a business plan for the operations of the fibre-network and telecommunication services, demonstrating an adequate rate of return on the investment. KPMG performed a due diligence review of the business plan and determined that the rate of return on the investment was appropriate. Moreover, the PTA instructed OR to fulfil the following conditions ([39]):

(i) **Separation of accounts**. The PTA instructed OR to establish a separate entity, entrusted with the telecommunications operations, which should keep separate accounts in line with established corporate practices.

(ii) **Prepare a foundation balance sheet (*stofnefnahagsreikningur*)**, comprising the telecommunication assets (valued at an appropriate market price) as well as the liabilities that stemmed from the financing of the telecom operations of OR (with the reservation that if the terms were more favourable than market terms, the new entity would have to compensate OR for any difference).

(iii) **Arm's-length terms** should apply to all dealings between the new entity and OR.

(30) On 1 January 2007, in accordance with instructions of the PTA described above, OR established the private limited liability company GR as a new legal entity.

(31) On 8 March 2007, a framework agreement was concluded between OR and GR, setting out the terms of the investment and the opening balance sheet of GR. OR transferred assets to GR. GR provided payment in the form of a loan and issuing share capital to OR. The interest rate to be paid by GR to OR on its loan principal over a payback period of […] years was based on the […] plus a margin of […] basis points, and was linked to the exchange rates of several foreign currencies. According to the consulting firm Deloitte, the loan agreement contained normal market practice terms, comparable to agreements concluded between private undertakings, as regards the event of default, the provision of information to the lender, and other covenants. Deloitte submitted a declaration in accordance with Article 5 of the Act on Private Limited Companies No 138/1994 ([40]), dated 7 March 2007, on the value of the assets, and concluded that they had been valued at a fair price. The terms of the loans were also reviewed and approved by the PTA ([41]).

([35]) PTA Decision of 13.11.2006, p. 1.
([36]) Attachments contained in Document No 862628.
([37]) PTA Decision of 13.11.2006, p. 5.
([38]) PTA Decision of 13.11.2006, p. 16.
([39]) PTA Decision of 13.11.2006, p. 15–23.
([40]) Article 5 of the Act (available in English here) concerns the special provisions that a Memorandum of Association should contain. According to section 5 in paragraph 2 there should be attached to the Memorandum of Association a report containing "a declaration to the effect that the specific valuables correspond at least to the agreed remuneration, including the nominal value of the shares to be issued plus a conceivable surcharge on account of overprice; the remuneration must not exceed the amount at which these valuables may be credited in the Company's accounts".
([41]) PTA Decision No 32/2008 of 30.12.2008.

(32) On 21 May 2010, the PTA issued Decision No 14/2010, concerning the financial separation between OR and GR. In its Decision, the PTA confirmed that GR had to obtain prior approval from the PTA for any increase in share capital on behalf of OR or related companies. The PTA also noted that it would only approve such measures if they were on arm's-length terms and if they did not entail the subsidisation of competitive operations ([42]).

(33) Following the financial crisis in Iceland in 2008, the ISK devalued considerably, and GR became unable to fulfil its commitments under the loan agreement. An agreement was made with OR on temporary suspension of interest payments. The PTA was informed and subsequently intervened. The PTA required that the suspension of payments be revoked on the grounds that it did not comply with the required arm's-length terms ([43]). GR complied and paid instalments and accrued interests in full.

4.3.4 GR's rate of return and the share capital increase of December 2008

(34) In December 2008, OR increased its share of GR's capital. On 22 December 2010, the PTA adopted Decision No 39/2010, concerning the share capital increase and GR's rate of return on capital.

(35) With this Decision, the PTA noted that the operations of GR went according to the initial business plan in the year 2007. GR's equity ratio was approximately 52% at the end of 2007 and the company made a profit of ISK 120 million that year. The financial crisis of 2008 hit the company hard and in spite of increasing operating revenues, the losses of 2008 were close to ISK 3 billion, almost solely attributable to the devaluation of the ISK, which caused the debt of the company to increase.

(36) To urgently restore the viability of GR, OR decided to increase the share capital before the end of 2008. The capital was increased by ISK 1.2 billion, setting an equity ratio of 23%. The PTA Decision states that in absence of the share capital increase, 'practically all equity would have been wiped out', due to the financial collapse and sharp devaluation of the operating currency whilst the liabilities were all linked to foreign currency rates ([44]).

(37) Furthermore, the PTA observed that in 2008 OR and GR had contacted private lenders with the intention to finance further investment in ongoing projects ([45]). The financial markets, however, were completely frozen by the end of the year. The Icelandic authorities maintain that, as an investor, OR inevitably had to invest further, in order to protect its significant initial investment ([46]).

(38) The PTA highlighted that OR's decision to increase the share capital had to be considered not only from its perspective as GR's owner, but also as GR's largest creditor. The PTA noted that creditors of several telecommunication companies had acquired them following the financial crisis, and either converted debts to equity or restructured loans. Moreover, the PTA found that GR's updated business plans convincingly demonstrated a satisfactory level of profitability for a telecommunication company in a competitive market, within a reasonable timeframe, and that there was a normal correlation between the profitability and the owner's contribution ([47]).

4.3.5 The conversion of debt into equity in 2014

(39) Like many companies in Iceland, GR needed to reorganize its financial affairs after the financial crisis of 2008. OR's application for permission to increase the share capital of GR in July and August 2013 was the subject of PTA's Decision No 2/2014 of 24 March 2014. The reorganisation involved: (i) a conversion of ISK 3.5 billion of debt into equity, and (ii) that GR would enter the financial markets to refinance all remaining debt owed to OR. Finally, OR intended to dispose of a large portion of its shares post-refinancing.

([42]) PTA Decision No 14/2010 of 21.5.2010, p. 15.
([43]) PTA Decision No 25/2010 of 7.9.2010.
([44]) PTA Decision No 39/2010 of 22.12.2010, p. 21.
([45]) PTA Decision No 39/2010 of 22.12.2010, p. 21.
([46]) Document No 840229, p. 8.
([47]) PTA Decision No 39/2010 of 22.12.2010, p. 24 and 26.

(40) The PTA accepted that the debt conversion would not increase the total financing of GR by OR, since it only changed the composition of the financing. The PTA also recognised that the conversion would change the equity ratio of GR from 22% to 52%, thereby leaving the ratio at the same level as GR's main competitor, Míla ([48]). The PTA also assessed the initial business plan of GR, and determined that it was credible. The cash flow analysis demonstrated that if the devaluation of the operating currency had not hit the company in 2008, there would not have been a need for refinancing. Moreover, the PTA's financial analysis confirmed that the rate of return for the investor and the weighted average cost of capital (WACC) of GR were in conformity with the general benchmark set by the PTA ([49]).

(41) Míla intervened in the procedure before the PTA. The PTA rejected all the objections from Míla. The PTA adopted its Decision No 2/2014 on 24 March 2014, and the debt conversion was finalized in early April 2014. In June 2014, Míla initiated a court case against the PTA, GR and OR, requesting the courts to annul the PTA's decision ([50]). The District Court of Reykjavík dismissed the case on 26 February 2015, and the Supreme Court confirmed the ruling of the District Court by judgment of 27 March 2015 ([51]).

4.3.6 The implementation of GR's financial separation for 2016–2017

(42) On 20 March 2019, the PTA adopted Decision No 3/2019, concerning the implementation of GR's financial separation for 2016–2017, and whether it was in compliance with Article 36 of the Electronic Communications Act ([52]).

(43) The PTA concluded that the financial separation between OR and GR had been in accordance with Article 36 of the Electronic Communications Act in the years 2016 and 2017, except for short-term lending to GR from a shared cash pool by OR and GR. The PTA found that these loan arrangements between OR and GR infringed an earlier PTA decision from 13 November 2006, as well as PTA Decision No 14/2010, since there was no loan agreement concluded between OR and GR reflecting the conditions that prevailed on the market for such loans ([53]).

(44) The PTA also commented on conditions in GR's loan agreements with private lenders, relating to OR's continuing majority ownership of GR. The loan agreements in question had included special conditions that if the ownership of OR in GR went below 50% then the lender was authorised to demand repayment, terminate the loan agreement, or declare the loan immediately due. Such a provision has been included in GR's loan agreements with private lenders since OR's loan financing of GR was replaced by private lenders, starting in 2014 and eventually being completely replaced by the end of 2017 ([54]).

(45) The PTA noted that by including these provisions, private lenders connected the ownership of OR to the loan agreements, in order to minimise the probability of default ([55]). The PTA considered that such arrangements could lead to more advantageous loan terms and more access to loan capital than other comparable telecommunication undertakings and, therefore, distort competition ([56]). Moreover, the PTA considered that this provision in the loan agreements constituted a connection between OR and GR that was not in accordance with the financial separation imposed in order to ensure that the two acted as unrelated parties ([57]).

([48]) PTA Decision No 2/2014 of 24.3.2014, p. 35.
([49]) PTA Decision No 2/2014 of 24.3.2014, p. 40–42.
([50]) According to Article 13, paragraph 4, of the Act on the Post and Telecom Administration No 69/2003, a party can decide to avoid the Ruling Committee and appeal a decision of the PTA directly to the District Court within 3 months from the time they are aware of the decision.
([51]) Supreme Court of Iceland judgment of 27.3.2015 in Case No 219/2015.
([52]) PTA Decision No 3/2019 of 20.3.2019.
([53]) PTA Decision No 3/2019 of 20.3.2019, paragraphs 372–373.
([54]) PTA Decision No 3/2019 of 20.3.2019, paragraph 375.
([55]) PTA Decision No 3/2019 of 20.3.2019, paragraph 353.
([56]) PTA Decision No 3/2019 of 20.3.2019, paragraph 353.
([57]) PTA Decision No 3/2019 of 20.3.2019, paragraph 354.

(46) The PTA concluded that measures were required to ensure an efficient financial separation between OR and GR, in accordance with Article 36 of the Electronic Communications Act. The PTA decided that:

a) OR's lending to GR from a shared cash pool, without a loan agreement reflecting market conditions, infringed the PTA Decision of 13 November 2006 and, therefore, also Article 36 of the Electronic Communications Act.

b) GR's debt from the shared cash pool was not to, at any given time, exceed ISK […].

c) GR was to obtain prior authorisation from the PTA for any loans from OR, or any other undertaking within the company group. GR shall submit an application to the PTA along with the necessary documents, e.g. a draft loan agreement, an appropriate business plan, a calculation of the profitability requirements, as well key social security numbers and the acceptance of other landers. Such a credit increase was to be in line with standard separation of accounts, and was to entail that competitive operations are not subsidised by activities enjoying exclusive rights.

d) New loan agreements with private lenders could not contain a provision stipulating that if the ownership of OR in GR goes below 50% then the lender is authorised to declare the loan immediately due.

(47) On 4 October 2019, following an appeal from GR, the Rulings Committee for Electronic Communications issued Ruling No 2/2019, confirming the decision of the PTA.

4.3.7 Other cases

(48) In addition to the decisions referred to above, the PTA adopted a decision in 2013, under Article 36 of the Electronic Communications Act, to temporarily allow GR to extend its loan agreement with OR ([58]).

(49) Moreover, in 2014, Míla complained to the PTA about certain measures relating to an agreement GR had concluded with Ölfus Municipality, which included funds indirectly deriving from OR. The funds had initially been paid by OR into the Ölfus Revegetation Fund ('ÖRF') in connection with OR's geothermal power plant project in the municipality. OR had joint control of the ÖRF together with representatives from the municipality. In 2014, the ÖRF decided to use its funds to finance GR's rollout of a fiber optic network in Ölfus Municipality. After assessing the measures, the PTA found that they were contrary to Article 36 of the Electronic Communications Act, and instructed GR to undertake certain measures to ensure that it did not obtain an advantage from the funds deriving from OR ([59]).

5 Comments by the Icelandic authorities

(50) The Icelandic authorities point out that the Authority has already dismissed allegations by the complainant as regards OR's investments in Lina.Net in its Decision No 300/11/COL of 5 October 2011 ([60]).

(51) The Icelandic authorities maintain that in all its relations with GR, OR has acted in accordance with the market economy operator ('MEO') test, and that no aid has been granted to GR. In that regard, the Icelandic authorities highlight that all of the measures complained of concerning the financial relations between OR and GR, have been assessed by the PTA on the basis of Article 36 of the Electronic Communications Act. According to the Icelandic authorities, the test applied by the PTA is comparable to the criterion applied by the Authority when determining whether a measure is on market terms (i.e. the MEO test).

([58]) PTA Decision No 26/2013 of 1.11.2013.
([59]) PTA Decision No 11/2015 of 2.6.2015.
([60]) Reply from the Icelandic authorities, dated 7.2.2017, pages 2 and 3. Document No 840228.

(52) The Icelandic authorities have confirmed that GR's current investments are financed with cash provided by its operating activities and loans from […]. According to the Icelandic authorities, these loans do not constitute state aid in any way, and nor do they indicate that state aid has been extended to GR by its owner, as it is clear that the loans from […] to GR were solely based on commercial motives. They state that the loans are fully in line with normal market terms.

6 Presence of state aid

(53) Article 61(1) of the EEA Agreement reads as follows:

'[…] 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.'

(54) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be granted by the state or through state resources; (ii) it must confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) be liable to distort competition and affect trade.

6.1 Presence of state resources

(55) The measure must be granted by the state or through state resources. The transfer of state resources may take many forms, such as direct grants, loans, guarantees, direct investment in the capital of companies and benefits in kind. A positive transfer of funds does not have to occur; foregoing state revenue is sufficient. Waiving revenue which would otherwise have been paid to the state constitutes a transfer of state resources.

(56) The state, for the purpose of Article 61(1) of the EEA Agreement, covers all bodies of the public administration, from the central government to the city or the lowest administrative level. Resources of public undertakings may also constitute state resources within the meaning of Article 61(1) of the EEA Agreement because the state is capable of directing the use of these resources ([61]). For the purposes of state aid law, transfers within a public group may also constitute state aid if, for example, resources are transferred from the parent company to its subsidiary ([62]). However, the measure must be imputable to the state.

(57) The mere fact that a measure is taken by a public undertaking is not *per se* sufficient to consider it imputable to the state. However, it does not need to be demonstrated that, in a particular case, the public authorities specifically incited the public undertaking to take the measure in question ([63]). Therefore, the imputability to the state of a measure taken by a public undertaking may be inferred from a set of indicators arising from the circumstances of the case and the context in which the measure was taken ([64]). Among the relevant indicators set out by the Court of Justice are:

- the fact that the body in question could not take the contested decision without taking into account the requirements of the public authorities;
- the nature of the undertaking's activities and the extent to which the activities were exercised on the market in normal conditions of competition with private operators;
- the intensity of the supervision exercised by the public authorities over the management of the undertaking, and the degree of control which the state has over the public undertaking; and

([61]) The Authority's Guidelines on the notion of state aid ('NoA'), OJ L 342, 21.12.2017, p. 35, and EEA Supplement No 82, 21.12.2017, p. 1, paragraph 49.
([62]) Judgment in *SFEI and others*, C-39/94, EU:C:1996:285, paragraph 62.
([63]) NoA, paragraph 41.
([64]) Judgment in *France* v *Commission (Stardust Marine)*, C-482/99, EU:C:2002:294, paragraph 55.

- any other indicator showing an involvement by the public authorities in the adoption of the measure, or the unlikelihood of their not being involved, having regard to the compass of the measure, its content or the conditions which it contains.

(58) The Authority will therefore need to assess, in light of the aforementioned indicators, whether OR, in its dealings with GR, was acting as an autonomous entity, free of any influence from its owners, or whether its actions are imputable to the Icelandic authorities, i.e. the City of Reykjavík and the municipalities of Akranes and Borgarbyggð.

(59) As noted in paragraph (18) above, OR operates as a public partnership company on the basis of Act No 136/2013 on OR ([65]) and Regulation No 297/2006 ([66]). OR is therefore distinct from private companies which are subject to ordinary company law. OR's annual accounts are also reflected in the City of Reykjavík's consolidated financial statements ([67]).

(60) The Board of OR consists of six members, five appointed by the Reykjavík City Council and one by the Municipality Council of Akranes. Currently, three board members are politicians who also serve as either City Council or Municipal Council representatives. According to OR's partnership agreement, the Board is responsible for the company's affairs between owner's meetings and should monitor the company's direction, organisation and that its operations are in good shape and in accordance with the ownership policy. The Board sets an overall policy and future vision for OR and adopts decisions concerning major matters within the limit of the ownership policy. Before adopting unusual or important decisions or policy decisions, the Board must consult with the owners of OR. The same applies to similar decisions regarding subsidiaries (such as GR). The Board is also responsible for recruiting OR's Director, drafting his/her job description and his/her eventual employment termination ([68]).

(61) OR produces and sells electricity in a liberalised market open to competition. The company also has legal obligations to provide utility services (heating and water) and carries out other projects in the municipalities of its owners as well as other municipalities ([69]). Those utility services have since 2014 been carried out by OR's subsidiary, Veitur, in order to comply with the Electricity Act, which prohibits cross subsidisation between utility activities, as well as between activities enjoying exclusive rights and competitive operations ([70]). According to OR's ownership policy, the company's administrative practices shall reflect professionalism, efficiency, prudence, transparency and responsibility. The Board is responsible for adopting the company's policies concerning dividends, risk management, purchasing, etc. ([71]).

(62) Although it appears that OR's owners have taken steps to separate its public utility services and its competitive operations, in order to ensure that the latter are operated in line with commercial practices on the market, with OR's management being somewhat autonomous in its decision making process, there are nevertheless elements to indicate that the public authorities may influence the company's strategy and decisions. As noted above, the Board sets OR's policies in various fields and must approve the company's major decisions, which in some instances requires consulting with OR's owners. It appears that many of the measures complained of concern major investments, loan guarantees and loan transactions between OR and GR, which may have been subject to the Board's scrutiny and approval. The Board, as noted above, is politically appointed, and currently half of the board members also serve as City or Municipal Council representatives. This arrangement has been evaluated by the Enquiry Committee on Orkuveita Reykjavíkur, which in its 2012 report noted that this arrangement could lead to a lack of professional knowledge and experience on the Board, and that its work could be characterised by political conflict and disunity ([72]).

([65]) https://www.althingi.is/lagas/nuna/2013136.html.
([66]) https://www.reglugerd.is/reglugerdir/allar/nr/297-2006.
([67]) See for example: https://reykjavik.is/sites/default/files/ymis_skjol/skjol_utgefid_efni/city_of_ reykjavik_-_financial_statements_2018.pdf.
([68]) https://www.or.is/um-or/skipulag-og-stjornhaettir/stjorn/. .
([69]) See Article 2 of OR's ownership policy: https://www.or.is/um-or/skipulag-og-stjornhaettir/eigendastefna/,
([70]) Article 16 of the Electricity Act No 65/2003.
([71]) See Article 6 of OR's ownership policy: https://www.or.is/um-or/skipulag-og-stjornhaettir/eigendastefna/. .
([72]) See Report of the Enquiry Committee on Orkuveita Reykjavíkur, page 73, https://rafhladan.is/handle/10802/5777.

(63) In light of the legal status of OR, the composition of its Board and the general circumstances described above, the Authority is unable to exclude that the measures are imputable to the State and that they entail the transfer of state resources, if and to the extent they confer advantages on GR.

(64) Against this background, the Icelandic authorities are invited to comment on the issue of imputability.

6.2 Conferral of an advantage on an undertaking

6.2.1 General

(65) The qualification of a measure as state aid requires that it confers an advantage on the recipient. An advantage, within the meaning of Article 61(1) of the EEA Agreement, is any economic benefit, which an undertaking could not have obtained under normal market conditions.

6.2.2 Does GR constitute an undertaking?

(66) The EU Courts have consistently defined undertakings as entities engaged in an economic activity, regardless of their legal status and the way in which they are financed ([73]). Consequently, the public or private status of an entity or the fact that an entity is partly or wholly publicly owned has no bearing as to whether or not that entity is an 'undertaking' within the meaning of state aid law ([74]).

(67) Economic activities are activities consisting of offering goods or services on a market ([75]). Conversely, entities that are not commercially active in the sense that they are not offering goods or services on a given market do not constitute undertakings. A single entity may carry out a number of activities, both economic and non-economic, provided that it keeps separate accounts for the different funds that it receives, so as to exclude any risk of cross-subsidisation of its economic activities by means of public funds received for its non-economic activities ([76]).

(68) As described in paragraph (19) above, GR was established on 1 January 2007, and its role is to provide Icelandic households and businesses access to high quality services on an open access network ([77]). GR operates a telecommunications and data transmission network and it provides wholesale access to its fibre optic network for a number of retail service providers that operate in supplying homes and businesses with different fixed broadband and data transmission services. GR also offers services on the household market, where it charges end-users directly for the use of the access network.

(69) Although GR does not sell its own services in the retail market, it offers neutral and open network access to all interested telecommunications providers. The Authority considers that the provision of network access for a fixed price to third-party service providers and households constitutes an economic activity. Consequently, GR appears to operate as an undertaking within the meaning of Article 61(1) of the EEA Agreement ([78]).

(70) Any advantage involved in the transactions between OR and GR will therefore have been conferred upon an undertaking.

6.2.3 PTA's monitoring and decisional practice

([73]) Judgments in *Pavlov and others*, C-180/98 to C-184/98, EU:C:2000:428, paragraph 74, and *Cassa di Risparmio di Firenze and others*, C-222/04, EU:C:2006:8, paragraph 107; Case E-5/07 *Private Barnehagers Landsforbund* [2008] EFTA Ct. Rep. 62, paragraph 78.

([74]) Judgment in *Congregación de Escuelas Pías Provincia Betania* v *Ayuntamiento de Getafe*, C-74/16, EU:C:2017:496, paragraph 42.

([75]) Judgment in *Cassa di Risparmio di Firenze and Others*, C-222/04, EU:C:2006:8, paragraph 108; and Case E-29/15 *Sorpa* [2016] EFTA Ct. Rep. 825, paragraph 72.

([76]) Judgment in *Congregación de Escuelas Pías Provincia Betania*, C-74/16, EU:C:2017:496, paragraph 51.

([77]) See https://www.ljosleidarinn.is/gagnaveita-reykjavikur.

([78]) See the Authority's Decision No 444/13/COL, *The Deployment of a Next Generation Access network in the municipality of Skeiða- and Gnúpverjahreppur*, C 66, 6.3.2014, p. 6 and EEA Supplement No 82, 21.12.2017, p. 1, paragraph 56.

(71) The measures complained of, concerning the financial relations between OR and GR, have, as described in Section 0 above, all been assessed by the PTA on the basis of Article 36 of the Electronic Communications Act.

(72) The Icelandic authorities maintain that the test applied by the PTA is comparable to the test applied by the Authority when determining whether a measure is on market terms (i.e. the MEO test).

(73) It is the Authority's preliminary view, considering the decisional practice of the PTA under Article 36 of the Electronic Communications Act on the financing of GR and the level of scrutiny involved in the assessment of the various measures, that the test applied by the PTA under Article 36 generally ensures that all transactions between GR and OR, or other related companies, are on market terms.

(74) The PTA's approach may not be identical to the MEO assessment that would be carried out by the Authority under the EEA state aid rules, but it nonetheless ensures the same outcome, i.e. it prevents transactions that are not on market terms. Therefore, at this stage the Authority is of the preliminary view that the PTA provides an assessment similar to the Authority's MEO assessment. The enforcement of Article 36 of the Electronic Communications Act by the PTA thus appears to effectively prevent GR from obtaining an advantage from its dealings with OR and when infringements are found the PTA has the competence to order the clawback of any advantages. However, there are instances where the PTA has either not ordered the full clawback of advantages with interest, or not ordered clawback at all.

(75) An advantage, within the meaning of Article 61(1) of the EEA Agreement, is any economic benefit which an undertaking would not have obtained under normal market conditions, i.e. in the absence of state intervention, thereby placing it in a more favourable position than its competitors ([79]).

(76) Generally, when examining this question, the Authority applies the MEO test ([80]), whereby the conduct of states or public authorities, when selling or leasing assets, is compared to that of private economic operators ([81]).

(77) The purpose of the MEO test is to assess whether the state has granted an advantage to an undertaking by not acting like a private market economy operator with regard to a certain transaction, e.g. loan agreements or the sale of asset ([82]). In order to fulfil the test, 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 lease of assets ([83]). This assessment must take into account any special rights or obligations attached to the asset concerned, in particular those that could affect the market value.

(78) It follows from this test that an advantage is present 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 ([84]).

(79) The PTA, as described above, has examined the strategy and financial prospect of the relevant measures, in order to determine whether the financing of the operations of GR has been carried out in line with normal market conditions. In its assessment, the PTA has considered independent

([79]) Judgments in *SFEI and Others*, C-39/94, EU:C:1996:285, paragraph 60, and *Spain* v *Commission*, C-342/96, EU:C:1999:210, paragraph 41.

([80]) NoA, chapter 4.2.

([81]) For the application of the MEO test, see Case E-12/11 *Asker Brygge* [2008] EFTA Ct. Rep. 536, and judgment in *Land Burgenland*, C-214/12 P, C-215/12 P and C-223/12 P, EU:C:2013:682.

([82]) NoA, paragraph 133.

([83]) Judgment in *Land Burgenland*, C-214/12 P, C-215/12 P and C-223/12 P, EU:C:2013:682.

([84]) See for example, the Opinion of Advocate-General Jacobs in *Spain* v *Commission*, C-278/92, C-279/92 and C-280/92, EU:C:1994:112, paragraph 28. See also judgments in *Belgium* v *Commission*, 40/85, EU:C:1986:305, paragraph 13, *France* v *Commission*, 301/87, EU:C:1990:67, paragraphs 39–40, and *Italy* v *Commission*, 303/88, EU:C:1991:136, paragraph 24.

expert reports and drawn comparisons with other, private operators in the same market. The PTA's assessment is normally carried out on an *ex ante* basis. However, there are also examples of the PTA having carried out an *ex post* assessment of the financial separation between OR and GR, as well as individual measures.

(80) More precisely, from 2006 until 2019, the PTA adopted nine formal decisions regarding the financial separation of OR and GR. The PTA did not make formal comments for the years 2013–2015. The PTA's investigations included a review of GR's business plan, which must be renewed annually, in accordance with actual financial data. In its review, the PTA e.g. checks whether the rate of return for the investor (OR) is in conformity with the telecom market in general, and looks at the capital structure and whether transactions between OR and GR are on market terms.

(81) GR has been obliged to submit to the PTA, on an annual basis, detailed operational and economic information, together with its revised business plans and profitability requirements. Whenever necessary, the PTA has requested additional data and has assessed whether the operations were in line with market terms and, if not, whether there was a reason for taking action.

(82) In a letter from the PTA to the complainant, dated 6 September 2018, the PTA confirmed that it does not have legal powers to perform a cost analysis of the prices OR sets for renting out its facilities. The complainant has argued that because of this, the PTA's assessment of the financial separation cannot replace that of the Authority, when assessing possible state aid.

(83) It is the preliminary view of the Authority that even though the PTA does not have the legal basis to perform a cost analysis of OR's prices, the PTA has other ways to ensure that OR's pricing practices for renting out facilities are on market terms. Article 36 of the Electronic Communications Act obliges OR to ensure equality in pricing when renting out facilities to related and unrelated companies. Furthermore, OR is obliged to ensure that competitive operations are not subsidised by activities enjoying exclusive rights or protected activities. The PTA then enforces these obligations. As the PTA explains in its letter to the complainant, it did in fact open an investigation into OR pricing practices for renting out facilities, and concluded that OR's pricing was in full conformity with Article 36 of the Electronic Communications Act ([85]).

(84) The PTA has found that in order to ensure that the effectiveness of Article 36 of the Electronic Communications Act is guaranteed, the concept of 'subsidy' should be understood in a broad sense, so as to include any measures from OR, both direct and indirect, which potentially provide GR with an advantage that its competitors on the market do not enjoy. The PTA has also noted that its monitoring role, pursuant to Article 36, is comparable to the Authority's, when it comes to assessing whether an advantage within the meaning of Article 61(1) of the EEA Agreement is present ([86]).

(85) It is the Authority's preliminary view that there is an efficient system in place in Iceland that entails an assessment similar to the MEO test. Consequently, Article 36 of the Electronic Communications Act sets up a system under which the PTA can ensure that GR's operations are not subsidised through income from OR's operations.

(86) It follows from the test that an advantage is present whenever OR makes funds available to GR, which, in the normal course of events, would not be provided by a private investor applying ordinary commercial criteria. The PTA can conduct a formal investigation on its own initiative or based on a complaint. If a transaction is not in conformity with Article 36 of the Electronic Communications Act, the PTA can instruct the parties to eliminate any advantage through the adoption of relevant measures set forth in an administrative decision by the PTA. The decisions are challengeable before the Rulings Committee for Electronic Communications and Postal Affairs and the Courts.

(87) The Icelandic authorities have explained that the PTA's monitoring role is primarily focused on an *ex ante* assessment of GR's business plans, financing, profitability requirements, loan arrangements, etc., with the PTA imposing conditions and obligations when necessary in order to ensure financial separation between OR and GR, and that the latter's competitive operations are not subsidised by the mother company ([87]).

([85]) Document No 931139.
([86]) PTA Decision No 3/2019 of 20.3.2019, paragraphs 338–340.
([87]) Document No 1073308.

(88) Where the PTA *ex post* finds an infringement of Article 36 of the Electronic Communications Act, i.e. where it finds that a particular transaction was not on market terms, it can instruct the parties to eliminate any potential advantage through the adoption of relevant measures. The advantage is then recovered from the beneficiary in accordance with national law ([88]).

(89) However, for the PTA to order an advantage clawed back, the incompatible measure must be clearly defined and be incontestable, e.g. a particular monetary sum, a condition in a loan agreement, etc. ([89]). Moreover, when the PTA has ordered advantages granted to GR to be clawed back, it has not required those advantages to be recovered with interest.

(90) As described in Section 0 above, there are three examples of the PTA having established concrete infringements of Article 36 of the Electronic Communications Act. In two of those cases, the PTA ordered that the measures be clawed back. In the third case, the PTA did not order any clawback.

(91) The first case, described in paragraph (33) above, concerned a temporary suspension of interest payments on loans provided by OR to GR ([90]). The PTA concluded that this temporary suspension had been in breach of the requirement imposed by the PTA concerning arm's-length terms in transactions between OR and GR. Moreover, the PTA found that the suspension of interest payments had provided GR with an advantageous subsidy. Considering the facts of this case, the nature of transactions, as well as the PTA's assessment, the Authority is also of the preliminary view that the measure provided GR with an advantage that it would not have obtained under normal market conditions.

(92) The PTA ordered GR to pay back the suspended interest payments, however, it did not order the company to pay back interest on those suspended payments ([91]). In order to effectively recover an unlawful advantage at national level, the beneficiary must be ordered to pay interest for the whole of the period in which it benefitted from that aid. The interest must at least be equivalent to that which would have been applied if the beneficiary had had to borrow the amount on the market at the time ([92]). Although GR has paid back the market interest it was obliged to pay in the first place, it has not been required to pay back market interest on the advantage it obtained through the temporary suspension of interest payments. Therefore, the full advantage has not been adequately clawed back.

(93) The second case, briefly described in paragraph (49) above, concerned funds deriving from OR and used to finance GR's fiber optic cable project in Ölfus Municipality ([93]). The PTA concluded that the transfer of funds from ÖRF (but deriving from OR) to GR had amounted to a cross-subsidy between OR's protected geothermal activities and GR's competitive operations. Having considered the facts of the case and the PTA's assessment, the Authority takes the preliminary view that ÖRF's financing of the fibre optic cable network was not on market terms and therefore provided GR with an advantage.

(94) The PTA ordered GR to undertake appropriate measures to repay the funds it received from ÖRF, although it did not stipulate how GR should go about this. Nevertheless, the PTA suggested that GR could either repay the funds to Ölfus Municipality or that the municipality could obtain an appropriate share in the project proportional to its investment. The Authority does not have information concerning how GR reacted to the PTA's proposals and which measures it adopted following the decision. At this stage, it is therefore not clear to the Authority whether the advantage has been fully clawed back from GR.

([88]) Judgment in *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraph 89.
([89]) Document No 1073308.
([90]) PTA Decision No 25/2010 of 7.9.2010.
([91]) PTA Decision No 25/2010 of 7.9.2010.
([92]) Judgment in *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraph 142.
([93]) PTA Decision No 11/2015 of 2.6.2015.

(95) Finally, in its latest decision concerning the implementation of GR's financial separation for 2016–2017 (see Section 0 above), the PTA found two infringements of Article 36 of the Electronic Communications Act ([94]):

(i) The first infringement concerned OR's lending to GR from a shared cash pool, without a loan agreement reflecting market conditions.

(ii) The second infringement concerned conditions in GR's loan agreements with private lenders relating to OR's continuing majority ownership of GR. Such provisions had been included in GR's loan agreements with private lenders, since OR's loan financing of GR was replaced by private lenders, starting in 2014 and eventually being completely replaced at the end of 2017. The PTA found that by including these provisions, private lenders connected the ownership of OR to the loan agreements, in order to minimise the probability of default ([95]). The PTA considered that such arrangements could lead to more advantageous loan terms and more access to loan capital than other comparable telecommunications undertakings and, therefore, distort competition ([96]).

(96) The Authority, considering the benchmarks applied by the PTA and its detailed assessment of these measures, takes the preliminary view that these two measures provided GR with an advantage that it would not have obtained under normal market conditions. Due to proportionality considerations, the PTA did not order the clawback of the aforementioned advantages.

6.2.4 Preliminary conclusions

(97) Based on the above considerations, it is the Authority's preliminary view that GR has obtained an advantage within the meaning of Article 61(1) of the EEA Agreement, which it could not have obtained under normal market conditions, by: (i) not paying market interest on the advantage it obtained through a temporary suspension of interest payments, (ii) receiving funds indirectly from OR for the layout of a fibre optic cable network in Ölfus Municipality, (iii) receiving short-term lending from OR, and (iv) through the inclusion of a condition in GR's loan agreements with private lenders on OR's continued majority ownership in GR.

6.3 Selectivity

(98) To be characterised as state aid within the meaning of Article 61(1) of the EEA Agreement, the measure must also be selective in that it favours 'certain undertakings or the production of certain goods'. Not all measures which favour economic operators fall under the notion of aid, but only those which grant an advantage in a selective way to certain undertakings, categories of undertakings or to certain economic sectors.

(99) The potential aid measures at issue, i.e. (i) not paying market interest on the advantage GR obtained through a temporary suspension of interest payments, (ii) receipt of funds indirectly from OR for the layout of a fibre optic cable network in Ölfus Municipality, (iii) short-term lending from OR to GR, and (iv) the inclusion of a condition in GR's loan agreements with private lenders on OR's continued majority ownership in GR, are individual measures addressed only to GR. The measures therefore appear to be selective within the meaning of Article 61(1) of the EEA Agreement.

6.4 Effect on trade and distortion of competition

(100) The measures must be liable to distort competition and affect trade between the Contracting Parties to the EEA Agreement.

(101) According to CJEU 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 ([97]). Furthermore, it is not necessary that the aid beneficiary itself is involved in intra-EEA trade.

([94]) PTA Decision No 3/2019 of 20.3.2019.
([95]) PTA Decision No 3/2019 of 20.3.2019, paragraph 353.
([96]) PTA Decision No 3/2019 of 20.3.2019, paragraph 353.
([97]) Case E-6/98 *Norway* v *ESA* [1999] EFTA Ct. Rep. 76.

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 ([98]).

(102) GR is active in deploying a fibre network infrastructure in a market which can be entered directly or through financial involvement by participants from other EEA States. In general, the markets for electronic communications services (including the wholesale and the retail broadband markets) are open to trade and competition between operators and service providers across the EEA.

(103) Therefore, it is the Authority's preliminary view that the measures are liable to distort competition and affect trade between the Contracting Parties to the EEA Agreement.

6.5 Conclusion

(104) Based on the information provided by the Icelandic authorities and the complainant, the Authority has formed the preliminary view that the measures, i.e. (i) not paying market interest on the advantage GR obtained through a temporary suspension of interest payments, (ii) receipt of funds indirectly from OR for the layout of a fibre optic cable network in Ölfus Municipality, (iii) short-term lending from OR to GR, and (iv) the inclusion of a condition in GR's loan agreements with private lenders on OR's, fulfil all criteria in Article 61(1) of the EEA Agreement and therefore constitute state aid.

7 Procedural requirements

(105) Pursuant to Article 1(3) of Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ('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.'

(106) The Icelandic authorities did not notify the potential aid measures to the Authority. It is therefore the Authority's preliminary view that the Icelandic authorities have not respected their obligations pursuant to Article 1(3) of Part I of Protocol 3. The granting of the potential aid therefore appears to be unlawful.

8 Compatibility

(107) Having reached a preliminary conclusion that the measures might constitute unlawful aid, the Authority must assess whether they would be compatible with the functioning of the EEA Agreement.

(108) The Authority can declare state aid compatible with the functioning of the EEA Agreement under its Articles 59(2) and 61(3)(c) provided that certain compatibility conditions are fulfilled.

(109) It is for the Icelandic authorities to invoke possible grounds for compatibility and to demonstrate that the conditions for compatibility are met ([99]). However, the Icelandic authorities have not provided any arguments substantiating why the measures should be considered compatible with the functioning of the EEA Agreement. In particular, no arguments supporting the conclusion that the aid is targeted at a well-defined objective of common interest have been presented. Furthermore, the Icelandic authorities have not presented evidence suggesting that GR has been entrusted with a public service obligation. The Authority has also not identified any clear grounds for compatibility.

([98]) See for example judgments in *Eventech*, C-518/13, EU:C:2015:9, paragraph 66, *Libert and others*, C-197/11 and C-203/11, EU:C:2013:288, paragraph 77, *Friulia Venezia Giulia*, T-288/97, EU:T:2001:115, paragraph 41.

([99]) Judgment in *Italy* v *Commission*, C-364/90, EU:C:1993:157, paragraph 20.

(110) To the extent that the measures constitute state aid, the Authority therefore has doubts as to their compatibility with the functioning of the EEA Agreement

9 Conclusion

(111) As set out above, the Authority has formed the preliminary view that the measures fulfil all criteria in Article 61(1) of the EEA Agreement and therefore appear to constitute state aid. The Authority furthermore has doubts as to whether the measures are compatible with the functioning of the EEA Agreement.

(112) Consequently, and in accordance with Article 4(4) of Part II of Protocol 3, the Authority hereby opens 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 do not constitute state aid or are compatible with the functioning of the EEA Agreement.

(113) The Authority, acting under the procedure laid down in Article 1(2) of Part I of Protocol 3, invites the Icelandic authorities to submit, by **6 January 2020** their comments and to provide all documents, information and data needed for the assessment of the measures in light of the state aid rules.

(114) The Icelandic authorities are requested to immediately forward a copy of this decision to OR.

(115) If this letter contains confidential information which should not be disclosed to third parties, please inform the Authority by **13 December 2019**, identifying the confidential elements and the reasons why the information is considered to be confidential. In doing so, please consult the Authority's Guidelines on Professional Secrecy in State Aid Decisions ([100]). If the Authority does not receive a reasoned request by that deadline, the Icelandic authorities will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter on the Authority's website: http://www.eftasurv.int/state-aid/state-aid-register/ and in the Official Journal of the European Union and the EEA Supplement thereto.

(116) Finally, the Authority will inform interested parties by publishing a meaningful summary of it in the Official Journal of the European Union and the EEA Supplement thereto. All interested parties will be invited to submit their comments within one month of the date of such publication. The comments will be communicated to the Icelandic authorities.

For the EFTA Surveillance Authority,

Yours faithfully,

Bente Angell-Hansen	Frank J. Büchel	Högni Kristjánsson
President	*College Member*	*College Member*
Responsible College Member		

Carsten Zatschler

Countersigning as Director,

Legal and Executive Affairs

([100]) OJ L 154, 8.6.2006, p. 27 and EEA Supplement No 29, 8.6.2006, p. 1.

EFTA-DÓMSTÓLLINN

DÓMUR DÓMSTÓLSINS **2020/EES/8/03**

13. nóvember 2019

í máli E-2/19

D og E

(Frjáls för fólks – Aðlögunarákvæði vegna einstakra atvinnugreina varðandi Liechtenstein – Búseturéttur – Afleiddur búseturéttur aðstandenda – Tilskipun 2004/38/EB)

Hinn 13. nóvember 2019, kvað dómstóllinn upp dóm í máli E-2/19, D og E – BEIÐNI *Verwaltungsgerichtshof des Fürstentums Liechtenstein* (stjórnsýsludómstóls Furstadæmisins Liechtenstein), skv. 34. gr. samnings EFTA-ríkjanna um stofnun eftirlitsstofnunar og dómstóls, um skýringu á tilskipun Evrópuþingsins og ráðsins 2004/38/EB frá 29. apríl 2004 um rétt borgara Sambandsins og aðstandenda þeirra til frjálsrar farar og dvalar á yfirráðasvæði aðildarríkjanna, eins og hún var aðlöguð að EES-samningnum. Dóminn skipuðu dómararnir Páll Hreinsson, forseti og framsögumaður, Bernd Hammermann og Ola Mestad (settur dómari), og hljóða dómsorð sem hér segir:

> Aðlögunarákvæði vegna einstakra atvinnugreina í viðaukum V. og VIII. við EES-samninginn, einkum III. lið, svipta ekki aðstandendur ríkisborgara EES-ríkis sem hafa gild dvalarleyfi og eru búsettir í Lichtenstein, réttinum til þess að fylgja ríkisborgara EES-ríkisins eða fylgja honum í Liechtenstein skv. d-lið 1. mgr. 7. gr. tilskipunar 2004/38/EB, jafnvel þótt dvalarleyfi EES-ríkisborgarans í Liechtenstein hafi ekki verið veitt á grundvelli kerfisins sem kveðið er á um í aðlögunarákvæðum vegna einstakra atvinnugreina.

ESB-STOFNANIR

FRAMKVÆMDASTJÓRNIN

Tilkynning um fyrirhugaðan samruna fyrirtækja **2020/EES/8/04**

(mál M.9410 – Saudi Aramco/SABIC)

1. Framkvæmdastjórninni barst 23. janúar 2020 tilkynning um fyrirhugaðan samruna í samræmi við 4. gr. reglugerðar ráðsins (EB) nr. 139/2004 ([1]).

   Tilkynningin varðar eftirfarandi fyrirtæki:

   – Saudi Arabian Oil Company („Saudi Aramco“, Sádí-Arabíu).

   – Saudi Basic Industries Corporation („SABIC“, Sádí-Arabíu).

   Saudi Aramco nær fullum yfirráðum, í skilningi b-liðar 1. mgr. 3. gr. samrunareglugerðarinnar, yfir SABIC í heild sinni.

   Samruninn á sér stað með kaupum á hlutabréfum.

2. Starfsemi hlutaðeigandi fyrirtækja er sem hér segir:

   – Saudi Aramco: fæst einkum við leit, vinnslu og markaðssetningu á hráolíu, jarðgasi og eldsneyti úr olíu, auk þess að annast framleiðslu og sölu á hreinsuðum vörum og efnum úr jarðolíu.

   – SABIC: einkum framleiðsla og sala á hrávöruíðefnum (m.a. jarðolíu), milliefnum, fjölliðum, áburði og málmum.

3. Frumathugun framkvæmdastjórnarinnar hefur leitt í ljós að hin fyrirhuguðu viðskipti sem hafa verið tilkynnt geti fallið undir gildissvið samrunareglugerðarinnar. Fyrirvari er þó um endanlega ákvörðun hvað þetta atriði varðar.

4. Þriðju aðilar sem eiga hagsmuna að gæta eru hvattir til að senda framkvæmdastjórninni athugasemdir sem þeir kunna að hafa fram að færa um hina fyrirhuguðu starfsemi.

   Athugasemdir verða að berast framkvæmdastjórninni innan tíu daga frá því að tilkynning þessi birtist í Stjtíð. ESB C 35, 3.2.2020. Eftirfarandi tilvísun skal ávallt tekin sérstaklega fram:

   M.9410 – Saudi Aramco/SABIC

   Unnt er að senda framkvæmdastjórninni athugasemdir með tölvupósti, símbréfi eða í pósti. Vinsamlegast notið eftirfarandi samskiptaleiðir:

   Netfang: COMP-MERGER-REGISTRY@ec.europa.eu

   Bréfsími: +32 229-64301

   Póstáritun:
   European Commission
   Directorate-General for Competition
   Merger Registry
   1049 Bruxelles/Brussel

([1]) Stjtíð. ESB L 24, 29.1.2004, bls. 1 („samrunareglugerðin“).

Tilkynning um fyrirhugaðan samruna fyrirtækja **2020/EES/8/05**

(mál M.9707 – Aperam Alloys Imphy/Tekna Plasma Europe/ImphyTek Powders)

Mál sem kann að verða tekið fyrir samkvæmt einfaldaðri málsmeðferð

1. Framkvæmdastjórninni barst 24. janúar 2020 tilkynning um fyrirhugaðan samruna í samræmi við 4. gr. reglugerðar ráðsins (EB) nr. 139/2004 ([1]).

   Tilkynningin varðar eftirfarandi fyrirtæki:

   – Aperam Alloys Imphy SAS, („Aperam“, Lúxemborg), dótturfélag að fullu í eigu Aperam S.A.

   – Tekna Plasma Europe SAS („Tekna“, Noregi), óbeint dótturfyrirtæki Arendals Fossekompani ASA.

   – ImphyTek Powders SAS („ImphyTek Powders“, Frakklandi).

   Aperam og Tekna ná í sameiningu yfirráðum, í skilningi b-liðar 1. mgr. 3. gr. og 4. mgr. 3. gr. samrunareglugerðarinnar, yfir ImphyTek Powders.

   Samruninn á sér stað með hlutabréfakaupum í nýstofnuðu fyrirtæki sem er sameiginlegt félag.

2. Starfsemi hlutaðeigandi fyrirtækja er sem hér segir:

   – Aperam: framleiðsla og sala á ryðfríu stáli, rafstáli og sérnota stálblendi, en viðskiptavinir eru í yfir 40 löndum.

   – Tekna: framleiðsla á ýrunarbúnaði og jaðarbúnaði vegna vinnslu á málmdufti.

   – ImphyTek Powders: framleiðsla og sala á nikkelblöndudufti.

3. Frumathugun framkvæmdastjórnarinnar hefur leitt í ljós að hin fyrirhuguðu viðskipti sem hafa verið tilkynnt geti fallið undir gildissvið samrunareglugerðarinnar. Fyrirvari er þó um endanlega ákvörðun hvað þetta atriði varðar.

   Hafa ber í huga að mál þetta kann að verða tekið fyrir samkvæmt málsmeðferðinni sem kveðið er á um í tilkynningu framkvæmdastjórnarinnar um einfaldaða málsmeðferð við meðhöndlun tiltekinna mála sem varða samruna, samkvæmt reglugerð ráðsins (EB) nr. 139/2004 ([2]).

4. Þriðju aðilar sem eiga hagsmuna að gæta eru hvattir til að senda framkvæmdastjórninni athugasemdir sem þeir kunna að hafa fram að færa um hina fyrirhuguðu starfsemi.

   Athugasemdir verða að berast framkvæmdastjórninni innan tíu daga frá því að tilkynning þessi birtist í Stjtíð. ESB C 38, 5.2.2020. Eftirfarandi tilvísun skal ávallt tekin sérstaklega fram:

   M.9707 – Aperam Alloys Imphy/Tekna Plasma Europe/ImphyTek Powders

   Unnt er að senda framkvæmdastjórninni athugasemdir með tölvupósti, símbréfi eða í pósti. Vinsamlegast notið eftirfarandi samskiptaleiðir:

   Netfang: COMP-MERGER-REGISTRY@ec.europa.eu

   Bréfsími: +32 229-64301

   Póstáritun:
   European Commission
   Directorate-General for Competition
   Merger Registry
   1049 Bruxelles/Brussel

([1]) Stjtíð. ESB L 24, 29.1.2004, bls. 1 („samrunareglugerðin“).
([2]) Stjtíð. ESB C 366, 14.12.2013, bls. 5.

Tilkynning um fyrirhugaðan samruna fyrirtækja **2020/EES/8/06**

(mál M.9714 – Viacom/beIN/Miramax)

Mál sem kann að verða tekið fyrir samkvæmt einfaldaðri málsmeðferð

1. Framkvæmdastjórninni barst 29. janúar 2020 tilkynning um fyrirhugaðan samruna í samræmi við 4. gr. reglugerðar ráðsins (EB) nr. 139/2004 ([1]).

   Tilkynningin varðar eftirfarandi fyrirtæki:

   – Viacom International Inc. („Viacom“, Bandaríkjunum), sem tilheyrir ViacomCBS Inc.

   – beIN Media Group, LLC („beIN“, Katar), sem tilheyrir beIN Corporation.

   – MMX Media Finance, LLC („Miramax“, Bandaríkjunum), sem er sem stendur alfarið undir yfirráðum beIN.

   Viacom og beIN ná í sameiningu yfirráðum, í skilningi b-liðar 1. mgr. 3. gr. og 4. mgr. 3. gr. samrunareglugerðarinnar, yfir Miramax.

   Samruninn á sér stað með kaupum á hlutabréfum.

2. Starfsemi hlutaðeigandi fyrirtækja er sem hér segir:

   – Viacom: fjölmiðla- og afþreyingarfyrirtæki sem starfar um allan heim.

   – beIN: afþreyingarfyrirtæki sem m.a. starfrækir íþróttafréttamiðla.

   – Miramax: afþreyingarfyrirtæki sem framleiðir og dreifir kvikmyndum og sjónvarpsþáttum.

3. Frumathugun framkvæmdastjórnarinnar hefur leitt í ljós að hin fyrirhuguðu viðskipti sem hafa verið tilkynnt geti fallið undir gildissvið samrunareglugerðarinnar. Fyrirvari er þó um endanlega ákvörðun hvað þetta atriði varðar.

   Hafa ber í huga að mál þetta kann að verða tekið fyrir samkvæmt málsmeðferðinni sem kveðið er á um í tilkynningu framkvæmdastjórnarinnar um einfaldaða málsmeðferð við meðhöndlun tiltekinna mála sem varða samruna, samkvæmt reglugerð ráðsins (EB) nr. 139/2004 ([2]).

4. Þriðju aðilar sem eiga hagsmuna að gæta eru hvattir til að senda framkvæmdastjórninni athugasemdir sem þeir kunna að hafa fram að færa um hina fyrirhuguðu starfsemi.

   Athugasemdir verða að berast framkvæmdastjórninni innan tíu daga frá því að tilkynning þessi birtist í Stjtíð. ESB C 40, 6.2.2020. Eftirfarandi tilvísun skal ávallt tekin sérstaklega fram:

   M.9714 – Viacom/beIN/Miramax

   Unnt er að senda framkvæmdastjórninni athugasemdir með tölvupósti, símbréfi eða í pósti. Vinsamlegast notið eftirfarandi samskiptaleiðir:

   Netfang: COMP-MERGER-REGISTRY@ec.europa.eu

   Bréfsími: +32 229-64301

   Póstáritun:
   European Commission
   Directorate-General for Competition
   Merger Registry
   1049 Bruxelles/Brussel

([1]) Stjtíð. ESB L 24, 29.1.2004, bls. 1 („samrunareglugerðin“).
([2]) Stjtíð. ESB C 366, 14.12.2013, bls. 5.

Tilkynning um fyrirhugaðan samruna fyrirtækja **2020/EES/8/07**

(mál M.9719 – Fairfax Financial Holdings Limited/OMERS Administration Corporation/Riverstone Barbados Limited)

Mál sem kann að verða tekið fyrir samkvæmt einfaldaðri málsmeðferð

1. Framkvæmdastjórninni barst 30. janúar 2020 tilkynning um fyrirhugaðan samruna í samræmi við 4. gr. reglugerðar ráðsins (EB) nr. 139/2004 ([1]).

   Tilkynningin varðar eftirfarandi fyrirtæki:

   – Fairfax Financial Holdings Limited („FFHL“, Kanada).

   – Kingston Infrastructure Holdings Inc. („Kingston“, Kanada) undir yfirráðum OMERS Administration Corporation („OMERS“, Kanada).

   – Riverstone Barbados Limited („Riverstone“, Barbados).

   FFHL og Kingston ná í sameiningu yfirráðum, í skilningi b-liðar 1. mgr. 3. gr. og 4. mgr. 3. gr. samrunareglugerðarinnar, yfir Riverstone.

   Samruninn á sér stað með kaupum á hlutabréfum.

2. Starfsemi hlutaðeigandi fyrirtækja er sem hér segir:

   – FFHL: eignarhaldsfélag með starfsemi á sviði eignatrygginga, skaðatrygginga og endurtrygginga ásamt tengdri fjárfestingastýringu.

   – OMERS: stýrir lífeyriskerfi starfsmanna sveitarfélagsins Ontario í Kanada og er fjárvörsluaðili lífeyrissjóðanna. Um er að ræða stýringu á fjölbreytilegu alþjóðlegu eignasafni hlutabréfa og skuldabréfa, sem og fasteignir, hagsmuni í óskráðum félögum og fjárfestingar í grunnvirkjum.

   – Riverstone: annast stýringu rekstraraðila sem fást við sólarlagstryggingar (e. run-off) og eignasafna.

3. Frumathugun framkvæmdastjórnarinnar hefur leitt í ljós að hin fyrirhuguðu viðskipti sem hafa verið tilkynnt geti fallið undir gildissvið samrunareglugerðarinnar.

   Hafa ber í huga að mál þetta kann að verða tekið fyrir samkvæmt málsmeðferðinni sem kveðið er á um í tilkynningu framkvæmdastjórnarinnar um einfaldaða málsmeðferð við meðhöndlun tiltekinna mála sem varða samruna, samkvæmt reglugerð ráðsins (EB) nr. 139/2004 ([2]).

4. Þriðju aðilar sem eiga hagsmuna að gæta eru hvattir til að senda framkvæmdastjórninni athugasemdir sem þeir kunna að hafa fram að færa um hin fyrirhuguðu viðskipti.

   Athugasemdir verða að berast framkvæmdastjórninni innan tíu daga frá því að tilkynning þessi birtist í Stjtíð. ESB C 40, 6.2.2019. Eftirfarandi tilvísun skal ávallt tekin sérstaklega fram:

   M.9719 – Fairfax Financial Holdings Limited/OMERS Administration Corporation/Riverstone Barbados Limited

   Unnt er að senda framkvæmdastjórninni athugasemdir með tölvupósti, símbréfi eða í pósti. Vinsamlegast notið eftirfarandi samskiptaleiðir:

   Netfang: COMP-MERGER-REGISTRY@ec.europa.eu

   Bréfsími: +32 229-64301

   Póstáritun:
   European Commission
   Directorate-General for Competition
   Merger Registry
   1049 Bruxelles/Brussel

([1]) Stjtíð. ESB L 24, 29.1.2004, bls. 1 („samrunareglugerðin“).
([2]) Stjtíð. ESB C 366, 14.12.2013, bls. 5.

Tilkynning um fyrirhugaðan samruna fyrirtækja **2020/EES/8/08**

(mál M.9723 – Showa Denko K.K./Hitachi Chemical Company)

Mál sem kann að verða tekið fyrir samkvæmt einfaldaðri málsmeðferð

1. Framkvæmdastjórninni barst 24. janúar 2020 tilkynning um fyrirhugaðan samruna í samræmi við 4. gr. reglugerðar ráðsins (EB) nr. 139/2004 ([1]).

   Tilkynningin varðar eftirfarandi fyrirtæki:

   – Showa Denko K.K. („SDK“) Japan.

   – Hitachi Chemical Company, Ltd. („Hitachi Chemical“), Japan.

   SDK nær eitt yfirráðum, í skilningi b-liðar 1. mgr. 3. gr. samrunareglugerðarinnar, yfir Hitachi Chemical í heild.

   Samruninn á sér stað með kaupum á hlutabréfum.

2. Starfsemi hlutaðeigandi fyrirtækja er sem hér segir:

   – SDK: er einkum með starfsemi í austurhluta Asíu við framleiðslu og sölu á jarðolíuefnum, íðefnum, rafeindavörum, ólífrænum efnum, áli og byggingarefnum.

   – Hitachi Chemical: einkum með starfsemi í austurhluta Asíu við framleiðslu og sölu á vinnsluefnum og þróuðum íhlutum og kerfum.

3. Frumathugun framkvæmdastjórnarinnar hefur leitt í ljós að hin fyrirhuguðu viðskipti sem hafa verið tilkynnt geti fallið undir gildissvið samrunareglugerðarinnar. Fyrirvari er þó um endanlega ákvörðun hvað þetta atriði varðar.

   Hafa ber í huga að mál þetta kann að verða tekið fyrir samkvæmt málsmeðferðinni sem kveðið er á um í tilkynningu framkvæmdastjórnarinnar um einfaldaða málsmeðferð við meðhöndlun tiltekinna mála sem varða samruna, samkvæmt reglugerð ráðsins (EB) nr. 139/2004 ([2]).

4. Þriðju aðilar sem eiga hagsmuna að gæta eru hvattir til að senda framkvæmdastjórninni athugasemdir sem þeir kunna að hafa fram að færa um hina fyrirhuguðu starfsemi.

   Athugasemdir verða að berast framkvæmdastjórninni innan tíu daga frá því að tilkynning þessi birtist í Stjtíð. ESB C 35, 3.2.2020. Eftirfarandi tilvísun skal ávallt tekin sérstaklega fram:

   M.9723 – Showa Denko K.K./Hitachi Chemical Company

   Unnt er að senda framkvæmdastjórninni athugasemdir með tölvupósti, símbréfi eða í pósti. Vinsamlegast notið eftirfarandi samskiptaleiðir:

   Netfang: COMP-MERGER-REGISTRY@ec.europa.eu

   Bréfsími: +32 229-64301

   Póstáritun:
   European Commission
   Directorate-General for Competition
   Merger Registry
   1049 Bruxelles/Brussel

([1]) Stjtíð. ESB L 24, 29.1.2004, bls. 1 („samrunareglugerðin“).
([2]) Stjtíð. ESB C 366, 14.12.2013, bls. 5.

Tilkynning um fyrirhugaðan samruna fyrirtækja **2020/EES/8/09**

(mál M.9726 – Itochu/AMCI/POSCO/JVLP/NCR)

Mál sem kann að verða tekið fyrir samkvæmt einfaldaðri málsmeðferð

1. Framkvæmdastjórninni barst 27. janúar 2020 tilkynning um fyrirhugaðan samruna í samræmi við 4. gr. reglugerðar ráðsins (EB) nr. 139/2004 ([1]).

   Tilkynningin varðar eftirfarandi fyrirtæki:

   – Itochu Corporation („Itochu“, Japan).

   – American Metals & Coal International, Inc. („AMCI“, Bandaríkjunum).

   – POSCO Corporation („POSCO“, Suður-Kóreu).

   – Jaz Ventures, L.P. („JVLP“, Bandaríkjunum).

   – North Central Resources, LLC („NCR“, Bandaríkjunum), sameiginlegt fyrirtæki.

   Itochu, AMCI, POSCO og JVLP ná í sameiningu yfirráðum, í skilningi b-liðar 1. mgr. 3. gr. og 4. mgr. 3. gr. samruna-reglugerðarinnar, yfir NCR.

   Samruninn á sér stað með kaupum á hlutabréfum.

2. Starfsemi hlutaðeigandi fyrirtækja er sem hér segir:

   – Itochu: starfsemi tengd iðnaði af margvíslegu tagi, m.a. stálvörur, textílefni, vinnuvélar, rafeindabúnaður, íðefni, matvæli og fjármálaþjónusta.

   – AMCI: einkafyrirtæki sem fjárfestir í náttúruauðlindum, með starfsemi innan orku- og málmiðnaðarins ásamt fjárfestingum í kola- og steinefnageiranum, málmgeiranum og flutningum.

   – POSCO: ýmiss konar námaiðnaður, m.a. með járngrýti, nikkel, kol og endurnýjanlega orku. POSCO rekur sem standur tvær stálsmiðjur í Kóreu.

   – JVLP: fjölskyldusamlagshlutafélag sem er eigandi ýmiss konar fjárfestinga í orkufyrirtækjum.

   – NCR: sameiginlegt fyrirtæki sem annast eignarhald, þróun, leit, byggingu og nýtingu í atvinnuskyni á kokskolaverkefni í Vestur-Virginíu.

3. Frumathugun framkvæmdastjórnarinnar hefur leitt í ljós að hin fyrirhuguðu viðskipti sem hafa verið tilkynnt geti fallið undir gildissvið samrunareglugerðarinnar. Fyrirvari er þó um endanlega ákvörðun hvað þetta atriði varðar.

   Hafa ber í huga að mál þetta kann að verða tekið fyrir samkvæmt málsmeðferðinni sem kveðið er á um í tilkynningu framkvæmdastjórnarinnar um einfaldaða málsmeðferð við meðhöndlun tiltekinna mála sem varða samruna, samkvæmt reglugerð ráðsins (EB) nr. 139/2004 ([2]).

4. Þriðju aðilar sem eiga hagsmuna að gæta eru hvattir til að senda framkvæmdastjórninni athugasemdir sem þeir kunna að hafa fram að færa um hina fyrirhuguðu starfsemi.

   Athugasemdir verða að berast framkvæmdastjórninni innan tíu daga frá því að tilkynning þessi birtist í Stjtíð. ESB C 35, 3.2.2020. Eftirfarandi tilvísun skal ávallt tekin sérstaklega fram:

   M.9726 – Itochu/AMCI/POSCO/JVLP/NCR

   Unnt er að senda framkvæmdastjórninni athugasemdir með tölvupósti, símbréfi eða í pósti. Vinsamlegast notið eftirfarandi samskiptaleiðir:

   Netfang: COMP-MERGER-REGISTRY@ec.europa.eu

   Bréfsími: +32 229-64301

   Póstáritun:
   European Commission
   Directorate-General for Competition
   Merger Registry
   1049 Bruxelles/Brussel

([1]) Stjtíð. ESB L 24, 29.1.2004, bls. 1 („samrunareglugerðin“).
([2]) Stjtíð. ESB C 366, 14.12.2013, bls. 5.

Tilkynning um fyrirhugaðan samruna fyrirtækja **2020/EES/8/10**

(mál M.9727 – AccorInvest/Accor/Hotel Portfolio)

Mál sem kann að verða tekið fyrir samkvæmt einfaldaðri málsmeðferð

1. Framkvæmdastjórninni barst 24. janúar 2020 tilkynning um fyrirhugaðan samruna í samræmi við 4. gr. reglugerðar ráðsins (EB) nr. 139/2004 ([1]).

   Tilkynningin varðar eftirfarandi fyrirtæki:

   – AccorInvest S.A. (Lúxemborg) („AccorInvest“).

   – Accor (Frakklandi).

   AccorInvest og Accor ná í sameiningu yfirráðum, í skilningi b-liðar 1. mgr. 3. gr. og 4. mgr. 3. gr. samrunareglugerðarinnar, yfir Hotel Portfolio.

   Samruninn á sér stað með opinberu yfirtökuboði sem tilkynnt var 17. desember 2019.

2. Starfsemi hlutaðeigandi fyrirtækja er sem hér segir:

   – AccorInvest: fjárfestingarfélag sem bæði er eigandi og rekstraraðili hóteleigna og -starfsemi. AccorInvest er sem stendur eigandi og rekstraraðili 856 hótela í Evrópu (Frakklandi, Mónakó, Austurríki, Belgíu, Þýskalandi, Grikklandi, Ítalíu, Lúxemborg, Hollandi, Portúgal, Spáni, Sviss, Bretlandi) og Ameríku (Argentínu, Brasilíu, Chíle, Kólumbíu, Mexíkó, Perú), Afríku (Kamerún, Fílabeinsströndinni, Senegal) Ástralíu, Japan og Singapúr.

   – Accor: hótelsamstæða sem einkum annast stjórnun og rekstrarleyfi fyrir hótel. Accor er einkum með starfsemi í tengslum við hótelstjórnun og rekstrarleyfi í Evrópu, Asíu, Mið-Austurlöndum, Afríku, Norður- og Mið-Ameríku og Suður-Ameríku.

   – Hotel Portfolio: eignasafn sem samanstendur af 73 hóteleignum, m.a. lúxushótelum, fínum hótelum, millifínum hótelum og almennum hótelum og rekstri. Hotel Portfolio er staðsett í Tékklandi, Ungverjalandi, Litháen, Póllandi, Rúmeníu og Slóvakíu og annast hótelgistingarþjónustu í þessum löndum. Í augnablikinu er það í eigu pólska fjárfestingarfyrirtækisins Orbis, sem er dótturfyrirtæki Accor.

3. Frumathugun framkvæmdastjórnarinnar hefur leitt í ljós að hin fyrirhuguðu viðskipti sem hafa verið tilkynnt geti fallið undir gildissvið samrunareglugerðarinnar. Fyrirvari er þó um endanlega ákvörðun hvað þetta atriði varðar.

   Hafa ber í huga að mál þetta kann að verða tekið fyrir samkvæmt málsmeðferðinni sem kveðið er á um í tilkynningu framkvæmdastjórnarinnar um einfaldaða málsmeðferð við meðhöndlun tiltekinna mála sem varða samruna, samkvæmt reglugerð ráðsins (EB) nr. 139/2004 ([2]).

4. Þriðju aðilar sem eiga hagsmuna að gæta eru hvattir til að senda framkvæmdastjórninni athugasemdir sem þeir kunna að hafa fram að færa um hina fyrirhuguðu starfsemi.

   Athugasemdir verða að berast framkvæmdastjórninni innan tíu daga frá því að tilkynning þessi birtist í Stjtíð. ESB C 35, 3.2.2020. Eftirfarandi tilvísun skal ávallt tekin sérstaklega fram:

   M.9727 – AccorInvest/Accor/Hotel Portfolio

   Unnt er að senda framkvæmdastjórninni athugasemdir með tölvupósti, símbréfi eða í pósti. Vinsamlegast notið eftirfarandi samskiptaleiðir:

   Netfang: COMP-MERGER-REGISTRY@ec.europa.eu

   Bréfsími: +32 229-64301

   Póstáritun:
   European Commission
   Directorate-General for Competition
   Merger Registry
   1049 Bruxelles/Brussel

([1]) Stjtíð. ESB L 24, 29.1.2004, bls. 1 („samrunareglugerðin“).
([2]) Stjtíð. ESB C 366, 14.12.2013, bls. 5.

Tilkynning um fyrirhugaðan samruna fyrirtækja **2020/EES/8/11**

(mál M.9751 – Elliot/Apollo/EP Energy)

Mál sem kann að verða tekið fyrir samkvæmt einfaldaðri málsmeðferð

1. Framkvæmdastjórninni barst 31. janúar 2020 tilkynning um fyrirhugaðan samruna í samræmi við 4. gr. reglugerðar ráðsins (EB) nr. 139/2004 ([1]).

   Tilkynningin varðar eftirfarandi fyrirtæki:

   – Apollo Capital Management, L.P. („Apollo“, Bandaríkjunum).

   – Elliot Investment Management, L.P. („Elliot“, Bandaríkjunum).

   – EP Energy Corporation („EP Energy“, Bandaríkjunum).

   Elliot og Apollo ná í sameiningu yfirráðum, í skilningi b-liðar 1. mgr. 3. gr. og 4. mgr. 3. gr. samrunareglugerðarinnar, yfir EP Energy.

   Samruninn á sér stað með kaupum á hlutabréfum.

2. Starfsemi hlutaðeigandi fyrirtækja er sem hér segir:

   – Apollo: fjárfesting í fyrirtækjum og skuldum útgefnum af félögum með starfsemi á margvíslegum sviðum um heim allan í gegnum fjárfestingarsjóði sem hlutdeildarfélög Apollo stjórna.

   – Elliot: fjárfestingafyrirtæki sem beinir sjónum að fjárfestingum og áhættustjórnun.

   – EP Energy: sjálfstætt leitar- og framleiðslufyrirtæki sem fæst við kaup og þróun á grunnvirkjum á landi í tengslum við olíu og jarðgas í Bandaríkjunum. EP Energy lýtur sem stendur alfarið yfirráðum af hálfu Apollo.

3. Frumathugun framkvæmdastjórnarinnar hefur leitt í ljós að hin fyrirhuguðu viðskipti sem hafa verið tilkynnt geti fallið undir gildissvið samrunareglugerðarinnar. Fyrirvari er þó um endanlega ákvörðun hvað þetta atriði varðar.

   Hafa ber í huga að mál þetta kann að verða tekið fyrir samkvæmt málsmeðferðinni sem kveðið er á um í tilkynningu framkvæmdastjórnarinnar um einfaldaða málsmeðferð við meðhöndlun tiltekinna mála sem varða samruna, samkvæmt reglugerð ráðsins (EB) nr. 139/2004 ([2]).

4. Þriðju aðilar sem eiga hagsmuna að gæta eru hvattir til að senda framkvæmdastjórninni athugasemdir sem þeir kunna að hafa fram að færa um hin fyrirhuguðu viðskipti.

   Athugasemdir verða að berast framkvæmdastjórninni innan tíu daga frá því að tilkynning þessi birtist í Stjtíð. ESB C 42, 7.2.2020. Eftirfarandi tilvísun skal ávallt tekin sérstaklega fram:

   M.9751 – Elliot/Apollo/EP Energy

   Unnt er að senda framkvæmdastjórninni athugasemdir með tölvupósti, símbréfi eða í pósti. Vinsamlegast notið eftirfarandi samskiptaleiðir:

   Netfang: COMP-MERGER-REGISTRY@ec.europa.eu

   Bréfsími: +32 229-64301

   Póstáritun:
   European Commission
   Directorate-General for Competition
   Merger Registry
   1049 Bruxelles/Brussel

([1]) Stjtíð. ESB L 24, 29.1.2004, bls. 1 („samrunareglugerðin“).
([2]) Stjtíð. ESB C 366, 14.12.2013, bls. 5.

Ákvörðun um að hreyfa ekki andmælum við tilkynntum samruna fyrirtækja **2020/EES/8/12**

(mál M.9574 – Associated British Foods/Wilmar International/AB Mauri Yihai Kerry China Investment Holding Company)

Framkvæmdastjórnin ákvað 22. janúar 2020 að hreyfa ekki andmælum við ofangreindum tilkynntum samruna og lýsa hann samrýmanlegan reglum sameiginlega markaðarins. Ákvörðunin er tekin í samræmi við b-lið 1. mgr. 6. gr. reglugerðar ráðsins (EB) nr. 139/2004 ([1]). Óstytt útgáfa þessarar ákvörðunar er eingöngu til á ensku og verður hún birt eftir að felld hafa verið brott viðskiptaleyndarmál, ef einhver eru. Unnt verður að nálgast hana á eftirfarandi hátt:

– Á samkeppnishluta Europa-vefsetursins (http://ec.europa.eu/competition/mergers/cases/). Notendur vefsetursins geta leitað að samrunaákvörðunum með ýmsum hætti, m.a. eftir fyrirtæki, málsnúmeri, dagsetningu og atvinnugrein.

– Á rafrænu sniði á vefsetrinu EUR-Lex (http://eur-lex.europa.eu/en/index.htm) undir skjalnúmeri 32020M9574. EUR-Lex veitir aðgang að löggjöf Evrópusambandsins á Internetinu.

Ákvörðun um að hreyfa ekki andmælum við tilkynntum samruna fyrirtækja **2020/EES/8/13**

(mál M.9612 – Central Group/SIGNA Prime/Mahis JV)

Framkvæmdastjórnin ákvað 23. janúar 2020 að hreyfa ekki andmælum við ofangreindum tilkynntum samruna og lýsa hann samrýmanlegan reglum sameiginlega markaðarins. Ákvörðunin er tekin í samræmi við b-lið 1. mgr. 6. gr. reglugerðar ráðsins (EB) nr. 139/2004 ([1]). Óstytt útgáfa þessarar ákvörðunar er eingöngu til á ensku og verður hún birt eftir að felld hafa verið brott viðskiptaleyndarmál, ef einhver eru. Unnt verður að nálgast hana á eftirfarandi hátt:

– Á samkeppnishluta Europa-vefsetursins (http://ec.europa.eu/competition/mergers/cases/). Notendur vefsetursins geta leitað að samrunaákvörðunum með ýmsum hætti, m.a. eftir fyrirtæki, málsnúmeri, dagsetningu og atvinnugrein.

– Á rafrænu sniði á vefsetrinu EUR-Lex (http://eur-lex.europa.eu/en/index.htm) undir skjalnúmeri 32020M9612. EUR-Lex veitir aðgang að löggjöf Evrópusambandsins á Internetinu.

([1]) Stjtíð. ESB L 24, 29.1.2004, bls. 1.

Ákvörðun um að hreyfa ekki andmælum við tilkynntum samruna fyrirtækja **2020/EES/8/14**

(mál M.9658 – Daiwa Securities Group/Aquila Holding/Aquila Capital Holding)

Framkvæmdastjórnin ákvað 22. janúar 2020 að hreyfa ekki andmælum við ofangreindum tilkynntum samruna og lýsa hann samrýmanlegan reglum sameiginlega markaðarins. Ákvörðunin er tekin í samræmi við b-lið 1. mgr. 6. gr. reglugerðar ráðsins (EB) nr. 139/2004 ([1]). Óstytt útgáfa þessarar ákvörðunar er eingöngu til á ensku og verður hún birt eftir að felld hafa verið brott viðskiptaleyndarmál, ef einhver eru. Unnt verður að nálgast hana á eftirfarandi hátt:

– Á samkeppnishluta Europa-vefsetursins (http://ec.europa.eu/competition/mergers/cases/). Notendur vefsetursins geta leitað að samrunaákvörðunum með ýmsum hætti, m.a. eftir fyrirtæki, málsnúmeri, dagsetningu og atvinnugrein.

– Á rafrænu sniði á vefsetrinu EUR-Lex (http://eur-lex.europa.eu/en/index.htm) undir skjalnúmeri 32020M9658. EUR-Lex veitir aðgang að löggjöf Evrópusambandsins á Internetinu.

Ákvörðun um að hreyfa ekki andmælum við tilkynntum samruna fyrirtækja **2020/EES/8/15**

(mál M.9687 – CPPIB/OTPP/IDEAL)

Framkvæmdastjórnin ákvað 22. janúar 2020 að hreyfa ekki andmælum við ofangreindum tilkynntum samruna og lýsa hann samrýmanlegan reglum sameiginlega markaðarins. Ákvörðunin er tekin í samræmi við b-lið 1. mgr. 6. gr. reglugerðar ráðsins (EB) nr. 139/2004 ([1]). Óstytt útgáfa þessarar ákvörðunar er eingöngu til á ensku og verður hún birt eftir að felld hafa verið brott viðskiptaleyndarmál, ef einhver eru. Unnt verður að nálgast hana á eftirfarandi hátt:

– Á samkeppnishluta Europa-vefsetursins (http://ec.europa.eu/competition/mergers/cases/). Notendur vefsetursins geta leitað að samrunaákvörðunum með ýmsum hætti, m.a. eftir fyrirtæki, málsnúmeri, dagsetningu og atvinnugrein.

– Á rafrænu sniði á vefsetrinu EUR-Lex (http://eur-lex.europa.eu/en/index.htm) undir skjalnúmeri 32020M9687. EUR-Lex veitir aðgang að löggjöf Evrópusambandsins á Internetinu.

([1]) Stjtíð. ESB L 24, 29.1.2004, bls. 1.

Ákvörðun um að hreyfa ekki andmælum við tilkynntum samruna fyrirtækja **2020/EES/8/16**

(mál M.9688 – Cinvend/Astorg/LGC Science Group)

Framkvæmdastjórnin ákvað 24. janúar 2020 að hreyfa ekki andmælum við ofangreindum tilkynntum samruna og lýsa hann samrýmanlegan reglum sameiginlega markaðarins. Ákvörðunin er tekin í samræmi við b-lið 1. mgr. 6. gr. reglugerðar ráðsins (EB) nr. 139/2004 ([1]). Óstytt útgáfa þessarar ákvörðunar er eingöngu til á ensku og verður hún birt eftir að felld hafa verið brott viðskiptaleyndarmál, ef einhver eru. Unnt verður að nálgast hana á eftirfarandi hátt:

– Á samkeppnishluta Europa-vefsetursins (http://ec.europa.eu/competition/mergers/cases/). Notendur vefsetursins geta leitað að samrunaákvörðunum með ýmsum hætti, m.a. eftir fyrirtæki, málsnúmeri, dagsetningu og atvinnugrein.

– Á rafrænu sniði á vefsetrinu EUR-Lex (http://eur-lex.europa.eu/en/index.htm) undir skjalnúmeri 32020M9688. EUR-Lex veitir aðgang að löggjöf Evrópusambandsins á Internetinu.

([1]) Stjtíð. ESB L 24, 29.1.2004, bls. 1.

Kynningatilkynning framkvæmdastjórnarinnar skv. 4. mgr. 16. gr. reglugerðar Evrópuþingsins og ráðsins (EB) nr. 1008/2008 um sameiginlegar reglur um flugrekstur í Bandalaginu **2020/EES/8/17**

Almannaþjónustukvaðir sem lagðar eru á í tengslum við áætlunarflug

Aðildarríki	Grikkland
Flugleiðir	Aþena – Kozani – Kastoria Þessaloníka – Limnos – Íkaría
Gildistökudagur almannaþjónustukvaða	miðvikudagur, 1. júlí 2020
Unnt er að nálgast textann ásamt hvers kyns viðkomandi upplýsingum og/eða skjölum sem varða almannaþjónustukvöðina, án endurgjalds	Hellenic Civil Aviation Authority (Flugmálastjórn Grikklands) Directorate-General for Air Transport Air Transport and International Affairs Division Section II GR-166 10 GRIKKLAND Sími: +30 2109973154 eða 8916307 Bréfsími: +30 2108947132 Vefsetur: www.hcaa.gr

Kynningatilkynning framkvæmdastjórnarinnar skv. 5. mgr. 17. gr. reglugerðar Evrópuþingsins og ráðsins (EB) nr. 1008/2008 um sameiginlegar reglur um flugrekstur í Bandalaginu **2020/EES/8/18**

Auglýsing um útboð á áætlunarflugi í samræmi við almannaþjónustukvaðir

Aðildarríki	Grikkland
Flugleiðir	Aþena – Kozani – Kastoria Þessaloníka – Limnos – Íkaría
Samningstími	1. júlí 2020 – 30. júní 2024
Frestur til að skila tilboðum	61 dagur eftir að auglýsing þessi birtist í Stjórnartíðindum Evrópusambandsins
Unnt er að nálgast texta útboðsauglýsingarinnar endurgjaldslaust, ásamt hvers kyns viðkomandi upplýsingum og/eða skjölum sem varða útboðið og almannaþjónustukvöðina	Hellenic Civil Aviation Authority (Flugmálastjórn Grikklands) Directorate-General for Air Transport Air Transport and International Affairs Division Section II GR-166 10 GRIKKLAND Sími + 30 2109973154 or 8916307 Bréfsími + 30 2108947132 Vefsetur: www.hcaa.gr

Kynningatilkynning framkvæmdastjórnarinnar skv. 4. mgr. 16. gr. reglugerðar Evrópuþingsins og ráðsins (EB) nr. 1008/2008 um sameiginlegar reglur um flugrekstur í Bandalaginu **2020/EES/8/19**

Almannaþjónustukvaðir sem lagðar eru á í tengslum við áætlunarflug

Aðildarríki	**Grikkland**
Flugleiðir	Aþena – Skiathos Aþena – Ikaria Aþena – Syros Aþena – Leros Aþena – Astipalea Aþena – Kalymnos Aþena – Skyros Þessaloníka – Samos Þessaloníka – Chios Þessaloníka – Kalamata Ródos – Karpathos – Kasos Ródos – Kastelorizo
Gildistökudagur almannaþjónustukvaða	1. október 2020
Unnt er að nálgast textann ásamt hvers kyns viðkomandi upplýsingum og/eða skjölum sem varða almannaþjónustukvöðina, án endurgjalds	Hellenic Civil Aviation Authority (Flugmálastjórn Grikklands) Directorate-General for Air Transport Air Transport and International Affairs Division Section II GR-16610 GRIKKLAND Sími + 30 2109973154 or 8916307 Bréfsími + 30 2108947132 Vefsetur: www.hcaa.gr

Kynningatilkynning framkvæmdastjórnarinnar skv. 5. mgr. 17. gr. reglugerðar Evrópuþingsins og ráðsins (EB) nr. 1008/2008 um sameiginlegar reglur um flugrekstur í Bandalaginu **2020/EES/8/20**

Auglýsing um útboð á áætlunarflugi í samræmi við almannaþjónustukvaðir

Aðildarríki	Grikkland
Flugleiðir	Aþena – Skiathos Aþena – Ikaria Aþena – Syros Aþena – Leros Aþena – Astipalea Aþena – Kalymnos Aþena – Skyros Þessaloníka – Samos Þessaloníka – Chios Þessaloníka – Kalamata Ródos – Karpathos – Kasos Ródos – Kastelorizo
Samningstími	1. október 2020 – 30. september 2020
Frestur til að skila tilboðum	61 dagur eftir að auglýsing þessi birtist í Stjórnartíðindum Evrópusambandsins
Unnt er að nálgast texta útboðsauglýsingarinnar endurgjaldslaust, ásamt hvers kyns viðkomandi upplýsingum og/eða skjölum sem varða útboðið og almannaþjónustukvöðina	Hellenic Civil Aviation Authority (Flugmálastjórn Grikklands) Directorate-General for Air Transport Air Transport and International Affairs Division Section II GR-16610 GRIKKLAND Sími: +30 2109973154 eða 8916307 Bréfsími: +30 2108947132 Vefsetur: www.hcaa.gr

Kynningatilkynning framkvæmdastjórnarinnar skv. 4. mgr. 16. gr. reglugerðar Evrópuþingsins og ráðsins (EB) nr. 1008/2008 um sameiginlegar reglur um flugrekstur í Bandalaginu **2020/EES/8/21**

Almannaþjónustukvaðir í tengslum við áætlunarflug felldar niður

Aðildarríki	Grikkland
Flugleiðir	Aþena – Paros Aþena – Karpathos Aþena – Kithira Aþena – Zakynthos
Upphaflegur gildistökudagur almannaþjónustukvaða	C164/10.7.2002 C299/11.10.2011
Dagur sem almannaþjónustukvaðir falla niður	30. september 2020
Unnt er að nálgast textann, ásamt hvers kyns viðkomandi upplýsingum og/eða skjölum sem varða almannaþjónustukvöðina	Hellenic Civil Aviation Authority (Flugmálastjórn Grikklands) Directorate-General for Air Transport Air Transport and International Affairs Division Section II GR-16610 GRIKKLAND Sími +30 2109973154 Bréfsími: +30 2108947132 Vefsetur: www.hcaa.gr

Kynningatilkynning framkvæmdastjórnarinnar skv. 4. mgr. 16. gr. reglugerðar Evrópuþingsins og ráðsins (EB) nr. 1008/2008 um sameiginlegar reglur um flugrekstur í Bandalaginu **2020/EES/8/22**

Breyting á almannaþjónustukvöðum í tengslum við áætlunarflug

Aðildarríki	Portúgal
Flugleiðir	Ponta Delgada - Santa Maria-Ponta Delgada Ponta Delgada - Terceira-Ponta Delgada Ponta Delgada - Graciosa- Ponta Delgada Ponta Delgada - Horta-Ponta Delgada Ponta Delgada - Pico-Ponta Delgada Ponta Delgada - São Jorge-Ponta Delgada Ponta Delgada - Flores-Ponta Delgada Ponta Delgada - Corvo-Ponta Delgada Terceira - Graciosa-Terceira Terceira - São Jorge-Terceira Terceira - Pico-Terceira Terceira - Horta-Terceira Terceira - Flores-Terceira Horta - Flores-Horta Horta - Corvo - Horta
Upphaflegur gildistökudagur almannaþjónustukvaða	1. júní 2009
Gildistökudagur breytinga	1. október 2020
Unnt er að nálgast textann, ásamt hvers kyns viðkomandi upplýsingum og/eða skjölum sem varða almannaþjónustukvöðina	Nánari upplýsingar veitir: Direção Regional dos Transportes da Secretaria Regional dos Transportes e Obras Públicas da Região Autónoma dos Açores Largo do Colégio, n.° 4 9500-054 Ponta Delgada Azores PORTUGAL Sími: + 351 296206300 Bréfasími +351 296281112 Netfang: drtransportes@azores.gov.pt Website: http://www.azores.gov.pt/Portal/pt/entidades/srtop/

Kynningatilkynning framkvæmdastjórnarinnar í samræmi við 5. mgr. 17. gr. reglugerðar Evrópuþingsins og ráðsins (EB) nr. 1008/2008 um sameiginlegar reglur um flugrekstur í Bandalaginu **2020/EES/8/23**

Auglýsing um útboð á áætlunarflugi í samræmi við almannaþjónustukvaðir

Aðildarríki	Portúgal
Flugleiðir	Ponta Delgada - Santa Maria-Ponta Delgada Ponta Delgada - Terceira-Ponta Delgada Ponta Delgada - Graciosa-Ponta Delgada Ponta Delgada - Horta-Ponta Delgada Ponta Delgada - Pico-Ponta Delgada Ponta Delgada - São Jorge-Ponta Delgada Ponta Delgada - Flores-Ponta Delgada Ponta Delgada - Corvo-Ponta Delgada Terceira - Graciosa-Terceira Terceira - São Jorge-Terceira Terceira - Pico-Terceira Terceira - Horta-Terceira Terceira - Flores-Terceira Horta - Flores-Horta Horta - Corvo - Horta
Samningstími	Frá 1. október 2020 til 30. september 2025
Frestur til að skila tilboðum	62 dagar frá birtingu þessarar auglýsingar
Unnt er að nálgast texta útboðsauglýsingarinnar endurgjaldslaust, ásamt hvers kyns viðkomandi upplýsingum og/eða skjölum sem varða útboðið og hina breyttu almannaþjónustukvöð	Nánari upplýsingar veitir: Direção Regional dos Transportes da Secretaria Regional dos Transportes e Obras Públicas da Região Autónoma dos Açores Largo do Colégio, n.° 4 9500-054 Ponta Delgada, Azores PORTUGAL Sími: + 351 296206300 Bréfasími +351 296281112 Netfang: drtransportes@azores.gov.pt Vefsetur: http://www.azores.gov.pt/Portal/pt/entidades/srtop/

Kynningatilkynning framkvæmdastjórnarinnar skv. 4. mgr. 16. gr. reglugerðar Evrópuþingsins og ráðsins (EB) nr. 1008/2008 um sameiginlegar reglur um flugrekstur í Bandalaginu **2020/EES/8/24**

Almannaþjónustukvaðir sem lagðar eru á í tengslum við áætlunarflug

Aðildarríki	Ítalía
Flugleiðir	Trapani – Trieste báðar leiðir Trapani – Brindisi báðar leiðir Trapani – Parma báðar leiðir Trapani – Ancona báðar leiðir Trapani – Perugia báðar leiðir Trapani – Napólí báðar leiðir
Gildistökudagur almannaþjónustukvaða	15. júlí 2020
Unnt er að nálgast textann, ásamt hvers kyns viðkomandi upplýsingum og/eða skjölum sem varða almannaþjónustukvöðina	Nánari upplýsingar veitir: Ministry of Infrastructure and Transport Department of Transport, Navigation, General Affairs and Human Resources Directorate-General for Airports and Air Transport Via Giuseppe Caraci, 36 00157 Rome ITALY Sími + 39 0641583690 National Civil Aviation Authority (ENAC) Air transport development and licensing department Viale Castro Pretorio, 118 00185 Rome ITALY Sími + 39 0644596515 Vefsetur: http://www.mit.gov.it http://www.enac.gov.it Netfang: dg.ta@pec.mit.gov osp@enac.gov.it

Tilkynning framkvæmdastjórnarinnar skv. 5. mgr. 17. gr. reglugerðar Evrópuþingsins og ráðsins (EB) nr. 1008/2008 um sameiginlegar reglur um flugrekstur í Bandalaginu **2020/EES/8/25**

Auglýsing um útboð á áætlunarflugi í samræmi við almannaþjónustukvaðir

Aðildarríki	Frakkland
Flugleiðir	Flokkur 1 (austur): Cayenne – Camopi Saint Georges – Camopi Flokkur 2 (vestur): Cayenne – Maripasoula Cayenne – Saül Cayenne – Grand Santi St Laurent du Maroni – Grand Santi St Laurent du Maroni – Maripasoula
Samningstími	5 ár
Umsóknarfrestur og frestur til að skila tilboðum	31. mars 2020
Unnt er að nálgast texta útboðsauglýsingarinnar, ásamt hvers kyns viðkomandi upplýsingum og/eða skjölum sem varða útboðið og almannaþjónustukvaðirnar:	Hôtel de la Collectivité Territoriale de Guyane Carrefour de Suzini – 4179, route de Montabo BP 47025 – 97307 Cayenne CEDEX https://www.ctguyane.fr/marches-publics/

Tilkynning framkvæmdastjórnarinnar skv. 4. mgr. 16. gr. reglugerðar Evrópuþingsins og ráðsins (EB) nr. 1008/2008 um sameiginlegar reglur um flugrekstur í Bandalaginu **2020/EES/8/26**

Almannaþjónustukvaðir sem lagðar eru á í tengslum við áætlunarflug

Aðildarríki	Frakkland
Flugleið	Cayenne – Camopi Saint Georges – Camopi
Gildistökudagur almannaþjónustukvaða	1. júlí 2020
Unnt er að nálgast textann, ásamt hvers kyns viðkomandi upplýsingum og/eða skjölum sem varða almannaþjónustukvaðirnar	Deliberation No AP-2019-94 of 18 December 2019 – new public service obligations on domestic air transport https://www.ctguyane.fr/deliberations/

Tilkynning framkvæmdastjórnarinnar skv. 4. mgr. 16. gr. reglugerðar Evrópuþingsins og ráðsins (EB) nr. 1008/2008 um sameiginlegar reglur um flugrekstur í Bandalaginu **2020/EES/8/27**

Breytingar á almannaþjónustukvöðum í tengslum við áætlunarflug

Aðildarríki	Frakkland
Flugleið	Cayenne – Maripasoula Cayenne – Saül Cayenne – Grand Santi St Laurent du Maroni – Grand Santi St Laurent du Maroni – Maripasoula
Upphaflegur gildistökudagur almannaþjónustukvaða	30. júlí 1996 (Cayenne – Maripasoula og Cayenne – Saül) 25. apríl 2005 (Saint Laurent du Maroni – Grand Santi) 1. júní 2005 (Cayenne – Grand Santi og St Laurent du Maroni – Maripasoula)
Gildistökudagur breytinga	1. júlí 2020
Unnt er að nálgast textann, ásamt hvers kyns viðkomandi upplýsingum og/eða skjölum sem varða almannaþjónustukvaðirnar	Deliberation No AP-2019-94 of 18 December 2019 – new public service obligations on domestic air transport https://www.ctguyane.fr/deliberations/