ÍSLENSK útgáfa

EES-viðbætir

við Stjórnartíðindi Evrópusambandsins

ISSN 1022-9337

Nr. 67

31. árgangur

12.9.2024

EFTA-STOFNANIR

EFTIRLITSSTOFNUN EFTA

Ákvörðun nr. 109/24/COL frá 10. júlí 2024 um að opna formlega rannsókn á hugsanlegri ríkisaðstoð við Vy Buss AS. **2024/EES/67/01**

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

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

EFTA Surveillance Authority
Registry
Avenue des Arts 19H
1000 Brussels
registry@eftasurv.int

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

*****

Ágrip

Málsmeðferð

Hinn 30. mars 2021 barst Eftirlitsstofnuninni kvörtun þar sem staðhæft var að stjórnvöld í Noregi hafi veitt Vygruppen AS („Vy“) og dótturfélagi þess Vy Buss AS („Vy Buss“) ólögmæta ríkisaðstoð í formi hlutafjárinnspýtingar frá Vy til Vy Buss.

Hinn 9. apríl 2022 sendi kvartandinn viðbótarathugasemdir til Eftirlitsstofnunarinnar þar sem kvörtunin var víkkuð til að ná yfir frekari meinta ólögmæta og ósamrýmanlega aðstoðarráðstöfun vegna fjármögnunar Vy á kaupum Flygbussarna AB árið 2020.

Hinn 18. apríl 2023 barst ESA viðbótarkvörtun sem var samhljóða kvörtununum sem þegar höfðu borist hvað varðar umfang, rökstuðning og gögn.

Lýsing á ráðstöfununum

Vy er ríkishlutafélag sem er alfarið í eigu norska ríkisins fyrir tilstilli samgönguráðuneytisins. Vy annast farþegaflutningaþjónustu með járnbrautum í Noregi. Vy annast einnig farþegaflutningaþjónustu með hópbifreiðum í Noregi í gegnum dótturfélag sitt Vy Buss AS og í Svíþjóð í gegnum Vy AB.

Ákvörðunin varðar eftirfarandi tvær ráðstafanir:

- Hlutafjárinnspýting Vy til Vy Buss upp á 1 milljarð NOK árið 2018 („hlutafjárinnspýtingin“).
- Lán veitt frá Vy til Vy Buss til kaupa á Flybussarna AB

Hlutafjáraukningin var gerð með því að skrá sig fyrir nýjum hlutabréfum í Vy Buss í samræmi við kafla 10-1 í norsku fyrirtækjalögunum. Að sögn stjórnvalda í Noregi var hlutafjárinnspýtingin framkvæmd til að styðja við hefðbundinn rekstur Vy Buss í hópbifreiðageiranum.

Kaupin á Flygbussarna AB voru hluti af stefnumótandi markmiðum og metnaði Vy til vaxtar fyrir starfsemi fyrirtækisins í Svíþjóð. Þau voru fjármögnuð með innra láni frá Vy til Vy Buss,

Bráðabirgðamat á því hvort um aðstoð er að ræða í samræmi við 1. mgr. 61. gr. EES-samningsins

Stjórnvöld í Noregi færa fram þær röksemdir að ráðstafanirnar teljist ekki vera ríkisaðstoð á grundvelli þess að þær hafi ekki stafað frá ríkinu í skilningi 1. mgr. 61. gr. EES-samningsins. Stjórnvöld í Noregi halda því enn fremur fram að ráðstafanirnar hafi verið gerðar á markaðskjörum.

Í ákvörðun sinni, kemst ESA að þeirri bráðabirgðaniðurstöðu að ráðstafanirnar virðast fullnægja skilyrðinu í 1. mgr. 61. gr. EES-samningsins og feli því í sér ríkisaðstoð.

Rekjanleiki ráðstafana

Fyrsta skilyrði 1. mgr. 61. gr. EES-samningsins sem taka þarf afstöðu til er hvort ráðstafanirnar séu veittar af hálfu ríkisins eða með ríkisfjármunum og hvort þær séu rekjanlegar til ríkisins.

Hægt er að yfirfæra ríkisfjármuni með beinum styrkjum, lánum, ábyrgðum, beinum fjárfestingum og fríðindum. Fjármunir opinberra fyrirtækja teljast einnig ríkisfjármunir í skilningi 1. mgr. 61. gr. EES-samningsins þar sem ríkið getur stýrt notkun þeirra. Tilfærslur innan opinberrar samstæðu, svo sem frá móðurfélagi til dótturfélags, geta einnig falið í sér ríkisaðstoð.

Sú staðreynd einvörðungu að opinbert fyrirtæki taki ákvörðun um aðstoð nægir ekki eitt og sér til að telja að hún verði rakin til ríkisins. Það er einnig nauðsynlegt að ganga úr skugga um hvort stjórnvöld geta talist hafa átt þátt í ákvörðuninni með einum eða öðrum hætti. Heimilt er að álykta að ráðstöfun sem opinbert fyrirtæki grípur til mega rekja til vísbendinga sem leiða af atvikum málsins og því samhengi sem ráðstöfunin á rætur sínar í.

Eftirlitsstofnunin kemst að þeirri bráðabirgðaniðurstöðu að hlutafjárinnspýtingin og lánið feli í sér yfirfærslu ríkisfjármuna. Eftirlitsstofnunin hefur vakið efasemdir um að ráðuneytið hafi tekið þátt í ákvörðun um að framkvæma hlutafjárinnspýtinguna og veitingu lánsins. Eftirlitsstofnunin getur ekki útilokað að ráðstafanirnar megi rekja til norska ríkisins. Eftirlitsstofnunin óskaði því eftir að stjórnvöld í Noregi legðu fram frekari upplýsingar um það atriði.

Að veita forskot

Ríkisaðstoð í skilningi 1. mgr. 61. gr. EES-samningsins nær ekki til ráðstöfunar sem fyrirtæki er veitt með ríkisaðstoð þar sem það hefði getað notið sama ávinnings við aðstæður sem samsvara eðlilegum markaðsaðstæðum. Mat á skilyrðunum fyrir veitingu slíks forskots fer fram með því að beita meginreglunni um rekstraraðila í markaðshagkerfi („MEOP“).

Eftirlitsstofnunin hefur efasemdir um að báðar ráðstafanirnar séu í samræmi við meginregluna um rekstraraðila í markaðshagkerfi (MEOP). Til að meta ráðstafanirnar gegn meginreglunni um rekstraraðila í markaðshagkerfi (MEOP), myndi Eftirlitsstofnunin krefjast þess að stjórnvöld í Noregi leggi fram allar viðeigandi upplýsingar sem gera Eftirlitsstofnunni kleift að beita meginreglunni. Eftirlitsstofnunin hvetur því stjórnvöld í Noregi til að leggja fram frekari upplýsingar til að staðfesta að ráðstafanirnar séu í samræmi við meginregluna um rekstraraðila í markaðshagkerfi (MEOP).

Mat á því hvort endurgjaldið samrýmist gildandi reglum

Stjórnvöld í Noregi hafi ekki lagt fram upplýsingar um hvort ráðstöfunin samrýmist einni undanþágunni frá banninu við ríkisaðstoð í 1. mgr. 61. gr. EES-samningsins. Því hefur Eftirlitsstofnunin efasemdir um hvort ráðstafanirnar samrýmist ákvæðum EES-samningsins.

Hins vegar hefur Eftirlitsstofnunin gert grein fyrir hugsanlegum ástæðum fyrir samrýmanleika og hefur boðið stjórnvöldum í Noregi að tjá sig um þær. Þessi lagagrundvöllur felur í sér samræmi við 2. eða 3. mgr. 61. gr. eða 2. mgr. 59. gr. EES-samningsins.

Subject: Measures concerning Vy Buss AS - Decision to open a formal investigation procedure

1 Summary

1) The EFTA Surveillance Authority ('ESA') wishes to inform Norway that it has preliminarily assessed the measures concerning: (i) the NOK 1 000 million capital injection into Vy Buss AS in 2018 and (ii) the loan granted by Vygruppen AS to Vy Buss AS for the acquisition of Flybussarna AB ('the measures'). ESA has doubts as to whether the measures constitute State aid within the meaning of Article 61(1) of the EEA Agreement. In case the measures were to be considered State aid, ESA has doubts whether the measures are compatible with the functioning of the EEA Agreement.

2) ESA has therefore decided to open a formal investigation procedure pursuant to Article 1(2) of Part I and Article 4(4) of Part II of Protocol 3 to the Surveillance and Court Agreement ('Protocol 3'). This decision is based on the following considerations.

2 Procedure

2.1 Three complaints

2.1.1 First complaint

3) On 1 December 2020,([1]) ESA received a complaint alleging that the Norwegian authorities were granting unlawful State aid to Vygruppen AS([2]) ('Vy') in the form of overcompensation for certain directly awarded public service obligation ('PSO') contracts for railway passenger services in Norway. The complainant requested confidentiality.

2.1.2 Second complaint

4) On 30 March 2021,([3]) ESA received a second complaint alleging that the Norwegian authorities were granting unlawful State aid to Vy and its subsidiary Vy Buss AS ('Vy Buss')([4]) in the form of overcompensation for certain directly awarded PSO contracts for railway passenger services in Norway, pension subsidy to Vy and a capital injection from Vy to Vy Buss. The complainant requested confidentiality.

5) On 3 June 2021, the Norwegian authorities submitted comments to the complaint([5]). On 9 April 2022, the complainant submitted supplementary observations to ESA extending the complaint to cover an additional alleged unlawful and incompatible aid measure concerning Vy's financing of the acquisition of Flygbussarna in 2020([6]).

6) On 13 July 2022, the complainant submitted supplementary observations to ESA([7]). On 14 July 2022, ESA met with the complainant. On 1 December 2022, the complainant submitted further information to ESA([8]). On 26 April 2023, ESA met with the complainant.

2.1.3 Third complaint

7) On 18 April 2023,([9]) ESA received an additional complaint identical in scope, reasoning, and evidence to the two complaints previously submitted. On 24 May 2023, ESA forwarded the complaint to the Norwegian authorities([10]). The complainant requested confidentiality.

([1]) Documents No 1166581, 1166617-22, 1166623-24, 1166700-02, 1166706-8, 1166748, 1166752, 1166753.
([2]) NSB AS changed its name to Vygruppen AS with effect from 24 April 2019.
([3]) Documents No 1192044-48, 1192124, 1192198-1192203, 1192204-1192215, 1192216-18, 1192219-21, 1192223-1192231, 1192232-36, 1192125-1192192.
([4]) Formerly called Nettbuss AS.
([5]) Documents No 1204908, 1204910, 1204912, 1204914, 1204916, 1204918, 1204920, 1204922, 1204924, 1204926, 1204928, 1204930, 1204932, 1204934, 1204936, 1204938, 1204940, 1204942, 1204944.
([6]) Documents No 1281554, 1281556 to 1281558. The financing of the acquisition of Flygbussarna is not subject to this decision.
([7]) Documents No 1302572, 1302573, 1302728 to 1302760, 1302715 to 1302718 and 1302762 to 1302769.
([8]) Documents No 1333853 to 1333879.
([9]) Documents No 1367333, 1367335, 1367338 and 1367339.
([10]) Document No 1373793.

2.2 Opening Decision and previous procedure

8) On 31 May 2023, ESA adopted Decision No 082/23/COL ('the Opening Decision')([11]) to open a formal investigation into two of the measures covered by the complaints, namely: (i) directly awarded public service obligation contracts for railway passenger services in Norway ('the PSO contracts'), and (ii) a grant to Vy to cover pension costs.

9) After a preliminary assessment, ESA found that there were doubts as to whether the two measures constituted existing aid, and in case the measures were new aid, if they were compatible with functioning of the EEA Agreement([12]).

10) In the following, ESA will assess the two measures that were not part of the Opening Decision, namely the NOK 1 000 million capital injection into Vy Buss in 2018 and the loan granted to Vy Buss for the acquisition of Flybussarna AB([13]).

3 Description of the measures

3.1 Background

3.1.1 Introduction

11) As described above, the complainants contend that the following two measures constitute unlawful aid:

- measure 1: Vy's NOK 1 000 million capital injection into Vy Buss in 2018 ('the Capital Injection'); and
- measure 2: the loan granted from Vy to Vy Buss for the acquisition of Flybussarna AB ('the Loan Agreement').

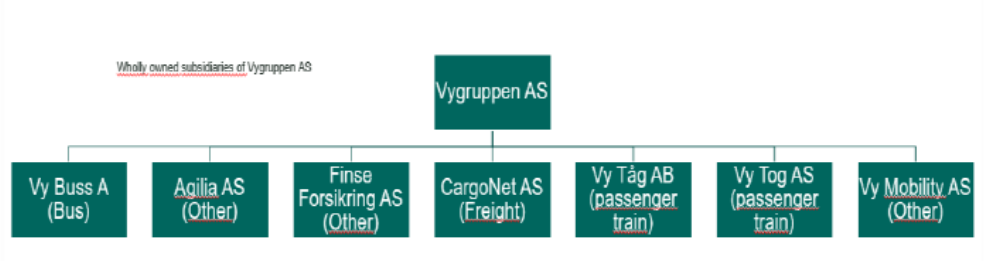
12) These measures will be further described in sections 3.2 and 3.3 of this decision.

3.1.2 Vy

13) Vy is a State limited liability company subject to the Norwegian limited liability companies act ('the Companies Act')([14]). The State, by the Ministry of Transport ('The Ministry'), owns 100% of the shares in Vy.

14) Vy operates railway passenger transport services in Norway. Through its subsidiary Vy Tåg AB, Vy also operates railway passenger transport services in Sweden.

15) Moreover, Vy operates bus passenger services in Norway through its subsidiary Vy Buss and in Sweden through Vy AB. Vy owns 100% of the shares in Vy Buss. Below is an illustration of the wholly owned subsidiaries of Vy (Figure 1):



([11]) OJ C 2023/239, 6.7.2023, p. 4–57, and EEA Supplement No 50, 6.7.2023, p. 26.
([12]) See the Opening Decision for further details on the complaints and the complaint procedure.
([13]) These measures were covered by the second and third complaint.
([14]) The Norwegian limited liability companies act (in Norwegian: Lov om aksjeselskaper), LOV-1997-06-13-44.

16) Vy and its subsidiaries are not integrated in the public administration of Norway.

17) Vy is an independent legal entity subject to private law. The rules in the Companies Act apply to Vy in the same way as any other private limited liability company. However, there are specific provisions in Sections 20-4 to 20-7 of the Companies Act that apply to State owned companies. These provisions include *inter alia* the right for the Ministry to call an extraordinary general meeting and an extended right to take out dividends.

18) The State's direct ownership in Vy is exercised through the general meeting. According to the Norwegian authorities, the Ministry also has regular contact meetings with the board of directors ('the Board') and the administration of Vy.

19) According to the Norwegian authorities, the purpose of the contact meetings is to give the Ministry a high-level overview of the activities in Vy, and of Vy's financial and non-financial performance.

20) The Norwegian authorities have further explained that these meetings are not a decision-making forum, as the Ministry's power to instruct Vy is limited to decisions taken in the general meeting.

21) The Board is elected by the Ministry, in accordance with the Companies Act section 6-3. However, in accordance with the Companies Act section 6-4, three of the board members are elected directly by Vy representing the employees.

22) According to the Norwegian authorities, the Board acts independently from the State and does not generally consult the State before taking decisions.

23) However, according to Article 10 of Vy's articles of association, the Board shall consult the Minister of Transport on matters of substantial social concern or principal importance. Furthermore, the Board is required to present a plan for the company and its subsidiaries each year. The plan must consist of the following:

i. A description of the market and the group, including relevant developments since the last 'Article 10 plan' was presented.

ii. An overview of the group's main business activities in the next years, including larger reorganisations, development and termination of existing businesses activities and the development of new business activities.

iii. The group's investment level, material investments and financial plans.

iv. Assessment of the economic development in the business plan period (five years).

v. A report setting out the measures and results of the company's social mission and responsibility.

24) The Minister of Transport must also be consulted for any amendments to the 'Article 10 plan' that deviates substantially from the plan previously presented.

25) The general manager of Vy ('the CEO') is elected by the Board, as for other private limited liability company, and is not subject to any direct instructions from the Ministry.

26) According to the general instructions issued by the Board to the CEO, the CEO has the power to represent Vy at general meetings in all Vy's subsidiaries. Furthermore, the CEO is authorised to approve intra-group agreements and transactions provided they are based on commercial terms and principles and are in accordance with the Companies Act([15]).

27) Furthermore, the CEO is authorised to oversee the daily operations of the company and the group. This includes managing normal activities that fall within the scope of the board's resolutions, business plans and budgets, as well as ensuring adherence to other board

([15]) See Document No 1204928: 'Instruction from the Board of directors to Vygruppen AS' as applicable on 9 April 2018 (Norwegian: Instruks for Vygruppens konsernsjef), p. 3.

decisions. The CEO is also empowered to handle any tasks necessary for the company's ongoing operations([16]).

3.1.3 Vy Buss

28) Vy Buss carries out bus services in Norway. The company's main business is the operation of public bus transport services on behalf of public authorities, e.g. public bus service contracts that have been awarded through a public tender. The company also carries out activities within the express bus market and long-distance bus services which are not covered by public service obligations.

29) Vy has carried out bus activities since the 1920s. In 1996, Vy became a limited liability company and established the subsidiary NSB Biltrafikk AS, which carried out *inter alia* bus activities. In 2001, NSB Biltrafikk AS changed its name to Nettbuss AS and in 2019 to Vy Buss AS.

3.2 Measure 1: The Capital Injection

30) Vy's Capital Injection into Vy Buss was carried out on 9 April 2018. The capital increase was done through subscription of new shares in accordance with section 10-1 of the Companies Act.

31) The decision to carry out the capital increase was also adopted on 9 April 2018 by the general meeting in Vy Buss, upon the proposal of the board of directors of Vy Buss from the same day. The general meeting was represented by the CEO of Vy([17])([18]).

32) According to the Norwegian authorities, the Capital Injection was carried out to support Vy Buss' normal business operations in the bus sector. The rationale for the Capital Injection was the following:([19])

i) Vy Buss' equity ratio was significantly lower than of its competitors. The year prior to the Capital Injection, Vy Buss had provided group contributions of approximately 250 MNOK to other group companies, of which about 200 MNOK were to Vy. The Capital Injection therefore sought to remedy the weakening of Vy Buss' equity ratio caused by the group contributions.

ii) It was considered necessary to strengthen the company's equity ratio to a minimum of 25%. A minimum of 25% equity is what banks typically require as a covenant for stand-alone companies. Failure to do so could result in higher financing costs.

iii) The transition to low-emission technology in upcoming tenders increased the need for investments. Vy had estimated that investment needs would amount to 1 450 MNOK in relation to tenders in 2019, provided that the hit rate would correspond to Vy Buss' pre-existing market share.

iv) Public tenders commonly have solidity requirements as qualification criteria, and Vy Buss could have risked exclusion from public tenders if its equity ratio was insufficient.

v) The Vy group was going through a transition to the accounting standard IFRS. The transition to IFRS alone required an equity contribution of 240 MNOK to reach the desired equity ratio of 25%. A capital injection was therefore required to avoid a deterioration in the company's financials.

3.3 Measure 2: the Loan Agreement

33) According to the Norwegian authorities, in the autumn of 2019, Vy was considering buying Flygbussarna AB, based on an external value assessment done by PWC([20]). According to the

([16]) Ibid, p. 2.
([17]) Board proposal from Vy Buss, dated 9 April 2018 (Document No 1204930), and the minutes from the General Meeting in Vy 9 April 2018 (Document No 1204936).
([18]) See paragraph (26) of this Decision and footnote 15.
([19]) Document No 1204926.
([20]) PricewaterhouseCoopers International Limited.

Norwegian authorities, the acquisition was part of Vy's strategic objectives and ambitions for growth of its activities in Sweden.

34) The Norwegian authorities explain that PWC estimated the value of the Flygbussarna AB […].

35) The final purchase price was SEK 1 200 million. The loan was, however, SEK 1 230 million (EUR 12.83 million),([21]) as the buyer also had to pay down Flygbussarna AB's debts to its former owner and equalise its working capital. According to the Norwegian authorises, this was due to the ratio between the net debts and the working capital of Flygbussarna AB at the time of the settlement. The agreed price was adjusted to compensate for additional capital in the company.

36) The acquisition was financed through an internal loan granted by Vy to Vy Buss,([22]) in order to ensure that no external debt was contracted specifically for the purpose of the transaction. The share purchase agreement was signed on 20 December 2019.

37) To avoid exchange rate volatility, the loan was converted to Norwegian kroners on 22 December 2020, at an exchange rate SEK – NOK of 105. The Norwegian authorities have explained that the applicable interest rates were higher in Norway than in Sweden, therefore the conversion was not financially advantageous to Vy Buss. However, the conversion was considered preferable to avoid the exchange rate risk.

38) According to the Norwegian authorities, Vy has set up a group account, Vy's 'internal bank', a common account system for the group entailing *inter alia* a joint credit limit and sub accounts for each company subject to the same terms, i.e. same interest rates, etc. With this banking system, subsidiaries can avoid taking up external debt, and all debt is rather contracted at group level.

39) The Norwegian authorities further explain that a group account system incentivises groups to spend their internal surplus liquidity before taking out external loans, and that the economic consequences of moving capital from one account to another are minimised. Each company is allowed to draw on the account and to deposit into the account.

40) All Norwegian and Swedish subsidiaries in Vy take part in the group's internal bank and centralised group account system. This allows Vy, as a group, to receive more favourable interest rates from external banks and all subsidiaries in the group to benefit from the same terms for their respective sub-accounts.

41) Moreover, revenues from cash deposits in the internal bank are the same regardless of whether surplus cash is deposited on the account of a subsidiary or the parent company. According to the Norwegian authorities, all cash deposits in a group account system in practice remain at the disposal of the parent company.

42) The Norwegian authorities explain that for loans granted through Vy's internal bank function, the interest rates are set on the basis of […] for interest rate + a mark-up. The mark-up is individual for each group company. The interest rate […], in connection with the preparation of the group budget.

43) The Norwegian authorities explain that Vy's internal bank […]([23]).

44) Based on these principles, the loan granted for the acquisition of Flygbussarna AB was given an interest rate of three years' NOK swap rate […]. The Norwegian authorities hold that the loan was directly benchmarked against the rates obtained in a recent leasing agreement, i.e. the Nordea lease agreement entered in spring 2019 ('the Nordea lease agreement')([24]). A swap rate is used to secure the borrower against fluctuations in interest rates by ensuring a fixed interest rate for the agreed period.

([21]) Ibid.
([22]) See Document No 1313438, p. 45.
([23]) Group policy, Document No 1357622.
([24]) Document No 1313444.

45) The swap rate is supposed to reflect the expected development of the NIBOR throughout the duration of the swap agreement. The Norwegian authorities have explained that a fixed rate would include a premium, which would mean that a three-year swap rate would generally be higher than for example a six-month NIBOR (only one week, or one, two, three and six months NIBOR rates still existed at the material time) […].

46) From the date the loan was granted on 22 December 2020, until the end of 2023, the total interest rate was set at 2.45%. […].

47) The swap rate is influenced by the base rate of Norges Bank([25]). The base rate was adjusted from 1% to 1.25% on 9 May 2019, which was according to the Norwegian authorities reflected in the swap rate applied to the loan.

48) Below is an illustration provided by the Norwegian authorities on the developments of the base rate in the Nordea lease agreement […], compared to the base rate of the internal loan […], from Q1 2020 until the end of 2021 (Figure 2):

[…].

49) According to the Norwegian authorities, the […] has in general been higher than the […]. This is due to[…].

50) The following table explains the key elements of the Nordea lease agreement and the Loan Agreement (Table 1):

		Nordea	**The Loan Agreement**
1	Base rate	[…]	[…]
2	Base rate adjustment	[…]	[…]
3	Margin	[…]	• […] • […] • […]
4	Margin adjustment	[…]	[…]
5	Collateral	No collateral but ownership of buses.	No collateral but ownership of 100% of the shares in Vy Buss.
6	Arrangement fee	[…]	[…]
7	Duration	[…]	[…]

51) The Norwegian authorities have explained that the Nordea lease agreement […]. In comparison, the interest rate in the loan agreement […].

52) Moreover, the Norwegian authorities have explained that the update of the interest rates of the loan […]. The Norwegian authorities confirm that Vy's internal bank […].

3.4 The complaints

3.4.1 Measure 1: Capital Injection

53) The complainants submit that the Capital Injection of NOK 1 000 million constitutes State aid according to Article 61(1) of the EEA Agreement. According to the complainants, the measure is imputable to the State and is not in line with the market economy investor principle([26]).

54) The complainants argue that the legal status of Vy indicates State control and supervision of its activities. They highlight that the special provisions of the Companies Act regarding State ownership provide the State with stronger rights to govern and control the company compared

([25]) The Central Bank of Norway.
([26]) See section 4.2.3.1 of this Decision for the market economy investor principle.

to ordinary limited liability companies. Further, that this control is reinforced through Vy's articles of association, particularly Article 10, which enhances State management and oversight of Vy.

55) Moreover, the complainants argue that the nature of Vy's activities is restricted by a public mandate outlined in Article 3 of its articles of association. This provision delineates the company's purpose and scope, aligning it with public transportation needs and objectives([27]). According to the complainants, this sets Vy apart from other State shareholdings, where there is no such explicit public mandate justifying the State's ownership.

56) Moreover, the complainants submit that the white paper on the State's direct ownership of companies for 2019-2020([28]) further confirms that the Ministry exert substantial influence over the management of Vy. The complainants submit that Vy's primary business is to operate passenger rail and cargo services. Therefore, the State's ownership of Vy is justified by the need to have a supplier capable of meeting the State's transportation need of people and goods by rail. Consequently, Vy is classified as a 'Category 2' company by the State, indicating a specific justification for State ownership and control([29]).

57) The complainants explain that the Office of the Auditor General ('OAG') conducted an audit of Vy and its subsidiaries, in the period from 2010-2015, which compelled the Ministry to 'closely' follow the development in Nettbuss (now Vy Buss)([30]).

58) The complainants explain that the Parliament endorsed the audit of the OAG on 25 February 2014 and noted that the 'ministry is following the development in NSB and Nettbuss closely'([31]).

59) Furthermore, the complainants submit that in the last audit report from the OAG, which was endorsed by the Parliament on 17 February 2015, the OAG stated that: 'the profitability of Nettbuss is still too poor'; but noted that the Ministry had committed to continue to 'closely' follow the development in the subsidiary([32]).

60) Considering the above, the complainants submit that the Ministry had committed to follow up closely on Vy Buss, and therefore should have been aware of the Capital Injection.

61) Moreover, the complainants argue that the equity in Vy Buss had run low in the years prior to the Capital Injection, as indicated in the annual reports from the period 2014 to 2017. The complainants further argue that the Ministry was made aware that the company was considering 'additional measures to strengthen the equity in the Nettbuss-group' in the years leading up to the Capital Injection.

62) Therefore, the complainants submit that the Ministry was aware that Vy Buss needed to raise its equity by additional measures.

63) The complainants explain that the white paper on NSB's (now Vy) business from April 2013, had outlined the Norwegian Government's policy concerning NSB's bus activities. The white paper highlighted the State's primary objective of ensuring a well-functioning rail transport service for both passengers and goods in Norway. It underscored that all other activities, whether within Norway or internationally, should bolster this primary goal, either by contributing financially, enhancing competence, or providing other forms of support to the rail service([33]). Moreover, in the previous white paper, the Government adopted the policy that continued investments in the bus business should be based on the capital generated by the bus operations([34]).

64) The complainants submit that Vy Buss' business plan was adopted on 4 September 2017 for the five-year period from 2018-2022. According to the business plan, no major investments in existing activities were foreseen. Trains and buses were mainly to be rented/leased([35]).

([27]) See Vy's article of association, Document No 1302728.
([28]) See Document No 1302739, p. 39.
([29]) Ibid, p. 8.
([30]) See Document No 1192211, p. 127.
([31]) See Document No 1192212, p. 21.
([32]) See Document No 1192214, p. 21.
([33]) See Document No 1192211, p. 128.
([34]) See Document No 1192142, p. 21.
([35]) See Document No 1302729, p. 15.

65) The complainants therefore submit that the Capital Injection was done in contravention to the five-year business plan.

66) The complainants moreover argue that Article 10 of Vy's articles of association was adopted to ensure that the company had to bring such matters to the Ministry. According to the complainants, pursuant to the last paragraph of Article 10 of the articles of association, the Board is required to present to the Minister of Transport 'significant changes' in that business plan.

67) The complainants point out that the objective of Article 10 of Vy's articles of association is to ensure that the Minister of Transport is informed of relevant matters and is given the opportunity to intervene against the Board if necessary.

68) Based on the above, the complainants argue that the investment decision went against the policy adopted by the Government and the current business plan of Vy Buss. Therefore, the Capital Injection became a principled issue under Article 10 of the articles of association that could not be taken without the Ministry.

69) The complainants argue that the magnitude of the investment also indicates that the Ministry had to be involved in the decision to inject NOK 1 000 million into Vy Buss.

70) According to the complainants, the Capital Injection committed a substantial part of Vy's equity into future risks and challenges in Vy Buss. The complainants hold that Vy, at the time of the Capital Injection, had an equity of NOK 4.1 billion. Therefore, the Capital Injection committed more than 24% of that equity to the future business risks in the bus business.

71) Furthermore, the complainants argue that the Capital Injection took place while Vy was going through fundamental changes in its own main business. Vy was in the middle of public tender rounds for passenger transport by rail in Norway, which carried its own significant business risks for Vy.

72) The complainants hold that the decision to commit as much as NOK 1 000 million, or more than 24% of Vy's equity, to the future business of the subsidiary constituted a significant transaction. According to the complainants, the commitment entailed that the net working capital in Vy would fall by more than 50%, from NOK 3.5 billion at the start of 2018, to just NOK 1.7 billion, at the end of the year.

73) Therefore, according to the complainants, the Capital Injection committed significant equity and transferred substantial working capital away from Vy's primary public service mission and required the Ministry's involvement.

74) The complainants further submit that there is evidence of calls, emails, and meetings between the chairman of the Board of Vy and the Secretary-General in the Ministry prior to the Capital Injection. In particular, the email from 6 February 2018([36]) is highlighted, as it documents that the Ministry had several meetings in the weeks before the Capital Injection with the Board. Moreover, there is evidence of meetings with the Ministry after 6 February 2018 until mid-March 2018. Therefore, the complainants argue that it is implausible that the investment decision was never discussed or shared with the Ministry.

75) Moreover, the complainants submit that there are strong organic links between the State and the Board. The CEO in Vy is also the chairman of the Board in Vy Buss. Furthermore, the complainants explain that the chairman of the Board used to be the CEO of Posten Norge AS, which was owned and controlled by the same Ministry, until he was elected chairman of Vy (then NSB AS). The complainants have further detailed the background of the other members of the Board, which indicates that many of the members are in or have held similar positions in other State owned or controlled companies.

([36]) Document No 1302736.

76) The complainants therefore argue that the background of the board members indicate that they have and have had a certain loyalty and dependency to the State throughout most of their careers.

77) Based on the above, the complainants argue that the Ministry was involved in the Capital Injection, and that the measure is consequently imputable to the State.

78) As for how the transaction was made, the complainants argue that a comparable professional (private) investor, operating under the same market conditions and acting on the same available information, would not have committed NOK 1 000 million as an equity investment in Vy Buss.

79) The complainants submit that, as agreed by the Norwegian authorities, no external independent reports were commissioned to verify the soundness of the investment decision.

80) The complainants argue further that Vy had ample time and opportunity to involve the Ministry in the planned decision, also that the company had ample time to seek independent expert verification.

81) The complainants therefore maintain that the Capital Injection was not made in accordance with market economy investor principle.

3.4.2 Measure 2: The loan for the acquisition of Flybussarna AB

82) The complainants hold that Vy's financing of the acquisition of Flygbussarna AB in 2020 is unlawful and incompatible State aid.

83) The complainants argue that the acquisition is imputable to the State. According to the complainants, the planned acquisition was approved by the Ministry before Vy had handed in a binding offer or purchased any shares.

84) Furthermore, the complainants submit that the loan was not market conform, as the loan should have been compared to an unsecured loan from an external creditor.

85) In addition, the complainants argue that Vy's credit rating should have been set as if the group had not been State-owned. According to the complainants, Vy's credit rating had been declining and continued to decline after the loan was granted.

86) The complainants further submit that according to Vy's 2020 annual report, Vy Buss made the acquisition on 1 March 2020 and not in late 2019 as held by the Norwegian authorities (see paragraph 36) above). Moreover, it follows from the annual report that the consideration for the shares amounted to a cash payment of NOK 1.198 million([37]).

87) The complainants argue that the loan amounted to NOK 1 291.5 million, which was NOK 93.5 million higher than the agreed price for Flygbussarna AB([38]).

88) The complainants therefore submit that the loan from Vy to Vy Buss is imputable to the State and was not market conform.

3.5 Comments by the Norwegian authorities

3.5.1 Measure 1: Capital Injection

3.5.1.1 Imputability

89) The Norwegian authorities contend that the capital increase did not amount to State aid because: (i) the measure was not imputable to the State and (ii) the Capital Injection was carried out on market terms.

([37]) Document No 1281617, p. 89.
([38]) Document No 1281635, p. 33.

90) The Capital Injection in Vy Buss was carried out on 9 April 2018, as a capital increase by subscription of new shares in accordance with section 10-1 of the Companies Act. According to the Norwegian authorities, the Ministry was not informed of the capital increase any time before 9 April 2018.

91) According to the Norwegian authorities, the Ministry could have first learned about the Capital Injection in a meeting on 29 May 2018 between Vy and BDO([39]). The Norwegian authorities explain that the meeting was held in connection with the finalisation of the BDO report for 2018, where the Ministry was also present. The Norwegian authorities submit that during this meeting the Ministry could potentially have learned about the Capital Injection.

92) The Norwegian authorities explain that the Board through its instructions had given the CEO the right to initiate and effectuate such intra-group transactions without prior Board approval. As noted above in paragraph 26), the CEO has the power to approve all intra-group transactions of any amount.

93) According to the delegation act from the Board to the CEO, the CEO is authorised to approve internal agreements and transactions provided that these are based on commercial terms and principles. The CEO also has the power to represent Vy at general meetings in all Vy's subsidiaries.

94) According to the Norwegian authorities, the Board was also not informed about the Capital Injection until after it had taken place on 9 April 2018. Furthermore, none of the Board members raised any objections to the transaction when informed about the capital increase in Vy's board meeting on 27 April 2018.

95) The information about the capital increase became publicly available when Vy Buss' 2018 annual accounts were registered in the Brønnøysund Register Centre([40]) on 6 July 2019. Vy Buss' annual accounts are not presented or sent to the Ministry for approval.

96) According to the Norwegian authorities, the Ministry has no additional powers to supervise the decisions of Vy's management, except for Article 10 in the articles of association (see paragraphs 22) and 24)). The Norwegian authorities submit that this provision is limited to exceptional circumstances and cannot be used to supervise or control the management when carrying out intra-group investments to support normal business operations.

97) The Norwegian authorities further submit that the Capital Injection was not described in the 'Article 10 plan'. The purpose of the 'Article 10 plan' is to inform the Ministry about investments that could significantly influence the group's finances. It therefore only describes investments and financial forecasts on a group level.

98) The Norwegian authorities explain that 'external' investments, where funds are invested outside the group, are described in the plan. Intra-group capital transfers are not described in the 'Article 10 plan'.

99) According to the Norwegian authorities, intra-group investments are carried out to support the strategy and business plan presented to the Ministry under the 'Article 10 plan'. Therefore, such investments are not considered to be matters of substantial social concern or principal importance and form part of Vy's ordinary business activities. Intra-group investments are therefore considered as matters for the management to decide without the Ministry's involvement. According to the Norwegian authorities, there are no examples of internal transactions that have been assessed as an 'Article 10 matter'.

100) The Norwegian authorities further explain that since capital injections into subsidiaries are internal to the group, the consolidated group accounts are not affected, and the group is not exposed to any material risk. When the capital is not invested outside the group, Vy could still control the capital, and has the possibility to recoup internal capital injections if necessary.

([39]) BDO is an accounting company.

([40]) A Norwegian government agency that is responsible for the management of numerous public registers for Norway, including company register, and governmental systems for digital exchange of information.

101) The Norwegian authorities argue that such transactions therefore cannot be compared to external investments, such as investments by the Ministry itself, either into a company which is wholly or partially State-owned or into a privately owned company. Moreover, the rationale for enacting certain specific rules relating to groups of companies is to enable the companies within the group to move capital to the company that can best utilize it. Therefore, the Norwegian authorities submit that group contributions and other capital transfers, even substantial amounts, are common within corporate groups and generally do not affect the group's overall financial standing.

102) Further, the Norwegian authorities explain that the railway reform introduced major structural measures in the rail sector, put into effect from late 2016 and early 2017. One of the measures was the transfer of ownership and responsibility for rolling stock, to Norske Tog AS, which was demerged from NSB (Vy) and placed under the ownership of the Ministry of Transport. From then on, Vy, and all other train operators on the Norwegian market, would lease trains from Norske Tog. Further, that investment in rolling stock is generally higher than investment in buses. Therefore, the Norwegian authorities argue, it is against this backdrop that the relative terms 'no major investments' and 'trains and buses will mainly be rented/leased' must be read, see paragraph 64) above.

103) According to the Norwegian authorities, the business plan for 2018-2022 made clear that the group would not carry out major investments in materials, such as the ones in the previous years, and that trains and buses would mainly be financed through leasing.

104) Moreover, the Norwegian authorities explain that by 'investments' referred to in the internal capitalisation memo, on which the Capital Injection was based, it is meant leasing of buses and rental agreements. According to the Norwegian authorities, there were a number of new contracts being tendered out in the Norwegian and Swedish market in 2018, which potentially required significant investments in buses and other material. Therefore, there was a need to ensure that Vy Buss AS had the capital to undertake the necessary investments should the company win the contracts. This included both ensuring that the equity ratio was at a sufficient level, and that the company had sufficient free equity to carry out necessary investments in conjunction with its business activities.

105) Norwegian authorities also explain that leasing and rental agreements are also accounted for as investments in the balance sheet under 'IFRS 16'([41]).

106) Based on the above, the Norwegian authorities argue that the Capital Injection is not imputable to the State.

3.5.1.2 Market economy investor principle ('MEIP')

107) According to the Norwegian authorities, the decision to do a Capital Injection in Vy Buss was not influenced by public policy considerations, but based on economic considerations at the time the measure was taken. The Norwegian authorities hold that a hypothetical private shareholder of Vy Buss would have acted in the same way as Vy at the time of the investment.

108) According to the Norwegian authorities, Vy Buss had over time shown itself to be a well-run company. Vy Buss had shown positive results in the years prior to the capital increase, and at the time of the capital increase, Vy Buss was in a healthy financial position.

109) Therefore, the Norwegian authorities argue that the Capital Injection should not be compared to exceptional Capital Injections made in conjunction with a subsidiary's possible sale or liquidation. According to the Norwegian authorities, in such cases it would require a more detailed projection of all possible losses before carrying out the investment.

([41]) IFRS 16 introduces a single lessee accounting model and requires a lessee to recognise assets and liabilities for all leases with a term of more than 12 months, unless the underlying asset is of low value.

110) The Norwegian authorities further explain that BDO issued two reports around the time of the capital increase. The first BDO report was published on 20 March 2017 and the second BDO report was published in July 2018([42]). The purpose of both reports was to assess the value of the NSB group (now Vy), which includes Vy Buss. Both reports included recommended rates of return for the group as a whole and for the individual subsidiaries.

111) The Norwegian authorities explain that Vy considered that Vy Buss would generate a return on equity which fulfilled the required rate of return for equity set by the BDO report in 2017. BDO estimated the rate of return for Vy Buss at […] on capital employed and […] on equity for long term investments. For investments with a time frame of 3-5 years, BDO estimated the rate of return at […] on capital employed and […] on equity([43]).

112) The Norwegian authorities explain that the internal return requirement applies to Vy Buss when it bids for contracts in public tenders or undertakes other investments.

113) The reasons for the capital increase are outlined in paragraph 32). As for the group contribution from Vy Buss, the Norwegian authorities explain that they are very common between different companies in Vy. Further, that this is usually done to optimise the tax position of the different group companies, and not to strengthen or weaken their balance sheet. Vy Buss' group contributions the year prior to the Capital Injection weakened its equity ratio, therefore the capital contribution also sought to remedy this, see paragraph 32).

114) As for the investment needs on tenders in 2019, the Norwegian authorities explain that public bus contracts typically have a duration of 10 – 12 years with a value of several billion NOK. Therefore, when such contracts end and new tenders are launched, the bus operators have much at stake and risk losing market shares. Moreover, most of the costs are incurred after a contract is awarded. Therefore, if after a contract is ended and a different bus operator is awarded the new contract, a transfer of an undertaking takes place so that the staff are hired by the new operator.

115) If Vy Buss were to be unsuccessful in a tender, it would not incur any investment costs, nor would it keep the staff formerly employed on the route on its payroll. Costs related to investments into new vehicles, charging infrastructure etc., are usually required for new contracts only by the operator to which the contract is awarded.

116) Therefore, considering that Vy Buss was in a healthy financial situation and Vy was and is its sole owner, and that the capital injected would not be invested unless Vy Buss was awarded a contract, Vy was in a position to recoup the capital injection in the form of group contributions or dividends. The Norwegian authorities submit that this also reduced the potential economic risk related to the investment.

117) The Norwegian authorities further explain that before each tender, a thorough financial analysis is carried out to ensure that the terms offered secure expected returns in line with the group's requirements.

118) Further, the Norwegian authorities explain that Vy had implemented sufficient mechanisms to ensure that the funds were only invested in a way that it delivered a market return. Mechanisms such as return requirements based on an external benchmark, business plans setting out Vy Buss' return requirements, and the requirement to carry out profitability analyses before bidding for a contract or investing in new activities or assets.

119) As for the transition to the accounting standard IFRS, the Norwegian authorities explain that for Vy Buss, the main effect was related to real estate rental agreements. However, that the financial impact was considerable, as the transition to IFRS alone required an equity contribution of 240 MNOK to reach the desired equity ratio of 25%. Therefore, the Capital Injection was required to avoid a significant deterioration in the company's financials, which would negatively impact its financing terms and risk exclusion from public tenders.

([42]) Document No 1204908 and Document No 1204920.
([43]) The BDO report from 2017, p. 98. (Document No 1204908).

120) The Norwegian authorities argue that prior economic assessments, according to market economy investor test, depend on the circumstances specific to each case. Considering the above, the Norwegian authorities argue that there was no need to carry out a separate profitability analysis, such as an NPV analysis etc. with respect to the Capital Injection.

121) The Norwegian authorities further submit that there are relatively liberal rules on loans between group companies in the Companies Act. In particular, Section 8-7(4) no. 2 of the Companies Act allows loans to group companies even if the lender company does not have distributable dividends. Moreover, there is a possibility to claw back capital as group contribution, dividends or (in the case of share equity) through a capital reduction (See Section 8-2, 8-5 and 12-1 of the Companies Act).

122) Based on the above, the Norwegian authorities submit that the Capital Injection from Vy to Vy Buss in 2018, was merely a transfer of liquidity from one account in the group account system to another, see paragraphs 39) to 41) above. As the return on the capital remains unchanged when it is moved to a different account, the capital remains *de facto* available to the parent company at any time. The Norwegian authorities submit that no privately owned parent company would undertake an *ex ante* profitability analysis in a similar situation. A subsidiary in a privately owned group would therefore have been able to receive a cash injection from its parent in similar circumstances.

123) Further, the Norwegian authorities submit that the MEIP-test must be considered against the fact that Vy is the sole shareholder of Vy Buss and that Vy Buss was not, at the time, a company in financial difficulties.

124) Finally, the Norwegian authorities confirm that Vy Buss has delivered a return according to expectations in the years since the investment. Except for the last years, which was mainly due to travel restrictions and other measures imposed by the Norwegian authorities to combat the COVID-19 pandemic.

125) In light of the above, the Norwegian authorities argue that the investment was carried out in line with the MEIP-test, and therefore did not confer an advantage on Vy Buss.

3.5.2 Measure 2: The loan for the acquisition of Flybussarna AB

3.5.2.1 Imputability

126) The Norwegian authorities argue that the loan for the acquisition of Flybussarna AB is not imputable to the State.

127) The Norwegian authorities explain that the Board informed the Ministry about their decision to acquire Flygbussarna AB prior to submitting the bid. However, the Ministry did not receive any information on how the acquisition would be financed, as this was within the company's autonomy.

128) According to the Norwegian authorities, the acquisition of Flygbussarna AB was considered as an investment that could significantly influence the group's finances, as the funds were used in an investment outside the group.

129) The acquisition was assumed to have a significant impact on the group´s business, as it entailed entering a new market, namely the commercial airport bus market in Sweden. Therefore, the Norwegian authorities explain that the decision to acquire Flygbussarna AB was considered as a 'significant amendment' of the 'Article 10 plan'. The acquisition was therefore brought before the Ministry in accordance with Article 10 of Vy's articles of association.

130) The Ministry was informed of the planned acquisition through an owner meeting, on 25 October 2019, where the amendments to the 'Article 10 plan' were presented. According to the Norwegian authorities, the Minister of Transport gave its approval to Vy's acquisition of Flygbussarna AB in the meeting.

131) Furthermore, the Norwegian authorities submit that the Ministry did not have the authority to supervise or control the management of Vy, as regards the way in which they chose to finance the acquisition.

132) Based on the above, the Norwegian authorities argue that the Ministry was not aware of the decision by Vy to grant Vy Buss a shareholder loan, until Flygbussarna AB was acquired.

133) Moreover, the Norwegian authorities argue that there is no indication that Vy's management, when considering granting the loan, pursued any objectives other than commercial ones. According to the Norwegian authorities, this indicates that Vy's management took the decision in full commercial autonomy without taking account of any requirements of the Ministry.

134) The Norwegian authorities therefore submit that there are no indications that the Ministry was involved in the adoption of the decision to grant a loan from Vy to Vy Buss for the acquisition of Flygbussarna AB.

3.5.2.2 MEIP

135) The Norwegian authorities submit that the loan granted by Vy to Vy Buss for the acquisition of Flybussarna AB, was granted on terms that would have been acceptable to a private investor in a similar situation. Therefore, the Norwegian authorities argue that the loan was granted according to the MEIP.

136) The loan was granted by Vy to its wholly owned subsidiary Vy Buss. The Norwegian authorities argue that this situation cannot be compared to a situation of an external lender.

137) The Norwegian authorities submit that when a shareholder grants a loan to a wholly owned subsidiary, the shareholder contrary to a commercial bank retains full control over its assets. The shareholder can call a general meeting at any moment, and instruct the board, within the limits of company laws, to take any action necessary to preserve the value of the assets.

138) Furthermore, a sole owner may also resolve any amendment it deems necessary to the by-laws of the subsidiary. The shareholder can liquidate or absorb the company at any moment within the limits set out in company laws.

139) The Norwegian authorities explain that the loan was offered without any security, but that a collateral is uncommon and generally unnecessary in case of a loan to a wholly owned company.

140) Moreover, the Norwegian authorities explain that the loan was compared with the lease agreement offered by Nordea to Vy Buss. The Norwegian authorities argue that the Nordea lease agreement should be considered as a financial agreement, since it is priced with a reference rate and mark-up with no additional services (such as maintenance, insurance etc.).

141) The Norwegian authorities explain that the reference rate applied […]. The interest rates in the Nordea lease agreement are updated in accordance with […]. By comparison, the reference rate for the internal loan […].

142) The Norwegian authorities explain that for the internal loan the mark-up will […]. Unlike the Nordea lease agreement, where […], see paragraphs 51)-51).

143) Therefore, the Norwegian authorities argue that the internal loan applied a generally higher reference rate and an equivalent or higher mark-up than the Nordea leasing agreement. The applied rates have been higher than for the rate set by Nordea. The Norwegian authorities argue that the higher reference rate reflects the increased risk to the lender of offering a fixed rate for a longer period with less frequent updates. Consequently, there is no indication that the internal loan was more beneficial to Vy Buss than equivalent financing agreements with external, commercial lenders.

144) The Norwegian authorities have stated that the loan was not assessed against ESA's Guidelines of Reference and Discount Rates([44]). However, if the shareholder loan was assessed as unsecured loan, the margin applied […], see paragraph 48)), is only marginally below the margin of 100 basis points applied in ESA's Guidelines of Reference and Discount Rates for lenders holding a strong credit rating.

145) According to the Norwegian authorities, the security involved when granting a loan to a subsidiary is at least comparable to a 'normal' security according to ESA's Guidelines of reference and discount rates, therefore the mark-up was acceptable when security is 'normal' (75 basis points) to low (100 basis points).

146) By comparison, the Nordea lease agreement was based […], i.e. on a generally lower reference rate and the same mark-up. Compared to the methodology in ESA's Guidelines for reference and discount rates the Norwegian authorities argue that the shareholder loan was based on a higher reference rate than foreseen in the guidelines, and applied an appropriate mark-up given the level of security involved. According to the Norwegian authorities, this means that the terms of the loan must be considered market conform, not only on the basis of the direct benchmarking against a comparable market transaction (i.e. the Nordea lease agreement), but also on the basis of the methodology set out in ESA's Guidelines for reference and discount rates.

147) Moreover, the Norwegian authorities contend that there were no changes in the financial situation in Vy during the period between the leasing agreement from 26 April 2019 and 20 December 2019 when the shareholder loan was granted. Vy Buss' financial situation was equally stable at the time. The Norwegian authorities explain that […] of Vy Buss' activities stem from public bus transport contracts based on gross prices. Moreover, […] of the activities are engaged in the commercial bus transport market, which did not experience any fluctuations in 2019.

148) The Norwegian authorities further submit that the decision to make the investment was taken at group level, based on a careful, third-party value assessment of Flybussarna AB.

149) Finally, the Norwegian authorities confirm that the repayment of the loan has taken place according to schedule.

4 Presence of State aid

4.1 Introduction

150) Article 61(1) of the EEA Agreement reads as follows: 'Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.'

151) The qualification of a measure as aid within the meaning of this provision 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.

152) ESA's preliminary assessment is that the cumulative conditions are fulfilled in relation to both measures, see section 4.2 and 4.3 below.

4.2 Measure 1: Capital Injection

4.2.1 Presence of State resources

([44]) ESA's Guidelines on Reference and Discount Rates adopted on 17 December 2008, outline the reference and discount rates that can be applied as a proxy for the market rate and to measure the grant equivalent of state aid.

153) The first condition of Article 61(1) of the EEA Agreement to be considered is whether the Capital Injection into Vy Buss was granted by the State or through State resources.

154) 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. Resources of public undertakings can 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. Furthermore, transfers within a public group may constitute State aid if, for example, resources are transferred from the parent company to its subsidiary (even if they constitute a single undertaking from an economic point of view)([45]).

155) Since Vy is fully owned by the Norwegian State, Vy's resources are at the disposal of the State, and those resources fall within the concept of 'State resources' within the meaning of Article 61(1) of the EEA Agreement. ESA therefore preliminarily finds that the Capital Injection involves the transfer of State resources.

156) The mere fact that a measure is taken by a public undertaking is not *per se* sufficient to consider it imputable to the State. In such cases, it is necessary to determine whether the public authorities can be regarded as having been involved, in one way or another, in adopting the measure. 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([46]).

157) Since relations between the State and public undertakings are necessarily close, there is a real risk that State aid may be granted through the intermediary of those undertakings in a non-transparent manner and in breach of the rules on State aid laid down in the EEA Agreement. Moreover, precisely because of the privileged relations that exist between the State and public undertakings, it will, as a general rule, be very difficult for a third party to demonstrate in a particular case that measures taken by such an undertaking were in fact adopted on the instructions of the public authorities([47]).

158) The public authorities can still require a public undertaking to conduct an entrepreneurial operation that could possibly comply with the private investor criterion but would still be attributable to the State([48]). Therefore, even if a measure, such as the Capital Injection or the loan agreement, would comply with the MEIP, it can still be considered imputable to the State.

159) 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:([49])

a) the fact that the body in question could not take the contested decision without taking account of the requirements of the public authorities;

b) the presence of factors of an organic nature which link the public undertaking to the State;

c) the fact that the undertaking through which aid was granted had to take account of directives issued by governmental bodies;

d) the integration of the public undertaking into the structures of the public administration;

e) the nature of the public undertaking's activities and their exercise on the market in normal conditions of competition with private operators;

([45]) EFTA Surveillance Authority Decision No 3/17/COL of 18 January 2017 amending, for the one hundred and second time, the procedural and substantive rules in the field of State aid by introducing new Guidelines on the notion of State aid as referred to in Article 61(1) of the Agreement on the European Economic Area [2017/2413], ('NoA'), OJ L 342, 21.12.2017, p. 35–84 and EEA Supplement No. 82, 21.12.2017, p. 1, paragraph 49.

([46]) NoA, paragraph 41.

([47]) Ibid.

([48]) Judgment of the Court of 23 November 2017, *SACE and Sace BT* v *Commission*, C-472/15 P, EU:T:2015:435, paragraph 29.

([49]) NoA, paragraph 43. Judgment of the Court of 16 May 2002, *French Republic* v *Commission of the European Communities ('Stardust')*, C-482/99, EU:C:2002:294, paragraphs 54-55.

f) the legal status of the undertaking (whether it is subject to public law or ordinary company law), although the mere fact that a public undertaking has been constituted in the form of a capital company under ordinary law cannot be regarded as sufficient reason to exclude imputability, having regard to the autonomy which that legal form confers on it;

g) the degree of supervision that the public authorities exercise over the management of the undertaking, and the degree of control which the State has over the public undertaking; and

h) any other indicator showing the involvement of the public authorities in adopting the measure in question or the unlikelihood of their not being involved, taking account of the scope of the measure, its content or the conditions it contains.

160) Based on the above, ESA will need to assess, whether Vy was acting as an autonomous entity, free of any influence from the Ministry, or whether its actions are imputable to the Norwegian State, i.e. the Ministry([50]).

161) Any indication of the involvement by the public authorities in the adoption of a measure or the unlikelihood of them not being involved, is relevant for the assessment. Having regard also to the objective of the measure, its content or the conditions which it contains, or, on the other hand, the absence of those authorities' involvement in the adoption of that measure([51]).

162) In the following, ESA will analyse the existence of indicators, listed in paragraph 159), to assess whether the measure is imputable to the State.

4.2.1.1 The role of public authorities when the decision was taken

163) The most direct way of demonstrating imputability would be in cases where direct instructions were given from the State to the public undertaking in relation to the measure in question or where the granting of the measure is governed by law instructing the public undertaking to act. However, according to the Norwegian authorities, Vy is governed by private law, and there are no specific provisions instructing Vy on how to carry out its operations. Therefore, other indirect indications of imputability need to be assessed.

164) According to the Norwegian authorities, intra-group investments form part of Vy's ordinary business activities. Therefore, they are a matter for the management to decide without the Ministry's involvement.

165) The Norwegian authorities have explained that the Capital Injection was not covered by Article 10 of Vy's articles of association and was not described in the 'Article 10 plan'. The purpose of the 'Article 10 plan' is to inform the Ministry about investments that could significantly influence the group's finances. These investments are external investments whereby the funds used in the specific transaction are invested outside the group, such as the acquisition of companies.

166) ESA notes that according to Article 10 of Vy's article of association, the Board is required to present a plan for the company and its subsidiaries each year, see paragraph 22). In particular, it follows from point iii) of Article 10 that the plan shall include Vy's investments, significant investments and financing plans. Article 10 of Vy's article of association do not explicitly exclude intra-group transfers.

167) In ESA's view, the Capital Injection amounting to NOK 1 000 million fulfils the criteria outlined in Article 10 of Vy's articles of association. ESA notes that the Capital Injection can qualify as a significant investment and be part of Vy's financial plans. ESA therefore considers

([50]) Stardust, paragraph 55; and Judgment of the General Court of 26 June 2008, *SIC* v *Commission*, T-442/03, EU:T:2008:228, paragraph 98, and judgment of the General Court of 10 November 2011, *Elliniki Nafpigokataskevastiki and Others* v *Commission*, T-384/08, EU:T:2011:650, paragraph 54.

([51]) Judgment in *Commission* v *Italy and Others*, C-425/19 P, EU:C:2021:154, paragraphs 60-61.
Judgment of 23 November 2017, *SACE and Sace BT* v *Commission*, C-472/15 P, EU:C:2017:885, paragraph 34; and of 10 December 2020, *Comune di Milano* v *Commission*, C-160/19 P, EU:C:2020:1012, paragraph 46.

this a potential indication of the need for the Ministry's involvement. In this regard, ESA also has doubts whether any measure enacted in connection with the 'Article 10 plan', can be executed without taking account of the Ministry's position.

168) Moreover, an indicator of an organic nature can, for example, be when the members of the board of an undertaking also preform senior management duties in government ministries, as civil servants that enjoy the confidence of the State. This is due to the likelihood of maintaining informal contacts with agents of the ministry to which they belong and, to relay the influence of the decision-making process within the public entity([52]).

169) Furthermore, the circumstances surrounding the appointment of the members of the management bodies of a public undertaking are, in certain cases, capable of establishing that the undertaking has a limited margin of independence from the State which controls it, with the result that such an appointment constitutes a significant indicator of imputability to the State([53]).

170) In the case at hand, at the time of the capital increase, five of the Board members were elected by the Ministry and three were elected by Vy. According to the Norwegian authorities, none of the Board members were, at the time of the capital increase, civil servants. Nor did they have more voting power or a veto right than the employee representatives. In ESA's preliminary view, there is no indication, based on the information available to it, that the Board members did not act independently.

171) However, as indicated by the complainants, many of the Board members are or have held similar positions in other State owned or controlled companies. This could suggest a certain degree of loyalty and dependency towards the State amongst the Board members. Although arguably to a lesser extent compared to the cases where board members are simultaneously performing other duties as civil servants.

172) Based on the above, ESA cannot with certainty dismiss that there are no links of organic nature between Vy and the Ministry.

4.2.1.2 The nature of Vy's or Vy Buss' activities

173) The nature of the activities of the public undertaking in question is a relevant indicator for assessing the imputability of the measure to the State. In this regard, the pursuit of public policy objectives and the exercise of activities falling within the competence of that State by the undertaking can be regarded as an indication of imputability to the State that controls it([54]).

It follows from Article 3 of Vy's articles of association that the company's public mandate is to ensure efficient, accessible, safe and environmentally friendly transport of people and goods. The company can operate directly, through subsidiaries, or other companies. The company can operate in other Nordic countries to the extent that it contributes to strengthening the company's competitiveness on the Norwegian market and/or contributes to strengthening the company's ability to solve the public mandate that justifies the State's ownership. As follows from paragraphs 55) and 56), the State's ownership of Vy indicates that it is distinct from other State shareholdings. This distinction arises from the explicit public mandate that justifies the State's ownership of Vy, a mandate that ESA cannot with certainty assume is present in other State-owned enterprises.

174) Vy's activities and those of its subsidiaries, i.e. Vy Buss', are commercial, excluding certain activities (namely, the public service obligation entrusted to Vy, see section 3.2. of the Opening Decision). According to the Norwegian authorities, there is no link between the commercial activities of Vy Buss and the public service activities of Vy.

([52]) Judgment of the General Court of 13.09.2023, *ITD and Danske Fragtmænd* v *Commission*, T-525/20, EU:T:2023:542, paragraphs 60 and 64.
([53]) Ibid, paragraph 54.
([54]) Ibid, paragraph 92.

175) As explained in paragraphs 92) to 95), the CEO of Vy carried out the capital increase without prior notification to the Board. According to the Norwegian authorities, the Capital Injection was considered part of the daily operations of Vy, and the CEO was therefore authorised to approve it independently (see paragraph 26)). According to the instruction to the CEO, the CEO was authorised to approve intra-group agreements and transactions, as long as they were on commercial terms and in compliance with the Companies Act([55]). This indicates that the decision was within Vy's competence without necessitating the Ministry's involvement.

176) However, given Vy's public mandate, it is expected that the Norwegian authorities would pay special attention to the decisions taken by the company. This scrutiny is particularly pertinent because decisions of significant financial impact, such as the Capital Injection, are typically approved by the General Meeting upon a proposal from the Board. In this case, the CEO approved the transaction singlehandedly. ESA notes that the unilateral decision by the CEO to approve the capital injection could raise concerns about adherence to the usual governance processes and oversight mechanisms.

177) In addition to the fact that the Ministry had committed to follow closely the development in Vy and Vy Buss, see paragraphs 53) and 54).

178) ESA takes into consideration that there was no link between Vy Buss' activities and those of Vy falling within the scope of the public service obligations. However, ESA notes that Vy's activities can be considered public in nature, as it is used by the State as a vehicle for ensuring the execution of its public service obligations.

179) Furthermore, Vy's corporate purpose is primarily to fulfil its public mandate to ensure efficient, accessible, safe, and environmentally friendly transport of people and goods in Norway. However, ESA does not have sufficient information to conclude whether the Capital Injection would have any impact, positive or negative, on the fulfilment of that service.

180) In the light of the above, when a decision about the long-term investment and development of the company is taken, which could potentially impact the activities of Vy, ESA cannot exclude that the Ministry as the sole shareholder of the group was involved.

181) Subsequently, ESA finds that the nature of the activities of Vy and Vy Buss may indicate that the public authorities could have been involved in adopting the measure.

4.2.1.3 The degree of supervision from the Ministry over the management of Vy Buss and the legal status of the undertaking

182) One of the factors in the assessment of whether a measure is imputable to the State is the degree of supervision exercised by the public authorities([56]). The fact that a public undertaking is subject to private law cannot be considered as sufficient to exclude the possibility of an aid measure taken by such a company being imputable to the State([57]). ESA must determine whether that evidence demonstrates, in the circumstances, that the public authorities were involved, in one way or another, in the adoption of the decision to inject capital([58]).

183) The Norwegian authorities have explained that the powers of the Ministry are comparable to a private shareholder in a limited liability company. With the exception of the specific provisions in the Companies Act and Article 10 of the articles of association, which provide the Ministry with more control than an ordinary shareholder of a limited liability company. Moreover, any decisions of substantial social concern, principal importance, and amendments to the 'Article 10 plan', must be approved by the Ministry.

([55]) See footnote 14.
([56]) Judgment of 2 March 2021, *Commission* v *Italy and Others*, C-425/19 P, EU:C:2021:154, paragraph 62 and the case-law cited.
([57]) Stardust, paragraph 57.
([58]) Judgment of the General Court of 13 December 2018, T-167/13, *Comune di Milano* v *European Commission*, EU:T:2018:940, paragraph 75.

184) From the information provided by the Norwegian authorities, it is not evident what is considered to be decisions of substantial social concern or principal importance. However, the Norwegian authorities argue that the Capital Injection falls outside of these categorise, as it is an intra-group transfer that the CEO of Vy can decide on, without the approval of the Board([59]). Moreover, the Norwegian authorities have confirmed that there are no examples of internal transactions being considered as an 'Article 10 matter'.

185) The Norwegian authorities have explained that in addition to general meetings, there are regular contact meetings between the Ministry and Vy every four months. The Ministry also has ongoing contact with the Board and the administration of Vy. ESA also considers that there is evidence of phone calls, email exchanges, and meetings prior to the Capital Injection between the Ministry and Vy. Which indicates direct interactions with Vy in the days prior to the Capital Injection, illustrating an ongoing and active involvement in the Vy's operations.

186) ESA notes that the Norwegian authorities argue that internal capitalisation is not usually discussed in such meetings, however, ESA finds that it cannot be excluded that the Ministry could unofficially have been informed of matters such as the capital increase in a contact meeting. The Ministry could therefore in one way or another, have been involved in the adoption of the decision to inject capital.

187) ESA also takes into account that the Ministry was committed to follow the development in Vy and Vy Buss closely, following the OAG's audit finding that the profitability of Vy Buss (then Nettbuss) was too poor, see paragraphs 58) and 59). ESA understands that the Ministry was also aware that the company was considering additional measures to strengthen the equity in Vy in the years leading up to the Capital Injection.

188) In light of the above, ESA cannot exclude that the Ministry's degree of supervision of the management of Vy directly or indirectly played a role in the decision to execute the Capital Injection. ESA considers that the ongoing contact between Vy and the Ministry could have provided the Ministry with the opportunity to influence Vy's activities.

4.2.1.4 Other indicators

189) ESA notes that Vy and its subsidiaries are not integrated in the public administration of Norway.

190) Furthermore, ESA notes that Vy Buss' business plan for the period of 2018-2022 did not forecast any major investments in existing activities during the planned period, as trains and buses are rented/leased. However, as described above in paragraph 32) and paragraph 103), part of the rationale behind the Capital Injection was a need for investments due to the transition to low-emission technology, and to be able to participate in upcoming public tenders. ESA invites the Norwegian authorities to further elaborate on the investments in the transition to low-emission technology, whether the Capital Injection only foresaw leasing/renting of buses or also other type of investments.

4.2.1.5 Conclusion

191) Considering the above, it appears that the Norwegian authorities could have been in a position to exercise a degree of supervision over the management of Vy, which enabled them to influence the decision to carry out the Capital Injection. ESA therefore has doubts as to whether the Ministry was involved one way or another in the decision to carry out the Capital Injection.

192) Therefore, ESA cannot exclude that the measure is imputable to the Norwegian State. ESA invites the Norwegian authorities to provide further information in this regard.

4.2.2 Conferring an advantage on an undertaking

4.2.2.1 Introduction

([59]) See footnote 15.

193) State aid within the meaning of Article 61(1) of the EEA Agreement does not cover a measure granted to an undertaking through State resources where it could have obtained the same advantage in circumstances which correspond to normal market conditions. The assessment of the conditions under which such an advantage was granted is made by applying the market economy operator principle ('MEOP').([60]).

194) This principle has been developed with regard to different economic transactions. The 'market economy investor principle' ('MEIP') has been developed to identify the presence of State aid in cases of public investment (in particular, capital injections)([61]). The MEIP is applied to determine whether a public body's investment constitutes State aid by assessing whether a private investor of a comparable size, in similar circumstances, operating in normal conditions of a market economy could have been prompted to make the investment in question([62]). Consequently, it is necessary to verify not whether a private investor would have acted in exact same way as the public investor, but whether, in similar circumstances, it would have contributed an amount equal to that contributed by the public investor([63]).

195) In the assessment, ESA must take into consideration whether the same measure would have been adopted in normal market conditions by a private investor in a situation as close as possible to that of the State. ESA must take into account only the benefits and obligations linked to the situation of the State as shareholder, excluding any linked to its situation as a public authority([64]).

196) The only relevant evidence when applying the private investor test is the information which was available and the developments which were foreseeable at the time when the decision was made([65])([66]). A retrospective finding that the investment made by the State concerned was actually profitable, or subsequent justifications for the investment, cannot be considered in the MEIP assessment([67]).

197) Furthermore, for the purposes of applying the test, ESA must rely, to a large extent, on the objective and verifiable evidence produced by the EEA EFTA State for the purposes of establishing that the measure implemented falls to be ascribed to the State acting as shareholder and, therefore, that the test is applicable([68]).

198) Consequently, the absence of a prior evaluation, which a private investor would have taken at the time the investment was made, although not decisive in itself, could constitute a relevant factor in the application and assessment of the MEIP([69]).

199) Therefore, the assessment is whether a hypothetical private investor in the same position as Vy would have carried out the same transactions on similar terms. In order to examine whether or not Vy has adopted the conduct of a prudent investor operating in a market economy, it is necessary to consider the context of the period during which the Capital Injection was taken to assess the economic rationality of the Vy's conduct([70]).

4.2.2.2 The burden of proof for establishing an advantage

([60]) Judgment of the Court if 6 March 2018, *Commission* v *FIH Holding and FIH Erhvervsbank*, C-579/16 P, EU:C:2018:159, paragraph 45 and the case-law cited.
([61]) The terms 'market economy investor' and 'market economy operator' can be used interchangeably; they are described in the NoA, paragraphs 73 to 82.
([62]) NoA, paragraph 74. Judgment of the Court of 10 December 2020, *Comune di Milano* v *Commission*, Case C 160/19 P, EU:C:2020:1012, paragraph 106. Judgment of the Court of 5 June 2012, *Commission* v *EDF*, C-124/10 P, EU:C:2012:318, paragraph 89.
([63]) Judgment of the Court of 5 June 2012, *Commission* v *EDF*, C-124/10 P, EU:C:2012:318, paragraph 95.
([64]) Ibid, paragraph 79.
([65]) Ibid, paragraph 105.
([66]) Ibid, paragraphs 83–85 and 105; and Stardust, paragraphs 71–72.
([67]) Judgment of the Court of 5 June 2012, *Commission* v *EDF*, C-124/10 P, EU:C:2012:318, paragraph 85.
([68]) Judgment of the Court of 10 December 2020, *Comune di Milano* v *Commission*, C-160/19 P, EU:C:2020:1012, paragraph 112.
([69]) Ibid, paragraph 113.
([70]) Stardust, paragraph 71.

200) It is settled case-law that it is for ESA to prove the existence of State aid([71]). In particular, ESA is required to conduct a diligent and impartial examination of the contested measures, so that it has at its disposal, when adopting the final decision establishing the existence of State aid, the most complete and reliable information possible for that purpos([72]).

201) Even where ESA is faced with an EFTA State which, in breach of its duty to cooperate, fails to provide the information requested, it must base its decisions on reasonably robust and coherent evidence which provides a reasonable basis for presuming that a company has received an advantage which constitutes State aid, and which is therefore capable of supporting the conclusions which it has reached. In doing so, ESA cannot simply proceed on the assumption that an advantage constituting State aid has accrued to an undertaking, because it does not have information to conclude otherwise, in the absence of other evidence to conclude positively that such an advantage is based on a negative presumption([73]).

4.2.2.3 MEIP assessment

202) The Norwegian authorities explain that no profitability analysis was carried out in relation to the Capital Injection. This was because the transaction was an intra-group capital transfer. Furthermore, since Vy Buss was not in financial difficulties at the time of the transfer, it was not considered as an 'investment' before the capital was invested in assets or new activities. The Capital Injection as such merely meant that the capital in question was moved from one group account to another, with the same risk and return profile. Moreover, the Norwegian authorities have argued that the requirements concerning prior economic analysis vary depending on the case at hand.

203) For the purposes of EEA State aid rules, transfers within a public group may also constitute State aid. Therefore, resources transferred from the parent company to its subsidiary, even if they constitute a single undertaking from an economic point of view, fall within the scope of EEA State aid rules([74]).

204) ESA further notes that deep knowledge of the sector and of the company itself, is not sufficient to justify the lack of prior examination. The State is still obliged to examine the expected future profitability of the investment in question, as would have been done by a private investor([75]).

205) As established above in section 4.2.2.1, the absence of a prior evaluation, which a private investor would have taken at the time the investment was made, could constitute a relevant factor in assessing whether the measure in question is market conform.([76]).

206) ESA understands the Norwegian authorities' argument, that the capital investment is not to be considered as an 'investment', to mean that the Capital Injection did not give Vy Buss an advantage before the investment materialised.

207) In ESA's preliminary view, the Capital Injection provided Vy Buss with a financial security that was liable to give Vy Buss a stronger position on the market. Vy Buss operates in a very competitive market and the main players on the Norwegian market for passenger bus transport also operated on an international level at the time of the Capital Injection. Therefore, ESA preliminarily finds that the Capital Injection, even if not invested in assets or activities, could

([71]) Judgment of the Court (Fifth Chamber) of 19 September 2018, in Case C-438/16 P, EU:C:2018:737, paragraph 110.
([72]) See Judgment of 3 April 2014, *France* v *Commission*, C-559/12 P, EU:C:2014:217, paragraph 63.
([73]) Judgment of 21 March 2024, E-10/22, *Eviny AS* v *EFTA Surveillance Authority*, paragraphs 93 and 94. See Judgment of 26 March 2020, *Larko* v *Commission*, C-244/18 P, EU:C:2020:238, paragraphs 67 to 70 and the case-law cited, and Judgment of 7 May 2020, *BTB Holding Investments and Duferco Participations Holding* v *Commission*, C-148/19 P, EU:C:2020:354, paragraphs 48 to 51 and the case-law cited.
([74]) See NoA, paragraph 49 and case law cited.
([75]) See Judgment of 18 September 2018, *Duferco Long Products* v *Commission*, T-93/17, EU:T:2018:558, paragraph 96.
([76]) See Judgment of 10 December 2020, *Comune di Milano* v *Commission*, C-160/19 EU:C:2020:1012, paragraph 114.

constitute an economic advantage to Vy Buss as it improves its competitive position as compared to its competitors on the market([77]).

208) ESA notes that, according to the Norwegian authorities, at the time when the Capital Injection took place on 9 April 2018, the latest available financial report for Vy (NSB Group at that time) was from March 2017. The financial report from March 2017 did not take into account the Capital Injection, and therefore did not indicate the estimated returns. In ESA's view, the lack of estimates of return for the investment, before the decision to carry out the Capital Injection was taken, indicates that Vy did not act in the same way a hypothetical private investor would have in a similar situation. Furthermore, the Norwegian authorities have not provided any information that any separate reports or assessments were carried out in relation to the Capital Injection.

209) Moreover, Vy's internal capitalisation memo describes why the Capital Injection was required, the reasons are outlined in paragraph 32)([78]). However, ESA finds that it is unclear how the assumptions in the memo are substantiated.

210) For example, ESA notes that part of the reason for the Capital Injection was to raise the company's equity ratio to a minimum of 25%, to avoid higher financing costs. Furthermore, the Norwegian authorities maintain that raising the equity was necessary both to ensure that the equity ratio was sufficient to participate in tenders and to ensure that the company had enough free equity to carry out necessary investments in conjunction with its business activities. However, the Norwegian authorities have explained that Vy has an 'internal bank', allowing subsidiaries to avoid taking on external debt, with all debt instead contracted at the group level (see paragraph 38)). The Norwegian authorities have also argued that the Capital Injection from Vy to Vy Buss in 2018, was merely a transfer of liquidity from one account in the group account system to another (see paragraph 122)). Therefore, ESA invites the Norwegian authorities to explain the need for Vy to maintain a certain equity ratio (25%), given that loans appear to be more appropriate instruments for providing liquidity, and subsidiaries can take up debt from the internal bank without resorting to external lenders.

211) Additionally, the Norwegian authorities have indicated that a minimum equity ratio of 25% is required for self-standing companies. Given that Vy Buss is part of the Vy group, ESA invites the Norwegian authorities to clarify whether the same equity ratio requirements apply to Vy Buss, considering its integrated status within the group structure.

212) Furthermore, the Norwegian authorities argue that the transaction is comparable to one a private investor would have done, as the capital was supposed to be used for future investments, which would be subject to profitability analyses. The Norwegian authorities also maintain that the capital injected would not be invested unless Vy Buss was awarded a contract, which gives Vy the possibility to recoup the Capital Injection in case of such investment not taking place (see paragraph 116)). However, ESA has doubts whether a private investor would provide equity to a subsidiary irrespective of that subsidiary's actual investment needs. Absent a specific investment opportunity, the funds provided through the Capital Injection may remain in the 'internal bank', earning a return lower than the opportunity cost of those funds (i.e. the subsidiary's cost of equity). In this regard, ESA invites the Norwegian authorities to provide their views.

213) As for the investment of the capital, ESA takes note of the fact that Vy has certain mechanisms to ensure that the funds are only invested in a way that deliver a market return (see paragraph 118) above). Mechanisms such as requirements to carry out profitability analyses before bidding for a contract or investing in new activities or assets.

([77]) See to this effect, Commission Decision of 27.03.2014, SA.32179, Decision to initiate the formal investigation procedure, OJEU C/156/2014, paragraph 62. Commission Decision of 24.11.2023, SA.32179, (not yet published), paragraph 156.

([78]) Document No 1204926.

214) ESA finds that the safeguards in place to ensure that the investments of Vy Buss are financially sound mitigates the risk associated with the Capital Injection. It is not unlikely that a private shareholder with similar safeguards could assume the risks associated with the Capital Injection. However, ESA has doubts whether the mechanisms can sufficiently replace a profitability analysis to be made before the Capital Injection. ESA further has doubts whether the prospects of obtaining a profitability analysis after the investment is materialised demonstrates that the State acted as a prudent investor. ESA invites the Norwegian authorities to provide further information on this.

215) The Norwegian authorities have acknowledged that no profitability analysis was carried out in relation to the Capital Injection. However, the Norwegian authorities argue that BDO, in its report from 2018, had set the same return rate as the internal minimum rate of return required on a project or investment (internal hurdle rate). As noted in paragraph 110) above, BDO had assessed the value of the companies in Vy in 2017 and 2018, which included an assessment of the value of Vy Buss, reasonable return on capital requirements, equity requirements in comparable companies and the general economic outlook.

216) ESA has doubts as to whether the BDO report of 2018 is sufficient evidence to find that Vy based its decision on a profitability forecast, which could show a profitability level above the cost of capital that would be required by a private investor. To this, ESA notes that the BDO report from 2018 was delivered after the Capital Injection took place.

217) Therefore, the information was not available at the time the investment decision was taken. As already noted, the only relevant evidence is the information which was available, and the developments which were foreseeable, at the time when the decision was taken([79]). Moreover, ESA understands that the BDO report sets hurdle rates in terms of return on equity and return on capital employed, i.e. minimum return rates that investments into Vy Buss need to achieve (see paragraph 111)). As such, the BDO report does not provide any profitability forecast demonstrating that the capital investment into Vy Buss would yield a return higher than those hurdle rates.

218) In ESA's view, the BDO report mentioned by the Norwegian authorities, merely describes Vy Buss' activities and financial status, rather than providing any information on its future prospects and profitability benefitting from the Capital Injection. ESA therefore considers the calculation of Vy Buss' future operational profits to be insufficiently substantiated by the Norwegian authorities.

219) Furthermore, ESA notes that the Norwegian authorities submit that Vy Buss has not delivered a return according to expectations in the last years mainly due to measures related to combat the COVID-19 pandemic. Even, if the losses are mainly due to the pandemic, in ESA's view a prudent market operator would have carried out a forward-looking economic analysis as Vy Buss operates in a competitive market. It cannot be assumed that past profits guarantee profits in the future.

220) Considering the above, ESA has doubts at this stage whether the Capital Injection to Vy Buss can be deemed market-conform. In particular, ESA has doubts whether a rational private investor would have made a similar investment on such conditions, without preforming any profitability analysis prior or a robustness check on the underlying assumptions to the Capital Injection.

221) Based on the above, ESA cannot with sufficient certainty conclude that at the time of the Capital Injection Vy had reasons to believe that it was a profitable decision. There is no evidence to indicate that the prospective return of the Capital Injection or the subsequent use of the capital was established or considered before the investment took place. It is not clear how the upcoming tenders or the potential risk of not being able to participate in the tenders were assessed before the decision to increase Vy Buss' capital was taken.

([79]) Judgment of the Court of 20 September 2017, *Commission* v *Frucona Košice*, C-300/16 P, EU:C:2017:706, paragraphs 59 to 61 and the case-law cited.

4.2.3 Conclusion

222) ESA has doubts as to whether the Capital Injection into Vy Buss was not influenced by the Norwegian authorities. Moreover, ESA has doubts that the measure meets the MEIP-test. ESA cannot therefore exclude at this stage that the Capital Injection conferred an economic advantage on Vy Buss.

223) ESA's preliminary view is therefore that the Capital Injection could involve State resources and be imputable to the State. Moreover, the Capital Injection could entail a selective advantage, as it is granted only to Vy Buss. Finally, since Vy Buss operates in both Norway and Sweden and other bus operators provide similar services in the market, it functions within a competitive environment. Consequently, the measure in question is likely to distort or threaten to distort competition and affect trade within the EEA, within the meaning of Article 61(1) of the EEA Agreement.

224) In order to assess the measure against the MEIP, ESA would require the Norwegian authorities to provide all relevant information enabling ESA to apply the test. ESA must have regard to all information liable to have a significant influence on the decision-making process. ESA therefore invites the Norwegian authorities to submit further information to establish that the measure is compliant with the MEIP and that it is not imputable to the State.

4.3 Measure 2: Loan Agreement

4.3.1 Presence of State resources and imputability to the State

225) For the reasons set out in paragraphs 154) and 155), ESA finds that Vy's financial support to Vy Buss implies the use of State resources([80]).

226) However, it must be examined whether the loan for the acquisition of Flybussarna AB can be regarded as the result of conduct imputable to the State.

227) ESA refers to paragraph 159) for the relevant indicators for the assessment of imputability of a measure undertaken by a public undertaking. In particular, (i) the fact that the body in question could not take the contested decision without taking account of the requirements of the public authorities; (ii) the organic nature which link the public undertaking to the State; (iii) the degree of supervision that the public authorities exercise over the management of the undertaking; and (iv) the degree of control which the State has over the public undertaking.

228) The acquisition of Flygbussarna AB was financed by a loan that Vy extended to Vy Buss. According to the Norwegian authorities, the Ministry was informed of the decision to acquire Flygbussarna AB prior to the Board submitting the bid. The decision to acquire Flygbussarna AB was considered as a 'significant amendment' to the 'Article 10 plan' and was therefore brought before the Ministry, in accordance with Article 10.

229) ESA notes that the acquisition of Flygbussarna AB was considered as an investment that significantly influenced the group's finances as the funds used in the transaction were invested outside the group. In addition, the acquisition was assumed to have a significant impact on the group´s business, *inter alia*, because it involved entering a new market, namely the commercial airport bus market in Sweden. Therefore, the Ministry's approval of the investment was necessary.

230) The Norwegian authorities argue that the Ministry's formal approval concerned only the acquisition of Flybussaran AB, and not the way it was to be financed.

231) However, given ESA's preliminary understanding of the Ministry's role and control of Vy as its sole shareholder, it has doubts that the Ministry's approval was given only in respect of the acquisition of the company without any relation to the subsequent financing by Vy. According to Vy's own internal guidelines, its subsidiaries do not take up any external debt (see paragraphs 38) and 39)). Furthermore, it can be expected that the Ministry, based on Vy Buss'

([80]) See section 4.2.1.

financial statements, could have been aware that Vy Buss needed additional financing to carry out the acquisition. ESA therefore has doubts that the Ministry's approval exclusively concerned the decision to acquire Flybussarna AB.

232) Based on the above, ESA has doubts that Vy could have granted the loan for the acquisition of Flygbussarna AB without the Ministry's approval. ESA further finds that the structural and organisational links, and the degree of supervision exercised by the Ministry, indicates that the measure is imputable to the State.

233) In light of the above, ESA cannot with sufficient certainty conclude that the loan for the acquisition of Flybussarna AB is not a result of conduct imputable to the State.

4.3.2 MEOP

4.3.2.1 Introduction

234) The assessment of whether an economic advantage unduly favours a public undertaking depends on whether the State acted as a shareholder or as a public authority. The State must establish unequivocally that it acted as an investor seeking a return and support this assertion with objective and verifiable elements([81]).

235) The evidence provided by the State must be contemporary to the decision to grant the measure and show that the decision was grounded on economic evaluations similar to those which a market operator would have carried out with a view to determining the profitability of the investment (see section 4.2.2.1 on the MEOP).

236) In the present case, the assessment is therefore whether a shareholder of a privately owned group would have provided a loan to its subsidiary under the same conditions and amount and for the same purpose. The Norwegian authorities hold that the loan was granted to Vy Buss for the purpose of acquiring Flybussarna AB and this acquisition was based on an external value assessment conducted by PwC.

237) ESA notes that the PwC value assessment has not been submitted to ESA. ESA therefore invites the Norwegian authorities to submit this information and to elaborate on how the loan corresponds to the value assessment. Moreover, ESA invites the Norwegian authorities to explain whether the decision to grant the loan was based on any business plan taking into account the prospects for economic development.

238) The Norwegian authorities submit that the purchase price for Flybussarna AB was SEK 1 200 million, but the loan amount was SEK 1 230 million. Moreover, that the share purchase agreement was signed on 20 December 2019.

239) The complainants, on the other hand, argue that Vy Buss acquired Flygbussarna AB on 1 March 2020. Further that the loan amount was NOK 93.5 million higher than the agreed price for Flygbussarna AB.

240) The purchase price or the calculation of the loan amount is not further explained by the Norwegian authorities. Furthermore, ESA cannot see that the Norwegian authorities have addressed the complainants' comments concerning granting a loan amount exceeding the purchase price.

241) Moreover, it is not clear whether the loan was given for the specific purpose of acquiring Flybussarna AB, or if it was a loan with no specific intended use. ESA supposes that the loan and the acquisition price would be the same if the former is linked to the acquisition unless there is a justification for any amount exceeding the acquisition price.

242) ESA therefore invites the Norwegian authorities to provide further explanations and information concerning the above. In particular, the calculation of the loan amount in relation to the purchase price, the purpose of the loan, how Flybussarna AB was acquired and by which subsidiary.

([81]) NoA, paragraphs 76 and 79.

243) The loan was granted through Vy's group account. The Norwegian authorities have not provided sufficient information on the conditions applied for each company in the group nor any information on which systems are in place to avoid abuse of the group account. Furthermore, it is not clear whether there is an upper limit on withdrawal and how the applicable interest rates are set.

244) The Norwegian authorities argue that there are liberal rules on loans between group companies in the Companies Act. ESA notes that loans granted in accordance with the Companies Act must also respect the relevant State aid rules.

245) ESA further notes that the accounting treatment and the subordination of the loan is unclear, and therefore invites the Norwegian authorities to provide more information on the nature and terms of the loan.

4.3.2.2 Loan agreement and Nordea Lease agreement

246) The Norwegian authorities argue that the shareholder loan is comparable to the Nordea leasing agreement. Therefore, the loan agreement was benchmarked against the Nordea leasing agreement.

247) ESA has doubts as to whether a leasing agreement is comparable with a shareholder loan agreement for the following reasons.

248) First, ESA notes that the circumstances concerning the loan agreement and the leasing agreements do not appear to be fully comparable. The Nordea leasing agreement is an agreement for leasing busses where the terms of the agreement are set accordingly. ESA assumes that the leasing agreement also depends on Vy Buss' public transport contracts.

249) The loan agreement on the other hand is a shareholder loan agreement, where the conditions of the agreement and the considerations made when granting it reflect the fact that Vy is the sole shareholder of Vy Buss. ESA notes that the Norwegian authorities argue that contrary to a commercial bank a shareholder will retain full control over its assets and is able to take any action necessary to preserve the value of the assets (see paragraphs 137) and 138)). As such, the loan could be regarded as an equity investment, presumably with lower seniority and higher risk than the Nordea lease agreement. Although, the risk could be mitigated by the fact the Vy is the sole shareholder of Vy Buss.

250) Secondly, the interest rate in the loan agreement is different to the interest rate in the leasing agreement. The Nordea lease agreement has an interest rate set to […], whilst the loan agreement is set to […]. The Norwegian authorities have explained that the risk to the lender associated with offering a specific interest rate […] for an extended period is higher than the risk associated with shorter maturities. In ESA's view, the difference in interest rates also indicates that a shareholder loan agreement is not comparable to a lease agreement offered by a commercial bank.

251) Thirdly, the duration of the agreements is different. The lease agreement is set to […], and the loan agreement is […].

252) Finally, no collateral is agreed on for the loan agreement, whilst Nordea has collateral in the buses leased to Vy Buss. The Norwegian authorities further argue that a collateral is uncommon and generally unnecessary in case of a loan to a wholly owned company. ESA consider that this further illustrate the different circumstances in which the loan was granted.

253) Considering the lack of analysis done before the loan was granted, ESA is doubtful as to whether a prudent market operator would have granted the loan under the same terms and amount. Further, ESA cannot with the available information conclude on what information the acquisition was based and which considerations were made ahead of the loan agreement.

254) Based on the above, ESA finds that the Norwegian authorities have not provided sufficient evidence to substantiate that Vy Buss could have obtained financing on similar terms from a private shareholder in a similar situation.

4.3.2.3 ESA's Guidelines of reference and discount rates

255) ESA notes that the Norwegian authorities have argued that the loan, even if not assessed in accordance with the rates prescribed in ESA's Guidelines of reference and discount rates, is in accordance with the Guidelines.

256) However, ESA notes that the Norwegian authorities have not substantiated Vy Buss' credit rating at the time the loan was granted. The Norwegian authorities have also not explained sufficiently how the lack of security, when granting a loan to a wholly owned subsidiary, is considered to be comparable to a 'normal' security. ESA therefore invites the Norwegian authorities to comment on this and to substantiate the assumptions made in the assessment of the loan being granted in accordance with the ESA's Guidelines of reference and discount rates.

257) In view of the above, ESA considers that a prudent market operator would have diligently verified the prospects for the investment and development of Vy Buss, including its ability to generate the necessary cash-flow to service and repay the loan.

4.3.2.4 Conclusion

258) ESA has doubts that Vy could have granted the loan to Vy Buss without prior approval of the investment by the Ministry and can therefore not exclude that the measure is imputable to the Norwegian authorities. Moreover, ESA has doubts that the measure is MEOP compliant. Therefore, ESA cannot at this stage exclude that the loan agreement conferred an economic advantage on Vy Buss.

259) ESA's preliminary view is therefore that the loan agreement could involve State resources and be imputable to the State. Moreover, it could entail a selective advantage, as it is granted only to Vy Buss. Finally, as Vy Buss operates in a competitive market, the measure distorts or threaten to distort competition and affect trade in the EEA, within the meaning of Article 61(1) of the EEA Agreement.

260) ESA invites the Norwegian authorities to provide further information and clarification in relation to the missing information outlined above.

5 Lawfulness of the aid

261) 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.'

262) If the two measures assessed above were found to constitute State aid, they would be considered as unlawful aid, since Norway has not notified them to ESA before their implementation.

6 Compatibility of the potential aid

6.1 Introduction

263) ESA has, at this stage, come to the preliminary conclusion that the measures granted by Vy in favour of Vy Buss could constitute State aid within the meaning of Article 61(1) of the EEA Agreement.

264) The Norwegian authorities have not invoked any grounds on which the measures, if found to constitute State aid, would be considered compatible with the EEA Agreement. The Norwegian authorities are invited to comment on this.

265) Based on the information currently available, ESA sees no grounds to declare the measures, if found to constitute State aid, compatible with Article 61(2) or (3) or Article 59(2) of the EEA Agreement.

7 Conclusion

266) As set out above, ESA has doubts as to whether the measures constitute State aid within the meaning of Article 61(1) of the EEA Agreement.

267) The Norwegian authorities have not advanced any arguments to the effect that the measures in question are compatible with the functioning of the EEA Agreement. ESA therefore invites the Norwegian authorities to provide their comments in this regard.

268) Consequently, and in accordance with Article 4(4) of Part II of Protocol 3, ESA 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 ESA, which may conclude that the measures do not constitute State aid or are compatible with the functioning of the EEA Agreement.

269) ESA, acting under the procedure laid down in Article 1(2) of Part I of Protocol 3, invites the Norwegian authorities to submit, by 14 August 2024 their comments and to provide all documents, information and data needed for the assessment of the measures, in light of the State aid rules.

270) The Norwegian authorities are requested to immediately forward a copy of this decision to the potential aid recipient.

271) If this letter contains confidential information which should not be disclosed to third parties, please inform ESA **by 31 July**, identifying the confidential elements and the reasons why the information is considered to be confidential. In doing so, please consult ESA's Guidelines on Professional Secrecy in State Aid Decisions([82]). If ESA 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 ESA's website: http://www.eftasurv.int/state-aid/state-aid-register/.

272) Finally, ESA will inform interested parties by publishing a meaningful summary 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 Norwegian authorities.

For the EFTA Surveillance Authority,

Yours faithfully,

Arne Røksund	Stefan Barriga	Árni Páll Árnason
President	*College Member*	*College Member*
Responsible College Member		

Melpo-Menie Joséphidès

Director,

Legal and Executive Affairs

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

ESB-STOFNANIR

FRAMKVÆMDASTJÓRNIN

Tilkynning um fyrirhugaðan samruna fyrirtækja **2024/EES/67/02**

(mál M.11159 – JD SPORTS/COURIR)

1. Framkvæmdastjórninni barst 3. september 2024 tilkynning um fyrirhugaðan samruna í samræmi við 4. gr. reglugerðar ráðsins (EB) nr. 139/2004 ([1]).

   Tilkynningin varðar eftirfarandi fyrirtæki:

   – JD Sports Fashion Plc Group („JD Sports“, Bretlandi), sem endanlega lýtur yfirráðum Pentland Group Holdings Limited („Pentland“, Bretlandi)

   – Groupe Courir SAS („Courir“, Frakklandi), sem lýtur endanlega yfirráðum Equistone VI FPCI (Frakklandi)

   JD Sports nær yfirráðum sér í lagi, í skilningi b-liðar 1. mgr. 3. gr. samrunareglugerðarinnar, yfir Courir.

   Samruninn á sér stað með kaupum á hlutabréfum.

   Sami samruni hafði verið tilkynntur framkvæmdastjórninni 21. júní 2024 en tilkynningin síðan dregin til baka 7. ágúst 2024.

2. Starfsemi hlutaðeigandi fyrirtækja er sem hér segir:

   – JD Group er smásöluaðili á íþróttavöru með áherslu á íþróttafatnað og skó. Um allan heim starfar fyrirtækið undir ýmsum smásöluaðilum (bæði á netinu og í yfir 300 raunlægum verslunum), fyrirtækið ræður einnig yfir takmörkuðum heildsöluviðskiptum og rekur fjölda líkamsræktarstöðva.

   – Courir fæst við smásölu á íþróttafatnaði, þar á meðal skóm, fatnaði og fylgihlutum/búnaði. Í Evrópu rekur Courir yfir 300 verslanir, sem eru staðsettar í Belgíu, Danmörku, Frakklandi, Lúxemborg, Portúgal, á Niðurlöndum og Spáni. Það hefur tekjur í öllum löndum Evrópusambandsins, öðrum en Möltu, í gegnum netverslun.

3. Frumathugun hefur leitt í ljós að hin fyrirhuguðu viðskipti sem hafa verið tilkynnt geti fallið undir gildissvið samruna-reglugerðarinnar. Fyrirvari er þó um endanlega ákvörðun.

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

   Athugasemdir verða að berast framkvæmdastjórninni innan tíu daga frá því að tilkynning þessi birtist í C-deild Stjórnartíðinda ESB, 11.9.2024. Eftirfarandi tilvísun skal ávallt tekin sérstaklega fram:

   M.11159 – JD SPORTS/COURIR

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

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

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

([1]) Stjtíð. ESB L 24, 29.1.2004, bls. 1 og EES-viðbætir nr. 9, 22.2.2007, bls. 62 („samrunareglugerðin“).

Tilkynning um fyrirhugaðan samruna fyrirtækja **2024/EES/67/03**

(mál M.11563 – MSC/CLASQUIN)

1. Framkvæmdastjórninni barst 2. september 2024 tilkynning um fyrirhugaðan samruna í samræmi við 4. gr. reglugerðar ráðsins (EB) nr. 139/2004 ([1]).

   Tilkynningin varðar eftirfarandi fyrirtæki:

   – SAS Shipping Agencies Services S.à.r.l. („SAS Lux“, Lúxemborg), sem lýtur óbeinum yfirráðum MSC Mediterranean Shipping Company Holding SA („MSC“, Sviss), höfuðeiningar MSC samstæðunnar

   – Clasquin S.A. („Clasquin“, Frakklandi)

   MSC samstæðan, í gegnum dótturfyrirtæki sitt SAS LUX, nær yfirráðum sér í lagi, í skilningi b-liðar 1. mgr. 3. gr. samrunareglugerðarinnar, yfir Clasquin.

   Samruninn á sér stað í tveimur áföngum í röð með kaupum á hlutabréfum annars vegar og hins vegar með opinberu yfirtökuboði í þá hluti sem eftir standa.

2. Starfsemi hlutaðeigandi fyrirtækja er sem hér segir:

   – MSC samstæðan, sem er alþjóðlegur rekstraraðili á sviði gámaflutninga, hafnarmeðhöndlunar og flutninga, annars vegar og í farþegaflutningum á sjó hins vegar.

   – Clasquin, sem starfar fyrst og fremst í vöruflutningum yfir landamæri, býður upp á alþjóðlegar lausnir í loft-, sjó- og landflutningum fyrir ýmsar vörutegundir.

3. Frumathugun hefur leitt í ljós að hin fyrirhuguðu viðskipti sem hafa verið tilkynnt geti fallið undir gildissvið samruna-reglugerðarinnar. Fyrirvari er þó um endanlega ákvörðun.

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

   Athugasemdir verða að berast framkvæmdastjórninni innan tíu daga frá því að tilkynning þessi birtist í C-deild Stjórnartíðinda ESB, 11.9.2024. Eftirfarandi tilvísun skal ávallt tekin sérstaklega fram:

   M.11563 – MSC/CLASQUIN

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

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

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

([1]) Stjtíð. ESB L 24, 29.1.2004, bls. 1 og EES-viðbætir nr. 9, 22.2.2007, bls. 62 („samrunareglugerðin“).

Tilkynning um fyrirhugaðan samruna fyrirtækja **2024/EES/67/04**

(mál M.11632 – ALTEN/WORLDGRID)

Mál sem kann að verða tekið fyrir samkvæmt einfaldaðri málsmeðferð

1. Framkvæmdastjórninni barst 4. september 2024 tilkynning um fyrirhugaðan samruna í samræmi við 4. gr. reglugerðar ráðsins (EB) nr. 139/2004 ([1]).

   Tilkynningin varðar eftirfarandi fyrirtæki:

   – ALT 08 SARL („ALT 08“, Frakklandi), sem endanlega lýtur yfirráðum Alten SA („Alten“, Frakklandi)

   – Rekstur Worldgrid, þar á meðal Worldgrid France SAS og annarra aðila og eigna Worldgrid („Worldgrid“, Frakklandi), sem endanlega lýtur yfirráðum Atos SE (Frakklandi)

   ALT 08 öðlast yfirráð sér í lagi, í skilningi b-liðar 1. mgr. 3. gr. samrunareglugerðarinnar, yfir Worldgrid í heild.

   Samruninn á sér stað með kaupum á hlutabréfum og eignum.

2. Starfsemi hlutaðeigandi fyrirtækja er sem hér segir:

   – Alten veitir verkfræði- og upplýsingatækniþjónustu um allan heim til helstu fyrirtækja-, fjarskipta- og þjónustuviðskiptavina fyrir verkefni sín með tæknilega vídd í tækni-, rannsóknar- og þróunar- og upplýsingakerfadeildum.

   – Worldgrid sérhæfir sig í samþættingarverkefnum og rauntíma snjöllum orkulausnum til orku- og veitufyrirtækja í virðiskeðjum orku-, vatns-, olíu- og gass. Fyrirtækið starfar á sviði upplýsingatækni og rekstrartækni, einkum í Evrópu og þá helst í Frakklandi, Þýskalandi, Bretlandi og á Spáni.

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

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

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

   Athugasemdir verða að berast framkvæmdastjórninni innan tíu daga frá því að tilkynning þessi birtist í C-deild Stjórnartíðinda ESB, 12.9.2024. Eftirfarandi tilvísun skal ávallt tekin sérstaklega fram:

   M.11632 – ALTEN/WORLDGRID

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

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

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

([1]) Stjtíð. ESB L 24, 29.1.2004, bls. 1 og EES-viðbætir nr. 9, 22.2.2007, bls. 62 („samrunareglugerðin“).
([2]) Stjtíð. ESB C 160, 5.5.2023, bls. 1.

Tilkynning um fyrirhugaðan samruna fyrirtækja **2024/EES/67/05**

(mál M.11644 – VREP/GILDE SFS/CONTEYOR/KTP)

Mál sem kann að verða tekið fyrir samkvæmt einfaldaðri málsmeðferð

1. Framkvæmdastjórninni barst 3. september 2024 tilkynning um fyrirhugaðan samruna í samræmi við 4. gr. reglugerðar ráðsins (EB) nr. 139/2004 ([1]).

   Tilkynningin varðar eftirfarandi fyrirtæki:

   – Gilde SFS B.V. („Gilde SFS“, Niðurlöndum)

   – VR Equitypartner GmbH („VREP“, Þýskalandi)

   – SFS Group B.V. („SFS Group“, Niðurlöndum)

   – KTP Holding GmbH („KTP Holding“, Þýskalandi)

   Gilde SFS og VREP öðlast sameiginleg yfirráð, í skilningi b-liðar 1. mgr. 3. gr. og 4. mgr. 3. gr. samrunareglugerðarinnar, yfir SFS Group og KTP Holding.

   Samruninn á sér stað með kaupum á hlutabréfum.

2. Starfsemi hlutaðeigandi fyrirtækja er sem hér segir:

   – Gilde SFS er eignarhaldsfélag sem lýtur yfirráðum Gilde Equity Management þar sem fjárfest er í ýmsum meðalstórum og stórum fyrirtækjum, einkum í Belgíu, Lúxemborg og Hollandi.

   – VREP er fjárfestingafyrirtæki sem styður aðallega við meðalstór fyrirtæki í þýskumælandi löndum Evrópu.

   – SFS Group er eignarhaldsfélag Conteyor, sem veitir aðgang að skilagjaldsskyldum umbúðalausnum, svo sem tæknilegum textílvörum, hitamótuðum vörum, plastílátum og málmgrindum.

   – KTP Holding er eignarhaldsfélag KTP Group, þýskrar samstæðu sem starfar á sviði skilagjaldsskyldra umbúðalausna sem leggja sérstaka áherslu á framleiðslu á geymslu- og flutningsílátum úr samanbrjótanlegu plasti.

3. Frumathugun hefur leitt í ljós að hin fyrirhuguðu viðskipti sem hafa verið tilkynnt geti fallið undir gildissvið samruna-reglugerðarinnar. Fyrirvari er þó um endanlega ákvörðun.

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

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

   Athugasemdir verða að berast framkvæmdastjórninni innan tíu daga frá því að tilkynning þessi birtist í C-deild Stjórnartíðinda ESB, 11.9.2024. Eftirfarandi tilvísun skal ávallt tekin sérstaklega fram:

   M.11644 – VREP/GILDE SFS/CONTEYOR/KTP

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

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

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

([1]) Stjtíð. ESB L 24, 29.1.2004, bls. 1 og EES-viðbætir nr. 9, 22.2.2007, bls. 62 („samrunareglugerðin“).
([2]) Stjtíð. ESB C 160, 5.5.2023, bls. 1.

Tilkynning um fyrirhugaðan samruna fyrirtækja **2024/EES/67/06**

(mál M.11667 – FRANCISCO PARTNERS/TA ASSOCIATES/ORISHA)

Mál sem kann að verða tekið fyrir samkvæmt einfaldaðri málsmeðferð

1. Framkvæmdastjórninni barst 30. ágúst 2024 tilkynning um fyrirhugaðan samruna í samræmi við 4. gr. reglugerðar ráðsins (EB) nr. 139/2004 ([1]).

   Tilkynningin varðar eftirfarandi fyrirtæki:

   – Francisco Partners Management L.P. („Francisco Partners“, Bandaríkjunum)

   – TA Associates Management, L.P. („TA Associates“, Bandaríkjunum)

   – Dali Topco SAS („Orisha“, Frakklandi), sem lýtur yfirráðum sér í lagi af hálfu TA Associates

   Francisco Partners og TA Associates ná í sameiningu yfirráðum, í skilningi b-liðar 1. mgr. 3. gr. og 4. mgr. 3. gr. samruna-reglugerðarinnar, yfir Orisha.

   Samruninn á sér stað með kaupum á hlutabréfum.

2. Starfsemi hlutaðeigandi fyrirtækja er sem hér segir:

   – Francisco Partners: alþjóðlegt fjárfestingarfyrirtæki sem sérhæfir sig í samstarfi við tækni- og tæknivædd fyrirtæki.

   – TA Associates: fjárfestingaráðgjöf í þágu sjóða TA Associates sem fjárfesta almennt í fimm grunngreinum, þ.e. tækni, fjármálaþjónustu, heilbrigðisþjónustu og neytenda- og fyrirtækjaþjónustu í Norður-Ameríku, Evrópu og Asíu.

3. Starfsemi fyrirtækisins Orisha er sem hér segir: útgefandi viðskiptahugbúnaðar sem einkum er tileinkaður fyrirtækjum í smásölu-, fasteigna-, heilbrigðis-, landbúnaðar- og byggingargeiranum.

4. Frumathugun hefur leitt í ljós að hin fyrirhuguðu viðskipti sem hafa verið tilkynnt geti fallið undir gildissvið samruna-reglugerðarinnar. Fyrirvari er þó um endanlega ákvörðun.

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

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

   Athugasemdir verða að berast framkvæmdastjórninni innan tíu daga frá því að tilkynning þessi birtist í C-deild Stjórnartíðinda ESB, 6.9.2024. Eftirfarandi tilvísun skal ávallt tekin sérstaklega fram:

   M.11667 – FRANCISCO PARTNERS/TA ASSOCIATES/ORISHA

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

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

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

([1]) Stjtíð. ESB L 24, 29.1.2004, bls. 1 og EES-viðbætir nr. 9, 22.2.2007, bls. 62 („samrunareglugerðin“).
([2]) Stjtíð. ESB C 160, 5.5.2023, bls. 1.

Tilkynning um fyrirhugaðan samruna fyrirtækja **2024/EES/67/07**

(mál M.11668 – PSG EQUITY/RIVEAN CAPITAL/CORILUS)

Mál sem kann að verða tekið fyrir samkvæmt einfaldaðri málsmeðferð

1. Framkvæmdastjórninni barst 3. september 2024 tilkynning um fyrirhugaðan samruna í samræmi við 4. gr. reglugerðar ráðsins (EB) nr. 139/2004 ([1]).

   Tilkynningin varðar eftirfarandi fyrirtæki:

   – PSG Ultimate GP Managing Member L.L.C. („PSG Equity“, Bandaríkjunum), sem endanlega lýtur yfirráðum Mark Hastings (Bandaríkjunum)

   – Rivean Capital Management Holding B.V. („Rivean Capital“, Niðurlöndum)

   – Corilus NV („Corilus“, Belgíu), sem lýtur sem stendur endanlega og sér í lagi yfirráðum af hálfu Rivean Capital

   PSG Equity og Rivean Capital öðlast sameiginleg yfirráð, í skilningi b-liðar 1. mgr. 3. gr. samrunareglugerðarinnar, yfir Corilus í heild.

   Samruninn á sér stað með kaupum á hlutabréfum.

2. Starfsemi hlutaðeigandi fyrirtækja er sem hér segir:

   – PSG Equity er fyrirtæki sem vinnur með hugbúnaðar- og tæknivæddum þjónustufyrirtækjum til að hjálpa þeim að komast í gegnum umbreytingarvöxt, nýta stefnumörkun og byggja upp sterk teymi. PSG Equity er með skrifstofur í Boston, Kansas City, London, Madríd, París og Tel-Aviv.

   – Rivean Capital er meðalstór framtakssjóður sem auðkennir fyrirtæki með möguleika á hraðari þróun, stefnumörkun um alþjóðlega þróun, framtaksverkefni um lífrænan vöxt og endurbætur á uppbyggingu. RIVEAN Capital er með staðbundnar skrifstofur í Belgíu, Þýskalandi, Sviss, á Ítalíu og Niðurlöndum.

3. Corilus markaðssetur hugbúnað fyrir heilbrigðisþjónustu sem gerir heilbrigðisstarfsmönnum, svo sem heimilislæknum, sérfræðingum, lyfjafræðingum, tannlæknum, hjúkrunarfræðingum, sjúkraþjálfurum og heilsugæslustöðvum kleift að tengjast sjúklingum sínum.

4. Frumathugun hefur leitt í ljós að hin fyrirhuguðu viðskipti sem hafa verið tilkynnt geti fallið undir gildissvið samruna-reglugerðarinnar. Fyrirvari er þó um endanlega ákvörðun.

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

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

   Athugasemdir verða að berast framkvæmdastjórninni innan tíu daga frá því að tilkynning þessi birtist í C-deild Stjórnartíðinda ESB, 12.9.2024. Eftirfarandi tilvísun skal ávallt tekin sérstaklega fram:

   M.11668 – PSG EQUITY/RIVEAN CAPITAL/CORILUS

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

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

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

([1]) Stjtíð. ESB L 24, 29.1.2004, bls. 1 og EES-viðbætir nr. 9, 22.2.2007, bls. 62 („samrunareglugerðin“).
([2]) Stjtíð. ESB C 160, 5.5.2023, bls. 1.

Tilkynning um fyrirhugaðan samruna fyrirtækja **2024/EES/67/08**

(mál M.11705 – TIKEHAU CAPITAL/BOUYGUES/SERENA INDUSTRIAL PARTNERS/BELLOVA JV)

Mál sem kann að verða tekið fyrir samkvæmt einfaldaðri málsmeðferð

1. Framkvæmdastjórninni barst 4. september 2024 tilkynning um fyrirhugaðan samruna í samræmi við 4. gr. reglugerðar ráðsins (EB) nr. 139/2004 ([1]).

   Tilkynningin varðar eftirfarandi fyrirtæki:

   – Egis Airport Operation SAS („Egis Airport Operation“, Frakklandi), sem lýtur yfirráðum Tikehau Capital SCA („Tikehau“, Frakklandi)

   – Egis Investment Partners France II SCA („Egis Investment Partners“, Frakklandi), sem lýtur yfirráðum Tikehau

   – Bouygues Construction Airport Concessions (France), sem lýtur yfirráðum Bouygues S.A. („Bouygues“, Frakklandi)

   – IMPACT V. S.à.r.l („Impact V.“, Lúxemborg), sem lýtur yfirráðum Serena Industrial Partners GP S.à.r.l („Serena“, Lúxemborg)

   – Bellova SAS („Bellova“, Frakklandi), nýstofnað fyrirtæki sem mun bera ábyrgð á rekstri, umsjón, viðhaldi og kynningu á flugvellinum í Beauvais-Tillé í Frakklandi

   Egis Airport Operation, Egis Investment Partners, Bouygues Construction Airport Concessions og Impact V. munu ná sameiginlegum yfirráðum yfir Bellova í heild í skilningi b-liðar 1. mgr. 3. gr. og 4. mgr. 3. gr. samrunareglugerðarinnar.

   Samruninn á sér stað með kaupum á hlutabréfum og með samningi.

2. Starfsemi hlutaðeigandi fyrirtækja er sem hér segir:

   – Egis Airport Operation annast stjórnun og rekstur flugvalla, einkum í Evrópu og Afríku. Tikehau starfar við stýringu eigna og fjárfestinga, einkum í Evrópu, Asíu og Norður-Ameríku.

   – Egis Investment Partners sérhæfir sig í fjárfestingum og stjórnun hagsmuna í innviðaverkefnum, einkum á sviði hönnunar, byggingar, viðhalds, þjónustu, rekstrar og fjármögnunar. Sem stendur er eina starfsemi þessa fyrirtækis fyrirhuguð sérleyfi fyrir Beauvais-Tillé flugvöll í Frakklandi.

   – Bouygues Construction Airport Concessions er félag sem hefur verið sett upp með það að markmiði að fjárfesta í flugvallarsérleyfum fyrir hönd Bouygues. Sem stendur er eina starfsemi þessa fyrirtækis fyrirhuguð sérleyfi fyrir flugvöllinn í Beauvais. Bouygues fæst við byggingarstarfsemi, opinberar framkvæmdir, fjarskipti og fjölmiðla.

   – Impact V. er fjárfestingarfélag sem sækir um opinber útboð á sviði innviða í Frakklandi. Serena Industrial Partners, sem sérhæfir sig í þróun meðalstórra innviða á sviði hreyfanleika, umhverfis og félagslegra innviða, starfar í Evrópu og Síle.

3. Nýstofnað fyrirtæki, Bellova, mun bera ábyrgð á rekstri, umsjón, viðhaldi og kynningu á flugvellinum í Beauvais-Tillé í Frakklandi.

4. Frumathugun hefur leitt í ljós að hin fyrirhuguðu viðskipti sem hafa verið tilkynnt geti fallið undir gildissvið samrunareglugerðarinnar. Fyrirvari er þó um endanlega ákvörðun.

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

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

   Athugasemdir verða að berast framkvæmdastjórninni innan tíu daga frá því að tilkynning þessi birtist í C-deild Stjórnartíðinda ESB, 12.9.2024. Eftirfarandi tilvísun skal ávallt tekin sérstaklega fram:

   M.11705 – TIKEHAU CAPITAL/BOUYGUES/SERENA INDUSTRIAL PARTNERS/BELLOVA JV

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

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

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

([1]) Stjtíð. ESB L 24, 29.1.2004, bls. 1 og EES-viðbætir nr. 9, 22.2.2007, bls. 62 („samrunareglugerðin“).
([2]) Stjtíð. ESB C 160, 5.5.2023, bls. 1.

Tilkynning um fyrirhugaðan samruna fyrirtækja **2024/EES/67/09**

(mál M.11719 – CINVEN/VITAMIN WELL COMPANIES)

Mál sem kann að verða tekið fyrir samkvæmt einfaldaðri málsmeðferð

1. Framkvæmdastjórninni barst 29. ágúst 2024 tilkynning um fyrirhugaðan samruna í samræmi við 4. gr. reglugerðar ráðsins (EB) nr. 139/2004 ([1]).

   Tilkynningin varðar eftirfarandi fyrirtæki:

   – Cinven Limited („Cinven“, Guernsey)

   – Rixile 2 Holding AB („Vitamin Well Group“, Svíþjóð)

   Cinven nær yfirráðum í heild, í skilningi b-liðar 1. mgr. 3. gr. samrunareglugerðarinnar, yfir andlagi Vitamin Well Group.

   Samruninn á sér stað með kaupum á hlutabréfum.

2. Starfsemi hlutaðeigandi fyrirtækja er sem hér segir:

   – Cinven er framtakssjóður sem stýrir fyrirtækjum í fjölmörgum greinum: m.a. viðskiptaþjónustu, fjármálaþjónustu, heilsugæslu, iðnaði og tækni, fjölmiðlum og fjarskiptum.

   – Vitamin Well Group er starfandi matvæla- og drykkjarvörufyrirtæki sem býður upp á úrvalsvörur fyrir heilsumeðvitaða og virka neytendur.

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

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

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

   Athugasemdir verða að berast framkvæmdastjórninni innan tíu daga frá því að tilkynning þessi birtist í C-deild Stjórnartíðinda ESB, 9.9.2024. Eftirfarandi tilvísun skal ávallt tekin sérstaklega fram:

   M.11719 – CINVEN/VITAMIN WELL COMPANIES

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

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

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

([1]) Stjtíð. ESB L 24, 29.1.2004, bls. 1 og EES-viðbætir nr. 9, 22.2.2007, bls. 62 („samrunareglugerðin“).
([2]) Stjtíð. ESB C 160, 5.5.2023, bls. 1.

Tilkynning um fyrirhugaðan samruna fyrirtækja **2024/EES/67/10**

(mál M.11720 – ENGIE/MACQUARIE/TAG SOUTH)

Mál sem kann að verða tekið fyrir samkvæmt einfaldaðri málsmeðferð

1. Framkvæmdastjórninni barst 30. ágúst 2024 tilkynning um fyrirhugaðan samruna í samræmi við 4. gr. reglugerðar ráðsins (EB) nr. 139/2004 ([1]).

   Tilkynningin varðar eftirfarandi fyrirtæki:

   – ENGIE S.A. („Engie“, Frakklandi)

   – MIP VI International AIV, L.P. („MIP VI“, Kanada), sem endanlega lýtur yfirráðum Macquarie Group Limited („Macquarie Group“, Ástralíu)

   – TAG Pipelines Sur, S. de R.L. de C.V. („TAG SOUTH“, Mexíkó), sem lýtur yfirráðum ENGIE og Brookfield Corporation („Kanada“)

   ENGIE og MIP VI öðlast sameiginleg yfirráð, í skilningi b-liðar 1. mgr. 3. gr. og 4. mgr. 3. gr. samrunareglugerðarinnar, yfir TAG SOUTH.

   Samruninn á sér stað með kaupum á hlutabréfum.

2. Starfsemi hlutaðeigandi fyrirtækja er sem hér segir:

   – ENGIE er alþjóðleg samstæða með höfuðstöðvar í Frakklandi sem starfar við lítt kolefnislosandi orkugjafa, gas og þjónustu.

   – MIP VI er sjóður með höfuðstöðvar í Kanada sem tekur þátt í fjárfestingum í orku- og innviðaeignum sem staðsettar eru í Norður-Ameríku og Suður-Ameríku og sem lýtur endanlega yfirráðum Macquarie Group. Macquarie Group er áströlsk alþjóðleg fjármálaþjónustusamstæða.

   – TAG SOUTH á, þróar, smíðar og rekur flutningskerfi fyrir jarðgas í Mexíkó.

3. Frumathugun hefur leitt í ljós að hin fyrirhuguðu viðskipti sem hafa verið tilkynnt geti fallið undir gildissvið samruna-reglugerðarinnar. Fyrirvari er þó um endanlega ákvörðun.

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

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

   Athugasemdir verða að berast framkvæmdastjórninni innan tíu daga frá því að tilkynning þessi birtist í C-deild Stjórnartíðinda ESB, 10.9.2024. Eftirfarandi tilvísun skal ávallt tekin sérstaklega fram:

   M.11720 – ENGIE/MACQUARIE/TAG SOUTH

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

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

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

([1]) Stjtíð. ESB L 24, 29.1.2004, bls. 1 og EES-viðbætir nr. 9, 22.2.2007, bls. 62 („samrunareglugerðin“).
([2]) Stjtíð. ESB C 160, 5.5.2023, bls. 1.

Ákvörðun um að hreyfa ekki andmælum við tilkynntum samruna fyrirtækja **2024/EES/67/11**

(mál M.11538 – CEZ/BCI/CZECH GAS NETWORKS JV)

Framkvæmdastjórnin ákvað 8. ágúst 2024 að hreyfa ekki andmælum við ofangreindum tilkynntum samruna og lýsa hann samrýmanlegan reglum sameiginlega markaðarins. Ákvörðunin er tekin í samræmi við b-lið 1. mgr. 6. gr. reglugerðar ráðsins (EB) nr. 139/2004 ([1]). Óstytt útgáfa þessarar ákvörðunar er eingöngu til á ensku og verður hún birt eftir að felld hafa verið brott viðskiptaleyndarmál, ef einhver eru. Unnt verður að nálgast hana á eftirfarandi hátt:

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

– Á rafrænu sniði á vefsetrinu EUR-Lex (http://eur-lex.europa.eu/en/index.htm) undir skjalnúmeri 32024M11538. EUR-Lex veitir aðgang að löggjöf Evrópusambandsins á Internetinu.

Ákvörðun um að hreyfa ekki andmælum við tilkynntum samruna fyrirtækja **2024/EES/67/12**

(mál M.11585 – EPR/UNIPER GROUP (TRADING ASSETS))

Framkvæmdastjórnin ákvað 2. september 2024 að hreyfa ekki andmælum við ofangreindum tilkynntum samruna og lýsa hann samrýmanlegan reglum sameiginlega markaðarins. Ákvörðunin er tekin í samræmi við b-lið 1. mgr. 6. gr. reglugerðar ráðsins (EB) nr. 139/2004 ([1]). Óstytt útgáfa þessarar ákvörðunar er eingöngu til á ensku og verður hún birt eftir að felld hafa verið brott viðskiptaleyndarmál, ef einhver eru. Unnt verður að nálgast hana á eftirfarandi hátt:

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

– Á rafrænu sniði á vefsetrinu EUR-Lex (http://eur-lex.europa.eu/en/index.htm) undir skjalnúmeri 32024M11585. EUR-Lex veitir aðgang að löggjöf Evrópusambandsins á Internetinu.

([1]) Stjtíð. ESB L 24, 29.1.2004, bls. 1 og EES-viðbæti nr. 9, 22.2.2007, bls. 62.

Ákvörðun um að hreyfa ekki andmælum við tilkynntum samruna fyrirtækja **2024/EES/67/13**

(mál M.11612 – ABN AMRO/HAL)

Framkvæmdastjórnin ákvað 30. ágúst 2024 að hreyfa ekki andmælum við ofangreindum tilkynntum samruna og lýsa hann samrýmanlegan reglum sameiginlega markaðarins. Ákvörðunin er tekin í samræmi við b-lið 1. mgr. 6. gr. reglugerðar ráðsins (EB) nr. 139/2004 ([1]). Óstytt útgáfa þessarar ákvörðunar er eingöngu til á ensku og verður hún birt eftir að felld hafa verið brott viðskiptaleyndarmál, ef einhver eru. Unnt verður að nálgast hana á eftirfarandi hátt:

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

– Á rafrænu sniði á vefsetrinu EUR-Lex (http://eur-lex.europa.eu/en/index.htm) undir skjalnúmeri 32024M11612. EUR-Lex veitir aðgang að löggjöf Evrópusambandsins á Internetinu.

Ákvörðun um að hreyfa ekki andmælum við tilkynntum samruna fyrirtækja **2024/EES/67/14**

(mál M.11659 – BNPP CARDIF/NEUFLIZE VIE)

Framkvæmdastjórnin ákvað 30. ágúst 2024 að hreyfa ekki andmælum við ofangreindum tilkynntum samruna og lýsa hann samrýmanlegan reglum sameiginlega markaðarins. Ákvörðunin er tekin í samræmi við b-lið 1. mgr. 6. gr. reglugerðar ráðsins (EB) nr. 139/2004 ([1]). Óstytt útgáfa þessarar ákvörðunar er eingöngu til á ensku og verður hún birt eftir að felld hafa verið brott viðskiptaleyndarmál, ef einhver eru. Unnt verður að nálgast hana á eftirfarandi hátt:

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

– Á rafrænu sniði á vefsetrinu EUR-Lex (http://eur-lex.europa.eu/en/index.htm) undir skjalnúmeri 32024M11659. EUR-Lex veitir aðgang að löggjöf Evrópusambandsins á Internetinu.

([1]) Stjtíð. ESB L 24, 29.1.2004, bls. 1 og EES-viðbæti nr. 9, 22.2.2007, bls. 62.

Ákvörðun um að hreyfa ekki andmælum við tilkynntum samruna fyrirtækja **2024/EES/67/15**

(mál M.11661 – IK/NEXTSTAGE/EUROBIO SCIENTIFIC/JV)

Framkvæmdastjórnin ákvað 30. ágúst 2024 að hreyfa ekki andmælum við ofangreindum tilkynntum samruna og lýsa hann samrýmanlegan reglum sameiginlega markaðarins. Ákvörðunin er tekin í samræmi við b-lið 1. mgr. 6. gr. reglugerðar ráðsins (EB) nr. 139/2004 ([1]). Óstytt útgáfa þessarar ákvörðunar er eingöngu til á ensku og verður hún birt eftir að felld hafa verið brott viðskiptaleyndarmál, ef einhver eru. Unnt verður að nálgast hana á eftirfarandi hátt:

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

– Á rafrænu sniði á vefsetrinu EUR-Lex (http://eur-lex.europa.eu/en/index.htm) undir skjalnúmeri 32024M11661. EUR-Lex veitir aðgang að löggjöf Evrópusambandsins á Internetinu.

([1]) Stjtíð. ESB L 24, 29.1.2004, bls. 1 og EES-viðbæti nr. 9, 22.2.2007, bls. 62.

Heimild til að veita ríkisaðstoð skv. 107. og 108. gr. sáttmálans um starfshætti Evrópusambandsins **2024/EES/67/16**

Mál sem framkvæmdastjórnin hreyfir ekki andmælum við

Málsnúmer	Aðildarríki	Landssvæði	Heiti aðstoðarkerfis (og/eða heiti aðstoðarþega)	Birtingar-tilvísun í Stjtíð. ESB
SA.110954	Slóvakía	Bratislavský kraj, Západné Slovensko, Stredné Slovensko, Východné Slovensko	Amendment of SA.53564 Compensation for EIUs for the part of the system operation tariff in relation to the RES component	C/2024/5345, 2.9.2024
SA.105117	Ítalía		Aid scheme for the use of shore-side electricity in the form of a reduction in general system charges for ship operators	C/2024/5376, 3.9.2024
SA.110068	Niðurlönd		NL-EZK_K&E_Subsidieregeling grootschalige productie volledig hernieuwbare waterstof via elektrolyse 2024	C/2024/5377, 3.9.2024
SA.112301	Búlgaría	Bulgaria	Incentives for filling of the Chiren gas storage facility in 2022	C/2024/5385, 4.9.2024
SA.106249	Tékkland	Praha, Střední Čechy, Jihozápad, Severozápad, Severovýchod, Jihovýchod, Střední Morava, Moravskoslezsko	Aid for the construction, reconstruction and acquisition of affordable rental flats - RRF	C/2024/5387, 3.9.2024
SA.109689	Tékkland		DP 9.F.m. Demonstrační farmy	C/2024/5388, 3.9.2024
SA.114303	Svíþjóð		Amendment to the Swedish tonnage tax scheme	C/2024/5389, 3.9.2024
SA.115132	Slóvakía	Bratislavský kraj, Západné Slovensko, Stredné Slovensko, Východné Slovensko	TCTF: Schéma štátnej pomoci na podporu živočíšnej výroby v dôsledku agresie Ruska proti Ukrajine	C/2024/5392, 5.9.2024
SA.113166	Þýskaland	Hessen	Hessen: Erhaltung von Streuobstbeständen - E.2	C/2024/5434, 6.9.2024
SA.110019	Belgía		Support for the voluntary cessation of livestock farming in respect of holdings indicated with orange colour (oranje bedrijven) and of holdings in special area of conservation with area specific measures (in de maatwerk-gebieden ligt) in order to implement the programmatic nitrogen approach	C/2024/5435, 6.9.2024
SA.113057	Þýskaland	Hessen	Hessen: Förderung von Innovation und Zusammenarbeit in der Landwirtschaft und in ländlichen Gebieten	C/2024/5436, 6.9.2024

Gildan texta þessara ákvarðana, að trúnaðarupplýsingum slepptum, er að finna á: https://ec.europa.eu/competition/elojade/isef/index.cfm