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EFTA-ORGANER

EFTAS OVERVÅKINGSORGAN

Vedtak nr. 085/19/COL av 4. desember 2019 om å innlede formell undersøkelse med hensyn til mulig statsstøtte tildelt Remiks Group i forbindelse med avfallshåndteringstjenester (Sak 84370)

2020/EØS/8/01

Innbydelse til å sende inn merknader i henhold til del I artikkel 1 nr. 2 i protokoll 3 til avtalen mellom EFTA-statene om opprettelse av et overvåkingsorgan og en domstol med hensyn til statsstøtte

EFTAs overvåkingsorgan har ved ovennevnte vedtak, gjengitt på det opprinnelige språket etter dette sammendraget, underrettet norske myndigheter om at det har besluttet å innlede undersøkelse av ovennevnte tiltak i henhold til del I artikkel 1 nr. 2 i protokoll 3 til avtalen mellom EFTA-statene om opprettelse av et overvåkingsorgan og en domstol.

EFTA Surveillance Authority

Registry

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

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Sammendrag

Framgangsmåte

1) Overvåkingsorganet mottok en klage fra handelsorganisasjonen Norsk Industri 16. august 2016.

2) Etter anmodninger mottok Overvåkingsorganet opplysninger fra norske myndigheter 5. oktober 2016, 28. februar, 20. mars, 22. august, 31. oktober, 20. november 2017 og 5. mars 2018.

Beskrivelse av tiltakene

3) Mottakere av den påståtte støtten er Remiks Miljøpark AS, Remiks Næring AS og Remiks Produksjon AS.

4) Remiks Miljøpark AS er eid 99,99 % av Tromsø kommune. Remiks Miljøpark AS eier 100 % av Remiks Næring AS og Remiks Produksjon AS.

5) Remiks Miljøpark AS eier også 100 % av Remiks Husholdning AS. Dette foretaket utfører imidlertid utelukkende tjenester for Tromsø kommune og er ikke aktivt på markedet. Remiks Husholdning AS' innkjøp kan ikke tilskrives kommunen.

6) Fra begynnelsen av 2010 til 1. februar 2017 kjøpte Tromsø kommune avfallsinnsamlingstjenester for sitt eget industriavfall fra Remiks Næring AS.

7) Fra begynnelsen av 2010 og fram til i dag har Tromsø kommune, basert på egen indirekte kontroll, instruert Remiks Husholdning AS til å samle inn husholdningsavfallet i Tromsø kommune. Fra 1. februar og fram til i dag har Tromsø kommune instruert Remiks Husholdning AS til også å samle inn Tromsø kommunes eget industriavfall. Remiks Husholdning AS utfører disse tjenestene på vegne av kommunen til selvkost, det vil si at foretaket er kompensert basert på fullstendige kostnader, ikke inkludert profitt. Remiks Husholdning AS utfører avfallsinnsamlingen, men kjøper de nødvendige avfallsbehandlingstjenestene fra sitt søsterforetak, Remiks Produksjon AS.

8) I 2010 og 2012, i forbindelse med etableringen av Remiks Group, overførte Tromsø kommune kapital, skyld, løsøre og eiendom til morforetaket Remiks Miljøpark AS.

9) Vedtaket gjelder tre tiltak: i) Tromsø kommunes kjøp av avfallsinnsamlingstjenester fra Remiks Næring AS, ii) Remiks Husholdning AS' kjøp av avfallsbehandlingstjenester fra Remiks Produksjon AS og iii) overføringer fra Tromsø kommune til Remiks Group i 2010 og 2012.

Vurdering av tiltakene

10) For tiltak i) og ii) over er Overvåkingsorganet i tvil om henholdsvis Tromsø kommune og Remiks Husholdning AS har betalt markedspris for de innkjøpte tjenestene. For tiltak iii) er Overvåkingsorganet i tvil om overføringene fra Tromsø kommune til Remiks Group skjedde til markedsvilkår, i tråd med markedsinvestorprinsippet (MEOP).

11) Dersom tiltakene utgjør statsstøtte, har forpliktelsen til å melde støtten til Overvåkingsorganet før den settes i verk, i henhold til del I artikkel 1 nr. 3 i protokoll 3 til avtalen mellom EFTA-statene om opprettelse av et overvåkingsorgan og en domstol, ikke blitt overholdt. Statsstøtten vil derfor være ulovlig.

12) Norske myndigheter har ikke framlagt argumenter som dokumenterer at tiltakene, i den grad de utgjør statsstøtte, kan anses som forenlige med EØS-avtalens virkemåte. Overvåkingsorganet er derfor i tvil om de tre tiltakene er forenlige.

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):

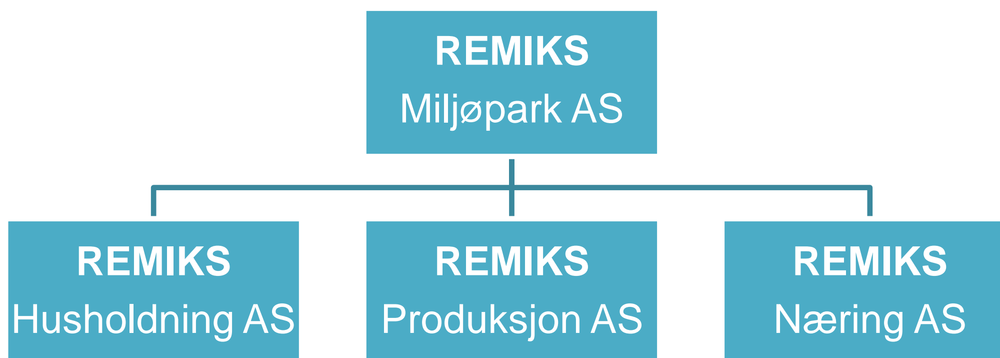
- Remiks Miljøpark AS is the parent company in the Remiks Group. It is owned 99.99% by Tromsø municipality and 0.01% by Karlsøy municipality (28). It provides services and rents out property to its subsidiaries.

- 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.

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(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.

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(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

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([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.

Vedtak nr. 86/19/COL av 5. desember 2019 om å innlede formell undersøkelse med hensyn til mulig statsstøtte tildelt Gagnaveita Reykjavíkur

2020/EØS/8/02

Innbydelse til å sende inn merknader i henhold til del I artikkel 1 nr. 2 i protokoll 3 til avtalen mellom EFTA-statene om opprettelse av et overvåkingsorgan og en domstol med hensyn til statsstøtte

EFTAs overvåkingsorgan har ved ovennevnte vedtak, gjengitt på det opprinnelige språket etter dette sammendraget, underrettet islandske myndigheter om at det har besluttet å innlede undersøkelse av ovennevnte tiltak i henhold til del I artikkel 1 nr. 2 i protokoll 3 til avtalen mellom EFTA-statene om opprettelse av et overvåkingsorgan og en domstol.

Berørte parter kan sende inn merknader til tiltaket innen en måned etter at dette ble offentliggjort, til:

EFTA Surveillance Authority
Registry
Rue Belliard 35
BE-1040 Bruxelles/Brussel
BELGIA
registry@eftasurv.int

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

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Sammendrag

Framgangsmåte

Overvåkingsorganet mottok 26. oktober 2016 en klage fra det islandske telekommunikasjonsselskapet Síminn hf. om påstått statsstøtte gitt av Orkuveita Reykjavíkur (heretter kalt OR) til datterselskapet Gagnaveita Reykjavíkur (heretter kalt GR). Overvåkingsorganet mottok tilleggsopplysninger og kommentarer fra klager ved brev og eposter datert 23. november 2016, 16. januar 2017, 28. mars 2017, 1. januar 2018, 20. april 2018, 21. september 2018, 26. mars 2019 og 13. september 2019.

Etter anmodninger mottok Overvåkingsorganet opplysninger fra islandske myndigheter ved brev datert 7. februar 2017, 22. juni 2017, 25. mai 2018 og 4. juni 2019.

Beskrivelse av tiltakene

Klagen gjelder ORs investeringer i bredbånd fra 1999, da forløperen til GR, Lina.Net, ble etablert, og fram til i dag. Klagen gjelder imidlertid hovedsakelig perioden fra og med 1. januar 2007, etter etableringen av GR. Klagen gjelder særlig påstått statsstøtte gitt av OR til GR på flere måter, som kapitaltilførsel og lån som ikke ble gitt til markedsvilkår.

OR ble etablert 1. januar 1999 som offentlig foretak etter vedtak i Reykjavik bystyre om å slå sammen driften av elektrisitets- og oppvarmingstjenestene som var eid av kommunen. OR er eid av tre islandske kommuner: i) Reykjavík by (93,5 %), ii) Akranes kommune (5,5 %) og iii) Borgarbyggð kommune (1 %). Fem medlemmer av ORs styre er utnevnt av Reykjavik bystyre, og ett medlem er utnevnt av kommunestyret i Akranes.

GR er et telekommunikasjonsselskap etablert i 2007. GR ble etablert som et uavhengig rettssubjekt for å oppfylle kravene fra det islandske post- og teletilsynet (heretter kalt PTA) om å skille mellom ORs virksomhet som er konkurranseutsatt og den virksomheten som ikke er det. GR er eid i sin helhet av OR. GRs formål, i henhold til vedtektene, er drift av telekommunikasjons- og dataoverføringsnett.

GR er en registrert operatør (dataoverføring og -tjenester) i henhold til den islandske lov om elektronisk kommunikasjon nr. 81/2003 (heretter kalt EC-loven). Artikkel 36 i EC-loven skal sikre at konkurranseutsatt virksomhet ikke er subsidiert gjennom inntekt fra virksomhet som er beskyttet av eneretter eller andre midler.

I samsvar med artikkel 36 i EC-loven sikrer PTA at inntekter som stammer fra ikke-konkurranseutsatt sektorer, ikke subsidierer virksomhet i den konkurranseutsatte delen av telekommunikasjonssektoren. PTA er derfor tillagt oppgaven å granske ORs investeringer i telekommunikasjonsmarkedet og forretningsforbindelsene mellom GR og OR. Slike undersøkelser kan gjøres på PTAs eget initiativ eller etter klager fra berørte parter. GR er også forpliktet til å melde særlige tiltak til PTA.

Fra 2006 fram til 2019 har PTA vedtatt ni formelle vedtak med hensyn til det økonomiske skillet mellom OR og GR. PTAs undersøkelser omfattet en gjennomgang av GRs forretningsplan, som må fornyes årlig, i samsvar med faktiske økonomiske opplysninger. I sin gjennomgang kontrollerer for eksempel PTA om avkastningsprosenten for investoren (OR) er i samsvar med telekommunikasjonsmarkedet generelt, og ser på kapitalstrukturen og om prisene mellom OR og GR er markedspriser.

I tre tilfeller har PTA påvist konkrete overtredelser av artikkel 36 i EC-loven. I to av disse tilfellene påla PTA tilbakebetaling av tiltakene, og i det tredje tilfellet påla ikke PTA tilbakebetaling av fordelene.

Islandske myndigheter holder fast ved at OR, i alle sine forbindelser med GR, har handlet i samsvar med markedsinvestortesten (MEO) og at ingen støtte er tildelt GR. I den forbindelse understreker islandske myndigheter at alle de påklagde tiltakene som omfatter økonomiske forbindelser mellom OR og GR, har blitt vurdert av PTA på bakgrunn av artikkel 36 i EC-loven. I henhold til islandske myndigheter er testen som er anvendt av PTA, sammenlignbar med kriteriene anvendt av Overvåkingsorganet når det avgjør om et tiltak er i henhold til markedsvilkår (markedsinvestortesten). Islandske myndigheter anførte også at Overvåkingsorganet i sitt vedtak nr. 300/11/COL av 5. oktober 2011 allerede har avslått klagers påstander med hensyn til ORs investeringer i Lina.net.

Vurdering av tiltakene

I lys av blant annet ORs rettslige status, selskapets partnerskapsavtale og sammensetningen av styret kan Overvåkingsorganet ikke utelukke at tiltakene kan tilskrives staten, og at de kan medføre overføring av statlige midler dersom og i den grad de gir GR fordeler.

GR tilbyr nøytral og åpen nettverkstilgang til alle interesserte telekommunikasjonsleverandører, selv om GR ikke selger sine egne tjenester gjennom sitt fiberoptiske nettverk. Overvåkingsorganet anser at levering av nettverkstilgang til fast pris til tredjeparts tjenesteleverandører utgjør økonomisk virksomhet, og at GR derfor synes å være en virksomhet i henhold til EØS-avtalens artikkel 61 nr. 1.

Det er Overvåkingsorganets foreløpige holdning, på bakgrunn av PTAs sakspraksis i henhold til artikkel 36 i EC-loven om finansiering av GR og nivået på undersøkelsen involvert i vurderingen av de ulike tiltakene, at testen anvendt av PTA i henhold til artikkel 36, på generelt grunnlag sørger for at alle overføringer mellom GR og OR, eller tilknyttede selskaper, skjer til markedsvilkår. PTAs tilnærming er kanskje ikke identisk med Overvåkingsorganets vurderinger gjort i forbindelse med markedsinvestortesten i henhold til statsstøttereglene i EØS-avtalen, men den sørger ikke desto mindre for samme resultat, dvs. den forhindrer overføringer som ikke skjer til markedsvilkår. Overvåkingsorganets foreløpige oppfatning er dermed på dette tidspunkt at PTA gir en vurdering som tilsvarer Overvåkingsorganets vurdering i forbindelse med markedsinvestortesten.

Dersom PTA finner at det har skjedd overtredelser av artikkel 36 i EC-loven, dvs. at det er påvist at en spesiell overføring ikke skjedde til markedsvilkår, har de myndighet til å instruere partene til å eliminere enhver fordel ved å vedta relevante tiltak. For at PTA skal kunne beordre tilbakebetaling av en fordel, må imidlertid det uforenlige tiltaket være klart definert og ubestridelig, f.eks. en bestemt pengesum, et vilkår i en låneavtale osv. Når PTA har beordret tilbakebetaling av fordeler som er gitt til GR, har det ikke krevd at nevnte fordeler tilbakebetales med renter.

Det finnes tre eksempler på at PTA har påvist konkrete overtredelser av artikkel 36 i EC-loven. I to av disse tilfellene påla PTA tilbakebetaling av tiltakene, og i det tredje tilfellet påla ikke PTA tilbakebetaling av fordelene. Overvåkingsorganet fant at tiltakene som ble vurdert av PTA i nevnte tilfeller, hadde gitt fordeler til GR som det ikke ville fått under normale markedsvilkår. Disse fordelene har videre ikke blitt fullt ut tilbakebetalt fra GR.

Det er derfor Overvåkingsorganets foreløpige oppfatning at GR har fått fordeler i betydning av EØS-avtalens artikkel 61 nr. 1 ved i) å ikke betale markedsrenter på en fordel oppnådd gjennom en midlertidig stans i rentebetaling, ii) å motta midler indirekte fra OR for å legge fiberoptisk kabelnett i Ölfus kommune, iii) å motta kortsiktige lån av OR og iv) å innlemme et vilkår i GRs låneavtale med private utlånere om ORs fortsatte majoritetseierskap i GR.

Det er Overvåkingsorganets foreløpige oppfatning at tiltakene er selektive ettersom de er individuelle tiltak som bare gjelder GR. Videre ser det ut til at tiltakene kan vri konkurransen og påvirke samhandelen i EØS.

Dersom tiltakene utgjør statsstøtte, har forpliktelsen til å melde støtten til Overvåkingsorganet, som fastsatt i del I artikkel 1 nr. 3 i protokoll 3 til avtalen mellom EFTA-statene om opprettelse av et overvåkingsorgan og en domstol, ikke blitt overholdt. Slik støtte vil derfor være ulovlig.

Islandske myndigheter har ikke framlagt argumenter som dokumenterer at tiltakene, i den grad de utgjør statsstøtte, kan anses som forenlige med EØS-avtalens virkemåte. Overvåkingsorganet er derfor i tvil om alle de fire tiltakene er forenlige.

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].

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(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

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(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-DOMSTOLEN

EFTA-DOMSTOLENS DOM **2020/EØS/8/03**

13. november 2019

i sak E-2/19

D og E

(fri bevegelighet for personer – sektorvise tilpasninger for Liechtenstein – oppholdsrett – avledet oppholdsrett for familiemedlemmer – direktiv 2004/38/EF)

I sak E-2/19, D og E – ANMODNING til EFTA-domstolen etter artikkel 34 i avtalen mellom EFTA-statene om opprettelse av et overvåkingsorgan og en domstol fra Fyrstedømmet Liechtensteins forvaltningsdomstol (*Verwaltungsgerichtshof des Fürstentums Liechtenstein*) vedrørende tolkningen av europaparlaments- og rådsdirektiv 2004/38/EF av 29. april 2004 om unionsborgeres og deres familiemedlemmers rett til å ferdes og oppholde seg fritt på medlemsstatenes territorium, tilpasset avtalen om Det europeiske økonomiske samarbeidsområde – har EFTA-domstolen, sammensatt av Páll Hreinsson, president og saksforberedende dommer, Bernd Hammermann og Ola Mestad (ad hoc), dommere, 13. november 2019 avsagt dom med følgende slutning:

De sektorvise tilpasninger til EØS-avtalens vedlegg V og VIII, særlig nr. III, fratar ikke familiemedlemmet til en EØS-borger, som har gyldig oppholdstillatelse og bor i Liechtenstein, retten til å komme sammen med eller slutte seg til EØS-borgeren i Liechtenstein på bakgrunn av artikkel 7 nr. 1 bokstav d) i direktiv 2004/38/EF, selv om EØS-borgerens oppholdstillatelse ikke ble gitt på bakgrunn av systemet fastsatt i de sektorvise tilpasninger.

EU-ORGANER

KOMMISJONEN

Forhåndsmelding om en foretakssammenslutning **2020/EØS/8/04**

(Sak M.9410 – Saudi Aramco / SABIC)

1. Kommisjonen mottok 23. januar 2020 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004([1]) om en planlagt foretakssammenslutning.

   Meldingen berører følgende foretak:

   – Saudi Arabian Oil Company (”Saudi Aramco”, Saudi-Arabia)

   – Saudi Basic Industries Corporation (”SABIC”, Saudi-Arabia)

   Saudi Aramco overtar alene kontroll i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b) over hele foretaket SABIC.

   Sammenslutningen gjennomføres ved kjøp av aksjer.

2. De berørte foretakene har virksomhet på følgende områder:

   – Saudi Aramco: hovedsakelig aktiv innen kartlegging, produksjon og markedsføring av råolje, naturgass og oljebasert drivstoff og produksjon samt markedsføring av foredlede produkter og petrokjemikalier.

   – SABIC: hovedsakelig aktiv innen produksjon og salg av råvarekjemikalier (herunder petrokjemikalier), halvfabrikater, polymerer, gjødselsprodukter og metaller.

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

4. Kommisjonen innbyr interesserte parter til å framlegge sine merknader til den planlagte foretakssammenslutningen for Kommisjonen.

   Merknadene må være Kommisjonen i hende senest ti dager etter offentliggjøring av denne meldingen i EUT C 35 av 3.2.2020. Følgende referanse bør alltid oppgis:

   M.9410 – Saudi Aramco / SABIC

   Merknadene sendes til Kommisjonen per e-post, faks eller post. Vennligst bruk følgende kontaktopplysninger:

   E-post: COMP-MERGER-REGISTRY@ec.europa.eu

   Faks: +32 229 64301

   Postadresse:
   European Commission
   Directorate-General for Competition
   Merger Registry
   BE-1049 Bruxelles/Brussel
   BELGIA

([1]) EUT L 24 av 29.1. 2004, s. 1 (”fusjonsforordningen”).

Forhåndsmelding om en foretakssammenslutning **2020/EØS/8/05**

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

Sak som kan bli behandlet etter forenklet framgangsmåte

1. Kommisjonen mottok 24. januar 2020 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004[1] om en planlagt foretakssammenslutning.

   Meldingen berører følgende foretak:

   – Aperam Alloys Imphy SAS, ("Aperam", Luxembourg), et heleid datterselskap til Aperam S.A.

   – Tekna Plasma Europe SAS ("Tekna", Norge), et indirekte datterselskap til Arendals Fossekompani ASA

   – ImphyTek Powders SAS ("ImphyTek Powders", Frankrike)

   Aperam og Tekna overtar i fellesskap kontroll i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b) og artikkel 3 nr. 4 over ImphyTek Powders.

   Sammenslutningen gjennomføres ved kjøp av aksjer i et nystiftet fellesforetak.

2. De berørte foretakene har virksomhet på følgende områder:

   – Aperam: produksjon og salg av rustfritt stål, elektrostål og spesialstål til kunder i over 40 land.

   – Tekna: produksjon av sprayinnretninger og tilleggsutstyr for å produsere metallpulver.

   – ImphyTek Powders: produksjon og salg av pulver av nikkellegeringer.

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

   Det gjøres oppmerksom på at denne saken kan bli behandlet etter framgangsmåten fastsatt i kommisjonskunngjøringen om forenklet framgangsmåte for behandling av visse foretakssammenslutninger etter rådsforordning (EF) nr. 139/2004[2].

4. Kommisjonen innbyr interesserte parter til å framlegge sine merknader til den planlagte foretakssammenslutningen for Kommisjonen.

   Merknadene må være Kommisjonen i hende senest ti dager etter offentliggjøring av denne meldingen i EUT C 38 av 5.2.2020. Følgende referanse bør alltid oppgis:

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

   Merknadene sendes til Kommisjonen per e-post, faks eller post. Vennligst bruk følgende kontaktopplysninger:

   E-post: COMP-MERGER-REGISTRY@ec.europa.eu

   Faks: +32 229 64301

   Postadresse:
   European Commission
   Directorate-General for Competition
   Merger Registry
   BE-1049 Bruxelles/Brussel
   BELGIA

(1) EUT L 24 av 29.1. 2004, s. 1 ("fusjonsforordningen").
(2) EUT C 366 av 14.12.2013, s. 5.

Forhåndsmelding om en foretakssammenslutning **2020/EØS/8/06**

(Sak M.9714 – Viacom/beIN/Miramax)

Sak som kan bli behandlet etter forenklet framgangsmåte

1. Kommisjonen mottok 29. januar 2020 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004(1) om en planlagt foretakssammenslutning.

   Meldingen berører følgende foretak:

   – Viacom International Inc. ("Viacom", USA), som tilhører ViacomCBS Inc.

   – beIN Media Group, LLC ("beIN", Qatar), som tilhører beIN Corporation

   – MMX Media Finance, LLC ("Miramax", USA), i dag kontrollert alene av beIN

   Viacom og beIN overtar i fellesskap kontroll i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b) og artikkel 3 nr. 4 over Miramax.

   Sammenslutningen gjennomføres ved kjøp av aksjer.

2. De berørte foretakene har virksomhet på følgende områder:

   – Viacom: globalt media- og underholdningsforetak.

   – beIN: underholdningsforetak som blant annet er aktivt innen sportsmediaindustrien.

   – Miramax: underholdningsforetak som produserer og distribuerer filmer og fjernsynsunderholdning.

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

   Det gjøres oppmerksom på at denne saken kan bli behandlet etter framgangsmåten fastsatt i kommisjonskunngjøringen om forenklet framgangsmåte for behandling av visse foretakssammenslutninger etter rådsforordning (EF) nr. 139/2004(2).

4. Kommisjonen innbyr interesserte parter til å framlegge sine merknader til den planlagte foretakssammenslutningen for Kommisjonen.

   Merknadene må være Kommisjonen i hende senest ti dager etter offentliggjøring av denne meldingen i EUT C 40 av 6.2.2020 Følgende referanse bør alltid oppgis:

   M.9714 – Viacom/beIN/Miramax

   Merknadene sendes til Kommisjonen per e-post, faks eller post. Vennligst bruk følgende kontaktopplysninger:

   E-post: COMP-MERGER-REGISTRY@ec.europa.eu

   Faks: +32 229 64301

   Postadresse:
   European Commission
   Directorate-General for Competition
   Merger Registry
   BE-1049 Bruxelles/Brussel
   BELGIA

(1) EUT L 24 av 29.1. 2004, s. 1 ("fusjonsforordningen").
(2) EUT C 366 av 14.12.2013, s. 5.

Forhåndsmelding om en foretakssammenslutning **2020/EØS/8/07**

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

Sak som kan bli behandlet etter forenklet framgangsmåte

1. Kommisjonen mottok 30. januar 2020 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004([1]) om en planlagt foretakssammenslutning.

   Meldingen berører følgende foretak:

   – Fairfax Financial Holdings Limited (”FFHL”, Canada)

   – Kingston Infrastructure Holdings Inc. (”Kingston”, Canada), kontrollert av OMERS Administration Corporation (”OMERS”, Canada)

   – Riverstone Barbados Limited (”Riverstone”, Barbados)

   FFHL og Kingston overtar i fellesskap kontroll i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b) og artikkel 3 nr. 4 over hele Riverstone.

   Sammenslutningen gjennomføres ved kjøp av aksjer.

2. De berørte foretakene har virksomhet på følgende områder:

   – FFHL: holdingforetak med virksomhet innen eiendoms- og ulykkesforsikring, gjenforsikring og tilknyttet investeringsforvaltning.

   – OMERS: administrator for Ontario Municipal Employees Retirement System Primary Pension Plan i Canada og formuesforvalter for pensjonsfondene. OMERS forvalter en bred portefølje av aksjer og obligasjoner samt investeringer i fast eiendom, kapital og infrastruktur.

   – Riverstone: forvalter forsikringsforetak og porteføljer under avvikling.

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

   Det gjøres oppmerksom på at denne saken kan bli behandlet etter framgangsmåten fastsatt i kommisjonskunngjøringen om forenklet framgangsmåte for behandling av visse foretakssammenslutninger etter rådsforordning (EF) nr. 139/2004([2]).

4. Kommisjonen innbyr interesserte parter til å framlegge sine merknader til den planlagte foretakssammenslutningen for Kommisjonen.

   Merknadene må være Kommisjonen i hende senest ti dager etter offentliggjøring av denne meldingen i EUT C 40 av 6.2.2020. Følgende referanse bør alltid oppgis:

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

   Merknadene sendes til Kommisjonen per e-post, faks eller post. Vennligst bruk følgende kontaktopplysninger:

   E-post: COMP-MERGER-REGISTRY@ec.europa.eu

   Faks: +32 229 64301

   Postadresse:
   European Commission
   Directorate-General for Competition
   Merger Registry
   BE-1049 Bruxelles/Brussel
   BELGIA

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

Forhåndsmelding om en foretakssammenslutning **2020/EØS/8/08**

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

Sak som kan bli behandlet etter forenklet framgangsmåte

1. Kommisjonen mottok 24. januar 2020 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004([1]) om en planlagt foretakssammenslutning.

   Meldingen berører følgende foretak:

   – Showa Denko K.K. ("SDK", Japan)

   – Hitachi Chemical Company, Ltd ("Hitachi Chemical", Japan)

   SDK overtar alene kontroll i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b) over hele foretaket Hitachi Chemical.

   Sammenslutningen gjennomføres ved kjøp av aksjer.

2. De berørte foretakene har virksomhet på følgende områder:

   – SDK: hovedsakelig aktivt i østasiatiske land innen produksjon og salg av petrokjemikalier, kjemikalier, elektronikk, uorganiske stoffer, aluminium og byggematerialer.

   – Hitachi Chemical: hovedsakelig aktivt i østasiatiske land innen produksjon og salg av funksjonelle materialer og avanserte komponenter og systemer.

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

   Det gjøres oppmerksom på at denne saken kan bli behandlet etter framgangsmåten fastsatt i kommisjonskunngjøringen om forenklet framgangsmåte for behandling av visse foretakssammenslutninger etter rådsforordning (EF) nr. 139/2004([2]).

4. Kommisjonen innbyr interesserte parter til å framlegge sine merknader til den planlagte foretakssammenslutningen for Kommisjonen.

   Merknadene må være Kommisjonen i hende senest ti dager etter offentliggjøring av denne meldingen i EUT C 35 av 3.2.2020. Følgende referanse bør alltid oppgis:

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

   Merknadene sendes til Kommisjonen per e-post, faks eller post. Vennligst bruk følgende kontaktopplysninger:

   E-post: COMP-MERGER-REGISTRY@ec.europa.eu

   Faks: +32 229 64301

   Postadresse:
   European Commission
   Directorate-General for Competition
   Merger Registry
   BE-1049 Bruxelles/Brussel
   BELGIA

([1]) EUT L 24 av 29.1. 2004, s. 1 ("fusjonsforordningen").
([2]) EUT C 366 av 14.12.2013, s. 5.

Forhåndsmelding om en foretakssammenslutning **2020/EØS/8/09**

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

Sak som kan bli behandlet etter forenklet framgangsmåte

1. Kommisjonen mottok 27. januar 2020 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004([1]) om en planlagt foretakssammenslutning.

   Meldingen berører følgende foretak:

   – Itochu Corporation (”Itochu”, Japan)

   – American Metals & Coal International, Inc. (”AMCI”, USA)

   – POSCO Corporation (”POSCO”, Sør-Korea)

   – Jaz Ventures, L.P. (”JVLP”, USA)

   – North Central Resources, LLC (”NCR”, USA), et fellesforetak

   Itochu, AMCI, POSCO og JVLP overtar i fellesskap kontroll i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b) og artikkel 3 nr. 4 over NCR.

   Sammenslutningen gjennomføres ved kjøp av aksjer.

2. De berørte foretakene har virksomhet på følgende områder:

   – Itochu: er aktiv innen en rekke bransjer, herunder stålindustrien, tekstiler, industrimaskiner, elektronikk, kjemikalier, næringsmidler og finansielle tjenester.

   – AMCI: privateid foretak med investeringer i naturressurser, driver virksomhet på en rekke områder knyttet til energi og metallvarer, herunder investeringer i kull og mineraler, metaller og skipsfart.

   – POSCO: aktivt innen gruveindustrien, blant annet innen jernmalm, nikkel, kull og fornybar energi. POSCO driver i dag to stålverk i Korea.

   – JVLP: en gruppe begrensede partnerskap som eier ulike investeringer i energiforetak.

   – NCR: fellesforetak som skal eie, utvikle, kartlegge, bygge og utvinne et uutviklet kokskullprosjekt i Vest-Virginia.

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

   Det gjøres oppmerksom på at denne saken kan bli behandlet etter framgangsmåten fastsatt i kommisjonskunngjøringen om forenklet framgangsmåte for behandling av visse foretakssammenslutninger etter rådsforordning (EF) nr. 139/2004([2]).

4. Kommisjonen innbyr interesserte parter til å framlegge sine merknader til den planlagte foretakssammenslutningen for Kommisjonen.

   Merknadene må være Kommisjonen i hende senest ti dager etter offentliggjøring av denne meldingen i EUT C 35 av 3.2.2020. Følgende referanse bør alltid oppgis:

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

   Merknadene sendes til Kommisjonen per e-post, faks eller post. Vennligst bruk følgende kontaktopplysninger:

   E-post: COMP-MERGER-REGISTRY@ec.europa.eu

   Faks: +32 229 64301

   Postadresse:
   European Commission
   Directorate-General for Competition
   Merger Registry
   BE-1049 Bruxelles/Brussel
   BELGIA

([1]) EUT L 24 av 29.1. 2004, s. 1 (”fusjonsforordningen”).
([2]) EUT C 366 av 14.12.2013, s. 5.

Forhåndsmelding om en foretakssammenslutning **2020/EØS/8/10**

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

Sak som kan bli behandlet etter forenklet framgangsmåte

1. Kommisjonen mottok 24. januar 2020 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004([1]) om en planlagt foretakssammenslutning.

   Meldingen berører følgende foretak:

   – AccorInvest S.A. ("AccorInvest", Luxembourg)

   – Accor (Frankrike)

   AccorInvest og Accor overtar i fellesskap kontroll i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b) og artikkel 3 nr. 4 over hotellporteføljen.

   Sammenslutningen gjennomføres ved offentlig overtakelsestilbud kunngjort 17. desember 2019.

2. De berørte foretakene har virksomhet på følgende områder:

   – AccorInvest: et investeringsforetak som eier og driver hotelleiendommer og -virksomhet. AccorInvest driver og/eller eier i dag 856 hoteller i Europa (Frankrike, Monaco, Østerrike, Belgia, Tyskland, Hellas, Italia, Luxembourg, Nederland, Portugal, Spania, Sveits og Det forente kongerike), Amerika (Argentina, Brasil, Chile, Colombia, Mexico, Peru), Afrika (Kamerun, Elfenbenskysten, Senegal) Australia, Japan og Singapore.

   – Accor: hotellkonsern som i hovedsak er aktivt innen forvaltning og franchising av hoteller. Accor er hovedsakelig aktiv innen hotellbransjen som hotellforvalter og franchisegiver i Europa, Asia, Midtøsten, Afrika, Nord-, Mellom- og Sør-Amerika.

   – Hotellporteføljen: en hotellportefølje som består av 73 hotelleiendommer fra luksussegmentet, øvre middelklasse-segmentet og økonomiklassesegmentet. Hotellporteføljen inkluderer hoteller i Tsjekkia, Ungarn, Litauen, Polen, Romania og Slovakia og tilbyr hotellovernattingstjenester i disse landene. Det eies i dag av det polske investerings-foretaket Orbis, et datterselskap til Accor.

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

   Det gjøres oppmerksom på at denne saken kan bli behandlet etter framgangsmåten fastsatt i kommisjonskunngjøringen om forenklet framgangsmåte for behandling av visse foretakssammenslutninger etter rådsforordning (EF) nr. 139/2004([2]).

4. Kommisjonen innbyr interesserte parter til å framlegge sine merknader til den planlagte foretakssammenslutningen for Kommisjonen.

   Merknadene må være Kommisjonen i hende senest ti dager etter offentliggjøring av denne meldingen i EUT C 35 av 3.2.2020. Følgende referanse bør alltid oppgis:

   M.9727 – AccorInvest / Accor / Hotel Portfolio

   Merknadene sendes til Kommisjonen per e-post, faks eller post. Vennligst bruk følgende kontaktopplysninger:

   E-post: COMP-MERGER-REGISTRY@ec.europa.eu

   Faks: +32 229 64301

   Postadresse:
European Commission
Directorate-General for Competition
Merger Registry
BE-1049 Bruxelles/Brussel
BELGIA

([1]) EUT L 24 av 29.1. 2004, s. 1 ("fusjonsforordningen").

([2]) EUT C 366 av 14.12.2013, s. 5.

Forhåndsmelding om en foretakssammenslutning **2020/EØS/8/11**

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

Sak som kan bli behandlet etter forenklet framgangsmåte

1. Kommisjonen mottok 31. januar 2020 melding i henhold til artikkel 4 i rådsforordning (EF) nr. 139/2004([1]) om en planlagt foretakssammenslutning.

   Meldingen berører følgende foretak:

   – Apollo Capital Management, L.P. ("Apollo", USA)

   – Elliot Investment Management, L.P. ("Elliot", USA)

   – EP Energy Corporation ("EP Energy", USA)

   Elliot og Apollo overtar i fellesskap kontroll i henhold til fusjonsforordningens artikkel 3 nr. 1 bokstav b) og artikkel 3 nr. 4 over EP Energy.

   Sammenslutningen gjennomføres ved kjøp av aksjer.

2. De berørte foretakene har virksomhet på følgende områder:

   – Apollo: investerer i foretak og gjeld utstedt av foretak i ulike sektorer over hele verden, gjennom investeringsfond som forvaltes av selskaper tilknyttet Apollo.

   – Elliot: investeringsforetak med fokus på investerings- og risikohåndteringsvirksomhet.

   – EP Energy: uavhengig kartleggings- og produksjonsforetak aktivt innen kjøp og utvikling av olje- og naturgass-infrastrukturer på land i USA. EP Energy er i dag kontrollert av Apollo alene.

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

   Det gjøres oppmerksom på at denne saken kan bli behandlet etter framgangsmåten fastsatt i kommisjonskunngjøringen om forenklet framgangsmåte for behandling av visse foretakssammenslutninger etter rådsforordning (EF) nr. 139/2004([2]).

4. Kommisjonen innbyr interesserte parter til å framlegge sine merknader til den planlagte foretakssammenslutningen for Kommisjonen.

   Merknadene må være Kommisjonen i hende senest ti dager etter offentliggjøring av denne meldingen i EUT C 42 av 7.2.2020. Følgende referanse bør alltid oppgis:

   Sak M.9751 – Elliot / Apollo / EP Energy

   Merknadene sendes til Kommisjonen per e-post, faks eller post. Vennligst bruk følgende kontaktopplysninger:

   E-post: COMP-MERGER-REGISTRY@ec.europa.eu

   Faks: +32 229 64301

   Postadresse:
   European Commission
   Directorate-General for Competition
   Merger Registry
   BE-1049 Bruxelles/Brussel
   BELGIA

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

Beslutning om å ikke gjøre innsigelse mot en meldt foretakssammenslutning **2020/EØS/8/12**

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

Kommisjonen besluttet 22. januar 2020 å ikke gjøre innsigelse mot ovennevnte meldte foretaks-sammenslutning og å erklære den forenlig med det felles marked. Beslutningen er truffet på grunnlag av artikkel 6 nr. 1 bokstav b) i rådsforordning (EF) nr. 139/2004([1]). Den foreligger i uavkortet form bare på engelsk og vil bli offentliggjort etter at eventuelle forretningshemmeligheter er fjernet. Beslutningen blir gjort tilgjengelig:

– på Europa-nettstedet for konkurransesaker (http://ec.europa.eu/competition/mergers/cases/). Dette nettstedet inneholder ulike funksjoner som gjør det lettere å finne en bestemt beslutning, med mulighet for å søke på blant annet foretaksnavn, saksnummer, dato og saksområde,

– i elektronisk form på nettstedet EUR-Lex, under dokumentnummer 32020M9574. EUR-Lex gir tilgang til EU-retten på Internett (http://eur-lex.europa.eu/en/index.htm).

Beslutning om å ikke gjøre innsigelse mot en meldt foretakssammenslutning **2020/EØS/8/13**

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

Kommisjonen besluttet 23. januar 2020 å ikke gjøre innsigelse mot ovennevnte meldte foretaks-sammenslutning og å erklære den forenlig med det felles marked. Beslutningen er truffet på grunnlag av artikkel 6 nr. 1 bokstav b) i rådsforordning (EF) nr. 139/2004([1]). Den foreligger i uavkortet form bare på engelsk og vil bli offentliggjort etter at eventuelle forretningshemmeligheter er fjernet. Beslutningen blir gjort tilgjengelig:

– på Europa-nettstedet for konkurransesaker (http://ec.europa.eu/competition/mergers/cases/). Dette nettstedet inneholder ulike funksjoner som gjør det lettere å finne en bestemt beslutning, med mulighet for å søke på blant annet foretaksnavn, saksnummer, dato og saksområde,

– i elektronisk form på nettstedet EUR-Lex, under dokumentnummer 32020M9612. EUR-Lex gir tilgang til EU-retten på Internett (http://eur-lex.europa.eu/en/index.htm).

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

Beslutning om å ikke gjøre innsigelse mot en meldt foretakssammenslutning **2020/EØS/8/14**

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

Kommisjonen besluttet 22. januar 2020 å ikke gjøre innsigelse mot ovennevnte meldte foretakssammenslutning og å erklære den forenlig med det felles marked. Beslutningen er truffet på grunnlag av artikkel 6 nr. 1 bokstav b) i rådsforordning (EF) nr. 139/2004[1]. Den foreligger i uavkortet form bare på engelsk og vil bli offentliggjort etter at eventuelle forretningshemmeligheter er fjernet. Beslutningen blir gjort tilgjengelig:

– på Europa-nettstedet for konkurransesaker (http://ec.europa.eu/competition/mergers/cases/). Dette nettstedet inneholder ulike funksjoner som gjør det lettere å finne en bestemt beslutning, med mulighet for å søke på blant annet foretaksnavn, saksnummer, dato og saksområde,

– i elektronisk form på nettstedet EUR-Lex, under dokumentnummer 32020M9658. EUR-Lex gir tilgang til EU-retten på Internett (http://eur-lex.europa.eu/en/index.htm).

Beslutning om å ikke gjøre innsigelse mot en meldt foretakssammenslutning **2020/EØS/8/15**

(Sak M.9687 – CPPIB/OTPP/IDEAL)

Kommisjonen besluttet 22. januar 2020 å ikke gjøre innsigelse mot ovennevnte meldte foretakssammenslutning og å erklære den forenlig med det felles marked. Beslutningen er truffet på grunnlag av artikkel 6 nr. 1 bokstav b) i rådsforordning (EF) nr. 139/2004[1]. Den foreligger i uavkortet form bare på engelsk og vil bli offentliggjort etter at eventuelle forretningshemmeligheter er fjernet. Beslutningen blir gjort tilgjengelig:

– på Europa-nettstedet for konkurransesaker (http://ec.europa.eu/competition/mergers/cases/). Dette nettstedet inneholder ulike funksjoner som gjør det lettere å finne en bestemt beslutning, med mulighet for å søke på blant annet foretaksnavn, saksnummer, dato og saksområde,

– i elektronisk form på nettstedet EUR-Lex, under dokumentnummer 32020M9687. EUR-Lex gir tilgang til EU-retten på Internett (http://eur-lex.europa.eu/en/index.htm).

(1) EUT L 24 av 29.1.2004, s. 1.

Beslutning om å ikke gjøre innsigelse mot en meldt foretakssammenslutning **2020/EØS/8/16**

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

Kommisjonen besluttet 24. januar 2020 å ikke gjøre innsigelse mot ovennevnte meldte foretakssammenslutning og å erklære den forenlig med det felles marked. Beslutningen er truffet på grunnlag av artikkel 6 nr. 1 bokstav b) i rådsforordning (EF) nr. 139/2004([1]). Den foreligger i uavkortet form bare på engelsk og vil bli offentliggjort etter at eventuelle forretningshemmeligheter er fjernet. Beslutningen blir gjort tilgjengelig:

– på Europa-nettstedet for konkurransesaker (http://ec.europa.eu/competition/mergers/cases/). Dette nettstedet inneholder ulike funksjoner som gjør det lettere å finne en bestemt beslutning, med mulighet for å søke på blant annet foretaksnavn, saksnummer, dato og saksområde,

– i elektronisk form på nettstedet EUR-Lex, under dokumentnummer 32020M9688. EUR-Lex gir tilgang til EU-retten på Internett (http://eur-lex.europa.eu/en/index.htm).

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

Kommisjonskunngjøring i henhold til artikkel 16 nr. 4 i europaparlaments- og rådsforordning (EF) nr. 1008/2008 om felles regler for drift av lufttrafikk i Fellesskapet

2020/EØS/8/17

Forpliktelse til å yte offentlig tjeneste med hensyn til ruteflyging

Medlemsstat	Hellas
Berørte flyruter	Athen–Kozani–Kastoria Thessaloniki–Limnos–Ikaria
Ikrafttredelsesdato for forpliktelse til å yte offentlig tjeneste	1. juli 2020
Teksten til og eventuell relevant informasjon og/eller dokumentasjon om forpliktelsen til å yte offentlig tjeneste kan fås gratis ved henvendelse til:	Hellenic Civil Aviation Authority Directorate-General for Air Transport Air Transport and International Affairs Division Section II GR-166 10 HELLAS Tlf. +30 2109973154 eller 8916307 Faks: +30 2108947132 Internett: www.hcaa.gr

Kommisjonskunngjøring i henhold til artikkel 17 nr. 5 i europaparlaments- og rådsforordning (EF) nr. 1008/2008 om felles regler for drift av lufttrafikk i Fellesskapet **2020/EØS/8/18**

Anbudsinnbydelse i forbindelse med forpliktelse til å yte offentlig tjeneste med hensyn til ruteflyging

Medlemsstat	Hellas
Berørte flyruter	Athen–Kozani–Kastoria Thessaloniki–Limnos–Ikaria
Avtalens gyldighetsperiode	1. juli 2020–30. juni 2024
Frist for innsending av anbud	61 dager fra kunngjøringen av denne meldingen
Anbudsinnbydelsen og eventuell relevant informasjon og/eller dokumentasjon i forbindelse med anbudet og forpliktelsen til å yte offentlig tjeneste kan fås gratis ved henvendelse til:	Hellenic Civil Aviation Authority Directorate-General for Air Transport Air Transport and International Affairs Division Section II GR-166 10 HELLAS Tlf. + 30 2109973154 eller 8916307 Faks: + 30 2108947132 Internett: www.hcaa.gr

Kommisjonskunngjøring i henhold til artikkel 16 nr. 4 i europaparlaments- og rådsforordning (EF) nr. 1008/2008 om felles regler for drift av lufttrafikk i Fellesskapet **2020/EØS/8/19**

Forpliktelse til å yte offentlig tjeneste med hensyn til ruteflyging

Medlemsstat	Hellas
Berørte flyruter	Athen–Skiathos Athen–Ikaria Athen–Syros Athen–Leros Athen–Astypalea Athen–Kalimnos Athen–Skyros Thessaloniki–Samos Thessaloniki–Chios Thessaloniki–Kalamata Rhodos–Karpathos–Kasos Rhodos–Kastelorizo
Ikrafttredelsesdato for forpliktelse til å yte offentlig tjeneste	1. oktober 2020
Teksten til og eventuell relevant informasjon og/eller dokumentasjon om forpliktelsen til å yte offentlig tjeneste kan fås gratis ved henvendelse til:	Hellenic Civil Aviation Authority Directorate-General for Air Transport Air Transport and International Affairs Division Section II GR-16610 HELLAS Tlf. + 30 2109973154 eller 8916307 Faks: + 30 2108947132 Internett: www.hcaa.gr

Kommisjonskunngjøring i henhold til artikkel 17 nr. 5 i europaparlaments- og rådsforordning (EF) nr. 1008/2008 om felles regler for drift av lufttrafikk i Fellesskapet **2020/EØS/8/20**

Anbudsinnbydelse i forbindelse med forpliktelse til å yte offentlig tjeneste med hensyn til ruteflyging

Medlemsstat	Hellas
Berørte flyruter	Athen–Skiathos Athen–Ikaria Athen–Syros Athen–Leros Athen–Astypalea Athen–Kalimnos Athen–Skyros Thessaloniki–Samos Thessaloniki–Chios Thessaloniki–Kalamata Rhodos–Karpathos–Kasos Rhodos–Kastelorizo
Avtalens gyldighetsperiode	1. oktober 2020–30. september 2024
Frist for innsending av anbud	61 dager fra kunngjøringen av denne meldingen
Anbudsinnbydelsen og eventuell relevant informasjon og/eller dokumentasjon i forbindelse med anbudet og forpliktelsen til å yte offentlig tjeneste kan fås gratis ved henvendelse til:	Hellenic Civil Aviation Authority Directorate-General for Air Transport Air Transport and International Affairs Division Section II GR-16610 HELLAS Tlf. +30 2109973154 eller 8916307 Faks: +30 2108947132 Internett: www.hcaa.gr

Kommisjonskunngjøring i henhold til artikkel 16 nr. 4 i europaparlaments- og rådsforordning (EF) nr. 1008/2008 om felles regler for drift av lufttrafikk i Fellesskapet **2020/EØS/8/21**

Oppheving av forpliktelse til å yte offentlig tjeneste med hensyn til ruteflyging

Medlemsstat	Hellas
Berørte flyruter	Athen–Paros Athen–Karpathos Athen–Kithira Athen–Zakynthos
Opprinnelig ikrafttredelsesdato for forpliktelse til å yte offentlig tjeneste	C164/10.7.2002 C299/11.10.2011
Opphevingsdato	30. september 2020
For henvendelser om teksten til og eventuell relevant informasjon og/eller dokumentasjon om forpliktelsen til å yte offentlig tjeneste:	Hellenic Civil Aviation Authority Directorate-General for Air Transport Air Transport and International Affairs Division Section II GR-16610 HELLAS Tlf.: +30 2109973154 Faks: +30 2108947132 Internett: www.hcaa.gr

Kommisjonskunngjøring i henhold til artikkel 16 nr. 4 i europaparlaments- og rådsforordning (EF) nr. 1008/2008 om felles regler for drift av lufttrafikk i Fellesskapet **2020/EØS/8/22**

Endring av forpliktelse til å yte offentlig tjeneste med hensyn til ruteflyging

Medlemsstat	Portugal
Berørte flyruter	Ponta Delgada–Santa Maria–Ponta Delgada Ponta Delgada–Terceira–Ponta Delgada Ponta Delgada–Flores–Ponta Delgada Ponta Delgada–Horta–Ponta Delgada Ponta Delgada–Pico–Ponta Delgada Ponta Delgada–Santa Maria–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
Opprinnelig ikrafttredelsesdato for forpliktelse til å yte offentlig tjeneste	1. juni 2009
Ikrafttredelsesdato for endringene	1. oktober 2020
For henvendelser om teksten til og eventuell relevant informasjon og/eller dokumentasjon om forpliktelsen til å yte offentlig tjeneste:	For ytterligere opplysninger: 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 Telefon: + 351 296206300 Faks: +351 296281112 E-post: drtransportes@azores.gov.pt Nettsted: http://www.azores.gov.pt/Portal/pt/entidades/srtop/

Kommisjonskunngjøring i henhold til artikkel 17 nr. 5 i europaparlaments- og rådsforordning (EF) nr. 1008/2008 om felles regler for drift av lufttrafikk i Fellesskapet **2020/EØS/8/23**

Anbudsinnbydelse i forbindelse med forpliktelse til å yte offentlig tjeneste med hensyn til ruteflyging

Medlemsstat	Portugal
Berørte flyruter	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–Santa Maria–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
Avtalens gyldighetsperiode	Fra 1. oktober 2020 til 30. september 2025
Frist for innsending av anbud	62 dager fra offentliggjøring av denne innbydelse
For henvendelser om anbudsinnbydelsen og eventuell relevant informasjon og/eller dokumentasjon i forbindelse med anbudet og de endrede forpliktelsene til å yte offentlig tjeneste:	For ytterligere opplysninger: 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 Telefon: + 351 296206300 Faks: +351 296281112 E-post: drtransportes@azores.gov.pt Nettsted: http://www.azores.gov.pt/Portal/pt/entidades/srtop/

Kommisjonskunngjøring i henhold til artikkel 16 nr. 4 i europaparlaments- og rådsforordning (EF) nr. 1008/2008 om felles regler for drift av lufttrafikk i Fellesskapet **2020/EØS/8/24**

Forpliktelse til å yte offentlig tjeneste med hensyn til ruteflyging

Medlemsstat	Italia
Berørte flyruter	Trapani–Trieste og omvendt Trapani–Brindisi og omvendt Trapani–Parma og omvendt Trapani–Ancona og omvendt Trapani–Perugia og omvendt Trapani–Napoli og omvendt
Ikrafttredelsesdato for forpliktelse til å yte offentlig tjeneste	15. juli 2020
For henvendelser om teksten til og informasjon og/eller dokumentasjon om forpliktelsen til å yte offentlig tjeneste:	For ytterligere opplysninger: 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 IT-00157 Roma ITALIA Tlf.: + 39 0641583690 National Civil Aviation Authority (ENAC) Air transport development and licensing department Viale Castro Pretorio, 118 IT-00185 Roma ITALIA Tlf.: + 39 0644596515 Nettsted: http://www.mit.gov.it http://www.enac.gov.it E-post: dg.ta@pec.mit.gov osp@enac.gov.it

Kommisjonsmelding i henhold til artikkel 17 nr. 5 i europaparlaments- og rådsforordning (EF) nr. 1008/2008 om felles regler for drift av lufttrafikk i Fellesskapet **2020/EØS/8/25**

Anbudsinnbydelse i forbindelse med forpliktelse til å yte offentlig tjeneste med hensyn til ruteflyging

Medlemsstat	Frankrike
Berørte flyruter	Del 1 (Øst): Cayenne–Camopi Saint Georges–Camopi Del 2 (Vest): Cayenne–Maripasoula Cayenne–Saül Cayenne–Grand Santi St Laurent du Maroni–Grand Santi St Laurent du Maroni–Maripasoula
Avtalens gyldighetsperiode	Fem år
Frist for innsending av søknader og anbud	31. mars 2020
For henvendelser om anbudsinnbydelsen og eventuell relevant informasjon og/eller dokumentasjon i forbindelse med anbudet og forpliktelsen til å yte offentlig tjeneste:	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/

Kommisjonsmelding i henhold til artikkel 16 nr. 4 i europaparlaments- og rådsforordning (EF) nr. 1008/2008 om felles regler for drift av lufttrafikk i Fellesskapet **2020/EØS/8/26**

Innføring av forpliktelse til å yte offentlig tjeneste med hensyn til ruteflyging

Medlemsstat	Frankrike
Berørt flyrute	Cayenne–Camopi Saint Georges–Camopi
Ikrafttredelsesdato for forpliktelse til å yte offentlig tjeneste	1. juli 2020
For henvendelser om teksten til og eventuell relevant informasjon og/eller dokumentasjon om forpliktelsen til å yte offentlig tjeneste:	Beslutning nr. AP-2019-94 av 18. desember 2019 – nye forpliktelser til å yte offentlig tjeneste med hensyn til innenlands ruteflyging https://www.ctguyane.fr/deliberations/

Kommisjonsmelding i henhold til artikkel 16 nr. 4 i europaparlaments- og rådsforordning (EF) nr. 1008/2008 om felles regler for drift av lufttrafikk i Fellesskapet **2020/EØS/8/27**

Endring av forpliktelse til å yte offentlig tjeneste med hensyn til ruteflyging

Medlemsstat	Frankrike
Berørt flyrute	Cayenne–Maripasoula Cayenne–Saül Cayenne–Grand Santi St Laurent du Maroni–Grand Santi St Laurent du Maroni–Maripasoula
Opprinnelig ikrafttredelsesdato for forpliktelse til å yte offentlig tjeneste	30. juli 1996 (Cayenne–Maripasoula og Cayenne–Saül) 25. april 2005 (Saint Laurent du Maroni–Grand Santi) 1. juni 2005 (Cayenne–Grand Santi og St Laurent du Maroni–Maripasoula)
Endringenes ikrafttredelsesdato	1. juli 2020
For henvendelser om teksten til og eventuell relevant informasjon og/eller dokumentasjon om forpliktelsen til å yte offentlig tjeneste:	Beslutning nr. AP-2019-94 av 18. desember 2019 – nye forpliktelser til å yte offentlig tjeneste med hensyn til innenlands ruteflyging https://www.ctguyane.fr/deliberations/