

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 204/11/COL

of 29 June 2011

on the alleged state aid granted to companies belonging to the Norsk Film group (Norway)

THE EFTA SURVEILLANCE AUTHORITY ("THE AUTHORITY"),

The Norwegian authorities submitted their observations by letter dated 2 February 2010 (Event No 545244).

HAVING REGARD to the Agreement on the European Economic Area ("the EEA Agreement"), in particular to Articles 61 and 62,

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

HAVING REGARD to Protocol 3 to the Surveillance and Court Agreement ("Protocol 3"), in particular to Article 1(2) of Part I and Articles 4(4) and 7(1) of Part II,

HAVING CALLED on interested parties to submit their comments pursuant to Article 6(1) of Part II of Protocol 3 ⁽¹⁾,

Whereas:

I. FACTS**1. Procedure**

By letter dated 23 March 2006 (Event No 368163), several Norwegian film companies ⁽²⁾ complained that the Norwegian authorities had awarded annual grants to Norsk FilmStudio AS/Filmparken AS for the years 2000 - 2005.

After various exchanges of correspondence, the Authority adopted Decision No 491/09/COL to initiate the formal investigation procedure, published in the *Official Journal of the European Union* and in the EEA Supplement thereto ⁽³⁾. The Authority called on interested parties to submit their comments. The Authority did not receive any comments from third parties.

⁽¹⁾ OJ C 174, 1.7.2010 and EEA Supplement No. 34, 1.7.2010.

⁽²⁾ The Chimney Pot Oslo AS, Dagslys AS, Egg & Bacon AS, Grip Teknisk AS, Bob Aas Carho ENK, Kamerautleien AS, Lydhodene AS, Megaphon AS and Krypton Film AS.

⁽³⁾ See footnote 1.

2. The Norsk Film group

Norsk Film AS was established in 1932 by the association of municipal cinemas. The company's film studio was opened in 1935. In the State budget for 1947, the Norwegian government decided to take greater responsibility for film production. During the 1950s and 1960s, Norsk Film AS was faced with financial difficulties which lead the government to allocate grants to it to guarantee its further existence. After the company was declared bankrupt in the late 1960s, the government decided to assume full responsibility for the future of the company. From 1974, the State kept an ownership of 77,6 % of the shares in the company. Norsk Film AS served two purposes: to provide Norwegian feature film production with the necessary facilities and to produce Norwegian films.

ScanCam AS was founded in 1986 by Norsk Film AS and the newspaper VG (Verdens Gang) on the basis of the existing camera department of Norsk Film AS. Later, Norsk Film AS and Schibsted ASA each owned 50 % of the shares in ScanCam AS. On 31 December 1998, Schibsted ASA sold its stake to Norsk Film AS and ScanCam AS continued as a 100 % owned subsidiary of Norsk FilmStudio AS as from 1999.

Norsk FilmStudio AS, which was founded in 1989, was a wholly-owned subsidiary of Norsk Film AS. Until 1989, the studio and technical facilities were an integral division of Norsk Film AS. Norsk FilmStudio AS was founded in order to establish a clear-cut distinction between the company's role as a producer and its role of maintaining the infrastructure for film production (studio and technical facilities).

In 2001, the Norwegian government reformed its film policy and a clearer distinction was made between the State's areas of responsibility and the responsibility of the private sector. Private production companies should have the responsibility for producing films. It was therefore proposed to sell the shares

in Norsk Film AS. The State would maintain its responsibility for the studios as this part of the production process was considered not sustainable on market conditions. In 2001, Norsk Film AS was de-merged into two separate companies: a company for film production, named Norsk Film AS and a company for infrastructure, named Filmparken AS. The remaining assets of the company stayed in Filmparken AS. Norsk FilmStudio AS continued as a wholly-owned subsidiary of Filmparken AS. On 25 June 2001, Norsk FilmStudio AS merged into Filmparken AS. The State sold its shares in the production company Norsk Film AS to a private production company called Diopter AS on 4 January 2002.

In 2002, Filmparken AS was re-named Norsk FilmStudio AS again.

In 2004, ScanCam AS merged into Norsk FilmStudio AS.

In 2009, Norsk FilmStudio AS and The Chimney Pot AS merged to become Storyline Studios AS. After the merger Filmparken AS owns 60 % of the business with 40 % left to the shareholders of the prior Chimney Pot AS.

Storyline Studios AS is a full spectre supplier of equipment and services to the film industry, providing film studios, grip and light, camera, post production, costumes, financing, office facilities, line production and film catalogues.

3. Description of the measures investigated

The Authority investigated two different measures: the payment of the grant of NOK 36 million (see Section 3.1) and the preferential tax treatment some companies belonging to the Norsk Film group benefited from (see section 3.2).

3.1. Payment of the grant of NOK 36 million

Yearly grants were made to various entities belonging to the Norsk Film group since the 1970s and until 2006. Annual budgets for 1971–1972 refer to an “existing aid scheme”. The grants were paid by the Ministry of Culture and Church Affairs.

The Authority, in its Decision No 491/09/COL, has taken the view that the yearly payments made by the Norwegian State since the 1970s to various entities belonging to the Norsk Film group for the production of feature films and to maintain an infrastructure necessary for the production of films were based on an existing system of aid.

The Norwegian authorities have indicated that in 1997, the Norwegian Parliament decided to grant NOK 36 million to Norsk Film AS for the upgrading, modernisation and development of the production facilities called “Filmparken”. The grant was allocated over the national budget’s section for grants to national cultural buildings. The sum was allocated over a two-year period, NOK 10 million being paid in 1998 and the remaining NOK 26 million in 1999. The grant partly

covered the modernisation and upgrading of the studio facilities and partly the development of new administration facilities.

The Authority, in Decision No 491/09/COL, considered that as the payment of the grant of NOK 36 million was based on a different budget allocation and the specific amount was singled out for a special aim (renovation of the jar site), it could amount to new aid. The Authority had doubts as to whether this contribution formed part of the existing system of aid or whether it constituted a new aid measure.

3.2. Preferential tax treatment

Norsk Film AS and Norsk FilmStudio AS benefited from a tax exemption as from 1995. The exemption was based on Section 26, first paragraph, *litra k*, of the former Tax Act of 18 August 1911 No 8, replaced by the Tax Act of 26 March 1999 No 14 ⁽⁴⁾.

According to Section 2-32 of the Norwegian Tax Act, presently setting out the rules regarding this preferential tax regime, non-profit organisations, institutions and companies are exempt from corporate tax to the extent that they operate on a non-profit basis.

Whether an institution or a company is considered as non-profit according to Section 2-32 is determined on the basis of objective criteria, with the purpose of the company being the decisive factor. Thus, a charitable purpose indicates the presence of a non-profit body. In order to determine the purpose of the company, the tax authorities take into account *inter alia* its statutes including its statutory purpose and the activity actually carried out. Whether the body is engaged in activities that are exposed to competition is also taken into consideration. If the undertaking carries out economic or commercial activities and competes with taxable profit driven companies, this indicates the existence of a taxable status. Another element taken into account is the nature of the funding of the undertaking. If the company is funded by private gifts or other contributions, this indicates that the company has a non-profit purpose.

An organisation considered non-profit is exempt from corporate tax for profit resulting from the non-profit purpose of the company. Income derived from commercial activities is – under certain conditions – subject to corporate tax ⁽⁵⁾.

Whether Section 2-32 is applicable to a company or organisation is determined by the tax authorities as part of the normal annual assessment process. It is on the basis of the information provided by the tax payer in the tax return and other information available that the local tax authorities determine which tax regime is applicable.

⁽⁴⁾ This regime provides exemption from corporate tax for so-called “ideal organisations”.

⁽⁵⁾ Section 2-32(2) of the Norwegian Tax Act provides that revenue is subject to corporate tax where the annual turnover from the commercial activities amount to more than NOK 70 000 or NOK 140 000 as the case may be.

Norsk Film AS, Norsk FilmStudio AS and ScanCam AS were granted a tax exemption based on the fact that the purpose of the companies was non-profit. Until 1995, Norsk Film AS and Norsk FilmStudio AS did not apply for the special regime. Following their applications they benefited from such a regime from 1995 until 2001.

In 2001, Norsk Film AS was de-merged into two separate companies: a company for film production, named Norsk Film AS and a company for infrastructure, named Filmparken AS. As from 2002, the companies were no longer funded by government subsidies and they carried out normal business activities. They were therefore considered as normal profit-making companies and consequently subject to standard corporate tax.

Until 1998, Norsk Film AS and Schibsted ASA each owned 50% of the shares in ScanCam AS. ScanCam AS was therefore not considered an integrated part of Norsk Film AS' business. From December 1998, ScanCam AS was 100% owned first by Norsk Film AS and then, from 1999, by Norsk FilmStudio AS (the wholly-owned subsidiary of Norsk Film AS). After this change, the tax authorities considered that ScanCam AS was an integrated part of Norsk Film AS' activity and could therefore benefit from the same tax regime for the years 1998–2000. ScanCam AS generated a profit in the years 1998, 1999, 2000 and 2001 ⁽⁶⁾.

In their evaluation, the tax authorities considered that the companies could benefit from the non-profit organisation status on the basis of the following elements: the statutes of Norsk Film AS which provided that its purpose was non-profit, the fact that 97,7% of the shares were held by the State and local municipalities and the fact that the company was funded essentially through state subsidies.

The tax authorities furthermore indicated that the tax exemption was given under the proviso that a possible profit should be used in full to achieve the purpose of the company within the framework of being a non-profit undertaking. The subsidiary Norsk FilmStudio AS was regarded as an integrated part of Norsk Film AS' activity and covered by the same tax exemption. The Norwegian authorities have indicated that Norsk FilmStudio AS did not generate a profit in the years 1995–2001 and that consequently, the application of the favourable tax regime was without effect.

The companies are now all subject to standard corporate tax.

The Authority, in Decision No 491/09/COL, considered that it was doubtful whether the application of the exemption from corporate tax based on the logic of exemption for non-profit organisations may justify the tax exemption in the case of the companies belonging to the Norsk Film group.

The aid in the form of an exemption from corporate tax is operating aid. Such aid is only allowed under special circumstances, and, in particular, in situations where the criteria set out

in the Authority's Guidelines are met (e.g. for certain types of environmental or regional aid). The Authority therefore doubted that the special tax rules – as applied to some of the companies belonging to the Norsk Film group – could be justified under the state aid provisions of the EEA Agreement.

4. Comments by the Norwegian authorities

4.1. Payment of the grant of NOK 36 million

4.1.1. The payment of the grant does not constitute state aid

The Norwegian authorities argue that the payment of the NOK 36 million does not constitute state aid.

Adopting an effects based approach, the Norwegian authorities claim that the grant under review did not actually confer any economic advantage upon the recipient.

The Norwegian authorities consider that none of the companies gained any economic advantage as a result of the grant for upgrading and modernisation of Filmparken. Norsk FilmStudio AS was responsible for renting out the facilities to all production companies in Norway. There was a clear legal separation within the Norsk Film group of the activities of production of film and rental of production facilities. Access to the production facilities was open and given to all Norwegian production companies (including Norsk Film AS) on equal terms and conditions. The rental activities were not profitable and generated deficits for Norsk FilmStudio AS.

The Norwegian authorities argue that it cannot be said that the measure gave the Norsk Film group an economic advantage as this was clearly not the effect of the grant. The intent and the effect of the measure were rather to provide Norwegian film producers with access to production facilities. They stress that it was only due to a market failure that Norsk FilmStudio AS acted as the sole provider of rental studio facilities where films of a certain length and quality could be produced. The company did so to the benefit of all producers and did not receive an economic advantage.

4.1.2. The measure would in any event constitute existing aid

The Norwegian authorities argue that even if the grant of NOK 36 million amounted to state aid, it would, in any event, constitute existing aid.

Indeed, the Norwegian authorities consider that the payment of the NOK 36 million grant formed part of the existing system of aid in the form of the payment of the yearly grants.

The Norwegian authorities state that the fact that the grant was paid out from a different budget than that used for the yearly grants is not a sufficient indication that the grant itself constituted a severable and new measure. They explain that

⁽⁶⁾ See letter by Norwegian authorities dated 11.8.2006 (Event No 383774).

the fact that the grant in 1998–1999 was allocated over another budget post was “merely coincidental and a question of technicalities and the payment of the NOK 36 million might as well have been allocated over the budget section for film funding and spread out over a period of ten years and thus been “melted into” the yearly payments to Norsk Film AS comprising both operating and investment aid. The fact that the grant 1998–1999 was allocated over another budget post was a result of a new way of organising the [national] budget section for contributions to the construction of national buildings”. The Norwegian authorities furthermore argue that what is important is that the payment was part of a systematic and continuous chain of payments to the same recipient and that the nature of the aid is unchanged. The scheme is said to have always consisted of an investment part and an operating part.

The upgrading and modernising process had been ongoing for some time and the costs involved had, until 1998 – 1999, been estimated to NOK 13 million. This amount included contributions from the Norwegian State through the existing support scheme which was in place since the 1970s. In 1997, however, it became clear that NOK 13 million was not sufficient to complete the works and therefore it was decided to allocate an additional NOK 36 million to complete the upgrading.

The Norwegian authorities provided the Authority with data supporting that also in the past amounts had been allocated and earmarked for the upgrading and modernisation of infrastructures necessary for maintaining conditions for film production.

Finally, the Norwegian authorities argue that the fact that the amount of the grant was much higher than the yearly payments had been until then was no indication that it constituted new aid. They refer to the judgment of the European Court of Justice in the case *Namur-Les-Assurances* (7): “the emergence of new aid or the alteration of existing aid cannot be assessed according to the scale of the aid or, in particular, its amount in financial terms at any moment in the life of the undertaking if the aid is provided under earlier statutory provisions which remain unaltered”.

4.1.3. *New aid would in any event be compatible*

The Norwegian authorities argue that the measure, if the Authority concluded that it amounted to new aid, would, in any event, be compatible with the functioning of the EEA Agreement. Indeed, they consider that the measure would be compatible with Article 61(3)(c) EEA as the grant’s purpose was cultural conservation, and the measure was necessary and proportionate to achieve such an aim.

The Norwegian authorities state that the production of films constitutes an important cultural expression and forms part of the nation’s heritage. Without suitable production facilities, no film production would take place. Furthermore, the grant was a

necessary intervention because of a market failure. The Norwegian authorities also stress that the Authority has approved support measures for audiovisual schemes which would remain without effect if the necessary infrastructure to produce audiovisual works did not exist.

4.2. *Preferential tax treatment*

4.2.1. *The application of the preferential tax treatment does not constitute state aid*

Firstly, the Norwegian authorities stress that the Authority, in its Decision No 491/09/COL, did not raise any doubts regarding the actual tax regime exempting from corporate tax non-profit undertakings, but investigated the application of such regime to certain companies belonging to the Norsk Film group. It is therefore the actual application or misapplication of the tax regime to certain companies that is under review.

Secondly, the Norwegian authorities argue that they have not themselves considered whether section 2-32 of the Tax Act was correctly applied to the companies belonging to the Norsk Film group as they are not a tax assessment authority.

They have, however, indicated that “a possible misapplication by the tax authorities of a general tax provision to the advantage of a taxpayer, does not constitute state aid. (...) In the case of a misapplication of a national tax provision, this should primarily be corrected by the tax authorities or the courts under the relevant national law. (...) It would create an unworkable situation if any misapplication of national tax provisions resulting in an unjustified advantage to a particular tax payer would constitute state aid”.

The Norwegian authorities stress that since the consequences of wrongful taxation could vary, unless it is a question of persistent misapplication, remedial action ought to be taken under national law and not reviewed under EEA state aid rules.

4.2.2 *The application of the preferential tax treatment was in any event based on an existing system of aid*

The Norwegian authorities furthermore argue that the application of a tax provision pre-dating the entry into force of the EEA Agreement would not, in any event, constitute new aid but would be the mere application of an existing system of aid.

They consider that “an ordinary application of the general rule and the evaluation of whether or not it is applicable in a specific case cannot in any event constitute new aid, and did not as such require notification to the Authority. Indeed, if individual applications of an existing system of aid would constitute new aid, it would extend the scope of what could

(7) Case C-44/93 *Namur-Les Assurances du Crédit SA v Office National du Ducroire and Belgian State* [1994] ECR I-3829, para. 28.

be considered as new aid in an unreasonable manner, and it would water out the scope of compatible aid in terms of existing aid within the meaning of state aid rules”.

II. ASSESSMENT

1. The presence of state aid

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.”

1.1. Presence of state resources

The measure must be granted by the State or through state resources.

1.1.1. Payment of the NOK 36 million grant

The grant of NOK 36 million was paid from the State’s budget section for grants to national cultural buildings.

The Authority therefore considers that the condition that state resources must be involved is met.

1.1.2. Preferential tax regime

Norsk Film AS and its subsidiary Norsk FilmStudio AS were granted a tax exemption for the years 1995 to 2001. In a letter dated 18 March 1996, the Bærum Tax Office granted the tax exemption for the fiscal year 1995 on the proviso that a possible profit should be used in full to achieve the purpose of the company within the framework of being a non-profit company.

ScanCam AS (the subsidiary renting cameras) was given a tax exemption from 1998–2001 on the same grounds.

As a result of the favourable tax regime, the State renounced tax revenue which it would normally have received from the undertakings concerned. The absence of these funds represented a burden on state resources corresponding to charges that are normally borne from the budgets of the undertakings concerned⁽⁸⁾.

The fact that the assessment was carried out by the local tax authorities does not have any effect on the finding that state resources were involved⁽⁹⁾.

1.2. Favouring certain undertakings or the production of certain goods

1.2.1. Payment of the NOK 36 million grant

Firstly, the measure must have conferred on Norsk FilmStudio AS/Filmparken AS advantages that relieved them of charges that are normally borne from their budget. The grant of NOK 36 million gave the beneficiaries a financial benefit they would not have enjoyed in the normal course of business. It thus strengthened the financial position of Norsk FilmStudio AS/Filmparken AS compared with the other undertakings active in the production of films within the EEA.

Secondly, the aid measure must be selective in that it favours “certain undertakings or the production of certain goods”.

The Authority considers the payment of the amount of NOK 36 million for the upgrading of the studio facilities to have been selective as the beneficiary was expressly designated.

1.2.2. Preferential tax regime

Some of the companies of the Norsk Film group were exempted from payment of the normally applicable corporate tax and thus relieved from charges normally borne from a company’s budget. They would not have enjoyed this advantage in the normal course of business.

However, the Authority recognises that the European Court of Justice and the EFTA Court have consistently held that measures granting advantages to certain recipients are not selective if they can be justified by the nature and general scheme of the system of which they are part.

Furthermore, the Authority’s Guidelines on the application of state aid rules to measures relating to direct business taxation provide specifically that “obviously, profit tax cannot be levied if no profit is earned. It may thus be justified by the nature of the tax system that non-profit-making undertakings, for example foundations or associations, are specifically exempt from the taxes on profits if they cannot actually earn any profits.”

The Authority did not in its Decision No 491/09/COL, challenge the fact that the preferential tax regime may as such be justified by the nature and logic of the system. It had doubts concerning the application of the regime to the undertakings in question. These undertakings were granted an exemption from the corporate tax in application of Section 26, first paragraph, *litra k*, of the former Tax Act of 18 August 1911 No 8, replaced by the Tax Act of 26 March 1999, No 14. Upon application, this regime provides exemption from corporate tax to organisations which fulfil certain criteria, mainly related to their non-profit purpose.

According to the information provided by the Norwegian authorities, Norsk Film AS, Norsk FilmStudio AS and ScanCam AS were granted a tax exemption based on the fact that the purpose of the companies was non-profit. The Authority, in

⁽⁸⁾ Case C-156/98 *Germany v Commission* [2000] ECR I-6857, paragraph 26.

⁽⁹⁾ Case C 248/84 *Germany v Commission* [1987] ECR I-4013, paragraph 17.

its assessment, cannot substitute itself for the Norwegian local tax authorities. On the basis of the information it has been provided with, the Authority does not consider that it has sufficient evidence that the preferential regime has been misapplied to the three undertakings and that therefore the measure can be said to be of a selective nature.

The Authority for that reason cannot conclude that the application of the preferential tax treatment to Norsk FilmStudio AS/Filmparken AS/ScanCam AS based on the criteria originally established in the Tax Act 1911 entails any state aid.

1.3. *Distortion of competition and effect on trade between Contracting Parties*

State aid to specific undertakings is regarded as distorting competition and affecting trade between the Contracting Parties if the recipient carries out an economic activity involving trade between the Contracting Parties. Cinema films may be produced in alternative locations within the EEA. They are subsequently traded between the Contracting Parties to the EEA Agreement. Support to an undertaking producing feature films and providing studio services may therefore alter the competition existing between different locations for the realisation of films. Thus the measure under scrutiny may be considered as distorting competition and affecting trade between the Contracting Parties.

1.4. *Conclusion*

On the basis of the elements reviewed above, the Authority concludes that the payment of NOK 36 million constituted state aid and that the grant of the favourable tax treatment to Norsk FilmStudio AS/Filmparken AS/ScanCam AS did not entail any state aid.

The Authority will therefore only analyse the payment of the grant of NOK 36 million in the following.

2. **Procedure**

The procedure for new aid is laid down in Article 1(3) in Part I of Protocol 3. If the Authority is in doubt about the compatibility of such an aid measure, it shall open the formal investigation procedure provided for in Article 1(2) in Part I of Protocol 3 and in Article 4(4) of Part II of Protocol 3.

A separate procedure for existing aid is laid down in Article 1(1) in Part I of Protocol 3. Pursuant to that provision, the Authority shall, in cooperation with the EFTA States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the EEA Agreement.

Any assessment made in a decision to open the formal investigation procedure as to whether a potential aid measure constitutes new or existing aid is necessarily only of a preliminary nature. Even if the Authority, based on the information provided at the time, decided to open a formal investigation procedure on the basis of Article 1(3) and (2) of Part I of Protocol 3, it can still, in the decision concluding that procedure, find that the measure in fact constitutes existing aid⁽¹⁰⁾. Where existing aid is involved, the Authority must follow the procedure for existing aid⁽¹¹⁾. Accordingly, in such a case, the Authority would have to close the formal investigation procedure and, as the case may be, open the procedure for existing aid laid down in Articles 17–19 in Part II of Protocol 3⁽¹²⁾.

The information presented to the Authority at the time when it decided to initiate the formal investigation procedure was not such as to justify the provisional conclusion of any aid involved being existing aid, and the Authority therefore dealt with these measures in the framework of the rules pertaining to new aid.

The Authority will conclude on the existence and compatibility of new aid measures under the formal investigation procedure. If existing aid is involved, as the two measures under investigation have now ended, it will close the formal investigation procedure without opening the procedure for existing aid as such procedure would be without object.

3. **Payment of the grant of NOK 36 million – existing aid**

Pursuant to Article 1(b)(i) of Part II of Protocol 3, existing aid is: “all aid which existed prior to the entry into force of the EEA Agreement in the respective EFTA States, that is to say, aid schemes and individual aid which were put into effect before, and are still applicable after, the entry into force of the EEA Agreement”. Alterations to such aid represent new aid according to Article 1(c).

The Norwegian authorities have submitted additional information in the context of their comments to Decision No 491/09/COL (see Section 4.1.2 above).

The Authority, as indicated in Decision No 491/09/COL, considers that the yearly payments made by the Norwegian State since the 1970s to Norsk FilmStudio AS/Filmparken AS for the production of feature films and to maintain the infrastructure necessary for the production of films were based on an existing system of aid.

⁽¹⁰⁾ Case C-400/99 *Italy v Commission* [2005] ECR I-3657, paragraphs 47, 54-55.

⁽¹¹⁾ Case T-190/00 *Regione Siciliana v Commission* [2003] ECR II-5015, paragraph 48.

⁽¹²⁾ Case C-312/90 *Spain v Commission* [1992] ECR I-4117, paragraphs 14-17 and Case C-47/91 *Italy v Commission* [1992] ECR I-4145, paragraphs 22-25.

The Authority considers that the payment of the NOK 36 million was made in the context of the existing system of aid.

Firstly, it appears that yearly grants made over the years had always included an investment aid part and an operating aid part⁽¹³⁾. Thus, the Norwegian authorities have indicated that the upgrading and modernisation process had already started and had until 1998–1999 been estimated to amount to NOK 13 million covered by the yearly grants. The Norwegian authorities provided extracts from budget proposals revealing that several considerable amounts had been allocated to Norsk Film AS for upgrading and modernising the infrastructure necessary to produce films⁽¹⁴⁾. The fact that the specific grant had been earmarked for the renovation works of the jar site should not therefore be held to constitute an alteration to the existing aid system.

Secondly, the fact that the payment of the grant had been made from a different budget than that used for the yearly grants is irrelevant under the circumstances of the present case. Indeed, this resulted from a purely budgetary technique and was the result of a new way to organise the budget.

Finally, the fact that the amount of the grant was much higher than the yearly payments had been is not an indication that the grant amounts to new aid. The European Court of Justice has held that: “the emergence of new aid or the alteration of existing aid cannot be assessed according to the scale of the aid or, in particular, its amount in financial terms at any moment in the life of the undertaking if the aid is provided under earlier statutory provisions which remain unaltered.”⁽¹⁵⁾.

The Authority therefore concludes in the light of the above that the payment of NOK 36 million was part of an existing system of aid which was terminated in 2006.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority considers that the grant of NOK 36 million was part of an existing system of aid. The formal investigation procedure applicable to new aid is therefore closed.

Article 2

The EFTA Surveillance Authority considers that the application of the preferential tax treatment to Norsk Film AS, Norsk Film-Studio AS and ScanCam AS does not constitute state aid within the meaning of Article 61(1) EEA.

Article 3

This Decision is addressed to the Kingdom of Norway.

Article 4

Only the English language version of this Decision is authentic.

Done at Brussels, 29 June 2011.

For the EFTA Surveillance Authority

Per SANDERUD
President

Sabine MONAUNI-TÖMÖRDY
College Member

⁽¹³⁾ See Comments from the Norwegian authorities on the decision of the EFTA Surveillance Authority to open a formal investigation procedure in Case No 67377 – Alleged state aid to companies belonging to the Norsk Film group (Event No 545244).

⁽¹⁴⁾ See St.prp. Nr. 1 (1976–77): NOK 1 313 000, St.prp. nr. 1 (1977–78): NOK 4 million, St.prp. nr. 1 (1978–79): NOK 3,9 million.

⁽¹⁵⁾ Case C-44/93 *Namur-Les-Assurances du Credit SA v Office National du Ducroire and the Belgian State* [1994] ECR I-3829, para. 28.