Diario Oficial de la Unión Europea

C 40

Edición en lengua española

Comunicaciones e informaciones

63.º año

6 de febrero de 2020

Sumario

IV *Información*

INFORMACIÓN PROCEDENTE DE LAS INSTITUCIONES, ÓRGANOS Y ORGANISMOS DE LA UNIÓN EUROPEA

Comisión Europea

2020/C 40/01 Tipo de cambio del euro — 5 de febrero de 2020 1

INFORMACIÓN RELATIVA AL ESPACIO ECONÓMICO EUROPEO

Órgano de Vigilancia de la AELC

2020/C 40/02 Decisión n.º 085/19/COL, de 4 de diciembre de 2019, relativa a la apertura de una investigación formal sobre una posible ayuda estatal concedida a Remiks Group en relación con servicios de tratamiento de residuos (Asunto 84370) Invitación a presentar observaciones con arreglo al artículo 1, apartado 2, de la parte I del protocolo 3 del Acuerdo entre los Estados de la AELC por el que se instituyen un Órgano de Vigilancia y un Tribunal de Justicia en el ámbito de las ayudas estatales 2

2020/C 40/03 Decisión n.º 86/19/COL, el 5 de diciembre de 2019, por la que se abre una investigación formal sobre la presunta ayuda estatal concedida a Gagnaveita Reykjavíkur Invitación a presentar observaciones con arreglo al artículo 1, apartado 2, de la parte I del protocolo 3 del Acuerdo entre los Estados de la AELC por el que se instituyen un Órgano de Vigilancia y un Tribunal de Justicia en el ámbito de las ayudas estatales 16

V *Anuncios*

PROCEDIMIENTOS JURISDICCIONALES

Tribunal de la AELC

2020/C 40/04 Tribunal de la Aelc Sentencia del Tribunal de Justicia de 13 de noviembre de 2019 en el asunto E-2/19 ... 33

ES

PROCEDIMIENTOS RELATIVOS A LA APLICACIÓN DE LA POLÍTICA COMERCIAL COMÚN

Comisión Europea

2020/C 40/05 Anuncio de expiración inminente de determinadas medidas antidumping 34

PROCEDIMIENTOS RELATIVOS A LA APLICACIÓN DE LA POLÍTICA DE COMPETENCIA

Comisión Europea

2020/C 40/06 Notificación previa de una concentración (Asunto M.9714 — Viacom/beIN/Miramax) Asunto que podría ser tramitado conforme al procedimiento simplificado ([1]) 35

2020/C 40/07 Notificación previa de una concentración (Asunto M.9719 — Fairfax Financial Holdings Limited/OMERS Administration Corporation/Riverstone Barbados Limited) Asunto que podría ser tramitado conforme al procedimiento simplificado ([2]) 37

OTROS ACTOS

Comisión Europea

2020/C 40/08 Publicación de una comunicación relativa a la aprobación de una modificación normal del pliego de condiciones de una denominación del sector vitivinícola, tal como se menciona en el artículo 17, apartados 2 y 3, del Reglamento Delegado (UE) 2019/33 de la Comisión. 38

2020/C 40/09 Anuncio dirigido a las empresas que tengan la intención de comercializar hidrofluorocarburos a granel en la Unión Europea en 2021 47

([2]) Texto pertinente a efectos del EEE.

IV

(Información)

INFORMACIÓN PROCEDENTE DE LAS INSTITUCIONES, ÓRGANOS Y ORGANISMOS DE LA UNIÓN EUROPEA

COMISIÓN EUROPEA

Tipo de cambio del euro [1]

5 de febrero de 2020

(2020/C 40/01)

1 euro =

	Moneda	Tipo de cambio		Moneda	Tipo de cambio
USD	dólar estadounidense	1,1023	CAD	dólar canadiense	1,4644
JPY	yen japonés	120,94	HKD	dólar de Hong Kong	8,5572
DKK	corona danesa	7,4728	NZD	dólar neozelandés	1,7006
GBP	libra esterlina	0,84444	SGD	dólar de Singapur	1,5202
SEK	corona sueca	10,5450	KRW	won de Corea del Sur	1 302,97
CHF	franco suizo	1,0717	ZAR	rand sudafricano	16,2246
ISK	corona islandesa	138,10	CNY	yuan renminbi	7,6858
NOK	corona noruega	10,1173	HRK	kuna croata	7,4568
BGN	leva búlgara	1,9558	IDR	rupia indonesia	15 036,47
CZK	corona checa	25,055	MYR	ringit malayo	4,5382
HUF	forinto húngaro	335,76	PHP	peso filipino	55,961
PLN	esloti polaco	4,2491	RUB	rublo ruso	69,0320
RON	leu rumano	4,7734	THB	bat tailandés	34,133
TRY	lira turca	6,5975	BRL	real brasileño	4,6614
AUD	dólar australiano	1,6299	MXN	peso mexicano	20,4923
			INR	rupia india	78,4330

[1] *Fuente*: tipo de cambio de referencia publicado por el Banco Central Europeo.

INFORMACIÓN RELATIVA AL ESPACIO ECONÓMICO EUROPEO

ÓRGANO DE VIGILANCIA DE LA AELC

Decisión n.º 085/19/COL, de 4 de diciembre de 2019, relativa a la apertura de una investigación formal sobre una posible ayuda estatal concedida a Remiks Group en relación con servicios de tratamiento de residuos (Asunto 84370)

Invitación a presentar observaciones con arreglo al artículo 1, apartado 2, de la parte I del protocolo 3 del Acuerdo entre los Estados de la AELC por el que se instituyen un Órgano de Vigilancia y un Tribunal de Justicia en el ámbito de las ayudas estatales

(2020/C 40/02)

Por medio de la Decisión citada, reproducida en la versión lingüística auténtica en las páginas siguientes al presente resumen, el Órgano de Vigilancia de la AELC notificó a las autoridades noruegas su decisión de incoar un procedimiento de conformidad con el artículo 1, apartado 2, de la parte I del protocolo 3 del Acuerdo entre los Estados de la AELC por el que se instituyen un Órgano de Vigilancia y un Tribunal de Justicia en relación con la medida mencionada.

Órgano de Vigilancia de la AELC
Registro
Rue Belliard 35
1040 Bruxelles/Brussel
BELGIQUE/BELGIË
registry@eftasurv.int

Dichas observaciones serán comunicadas a las autoridades noruegas. La identidad de las partes interesadas que presenten observaciones podrá tratarse de modo confidencial, previa solicitud por escrito aduciendo las razones para ello.

Resumen

Procedimiento

(1) El Órgano de Vigilancia recibió una denuncia de la organización comercial Norsk Industri el 16 de agosto de 2016.

(2) A raíz de los requerimientos enviados, el Órgano recibió información de las autoridades noruegas el 5 de octubre de 2016, el 28 de febrero, 20 de marzo, 22 de agosto, 31 de octubre y 20 de noviembre de 2017 y el 5 de marzo de 2018.

Descripción de las medidas

(3) Los supuestos beneficiarios de la ayuda son Remiks Miljøpark AS, Remiks Næring AS y Remiks Produksjon AS.

(4) Remiks Miljøpark AS es propiedad al 99,99 % del municipio de Tromsø. Remiks Miljøpark AS posee el 100 % de Remiks Næring AS y de Remiks Produksjon AS.

(5) Remiks Miljøpark AS también posee el 100 % de Remiks Husholdning AS. No obstante, esta empresa realiza exclusivamente servicios para el municipio de Tromsø y no es activa en el mercado. Las compras de Remiks Husholdning AS son imputables al municipio.

(6) Desde el principio de 2010 y hasta el 1 de febrero de 2017, el municipio de Tromsø contrató servicios de recogida de residuos a Remiks Næring AS, para sus propios residuos industriales.

(7) Desde el principio de 2010 y hasta la fecha, y en virtud de su control indirecto, el municipio de Tromsø ha dado instrucciones a Remiks Husholdning AS para recoger los residuos domésticos en el municipio de Tromsø. A partir del 1 de febrero y hasta la fecha, el municipio de Tromsø ha dado instrucciones a Remiks Husholdning AS para recoger también los residuos industriales del propio municipio de Tromsø. Remiks Husholdning AS realiza estos servicios en nombre del municipio sobre la base del coste de capital, lo que significa que el servicio se compensa con arreglo a la totalidad de los costes, sin incluir los beneficios. Remiks Husholdning AS recoge los residuos, pero contrata los necesarios servicios de tratamiento de residuos a su empresa hermana, Remiks Produksjon AS.

(8) En 2010 y 2012, en relación con la creación de Remiks Group, el municipio de Tromsø transfirió el capital, la deuda y los bienes muebles e inmuebles a la sociedad matriz Remiks Miljøpark AS.

(9) La Decisión se refiere a tres medidas: i) la contratación por el municipio de Tromsø de servicios de recogida de residuos a Remiks Næring AS, ii) la contratación por Remiks Husholdning AS de servicios de tratamiento de residuos a Remiks Produksjon AS, y iii) las transacciones entre el municipio de Tromsø y Remiks Group en 2010 y 2012.

Evaluación de las medidas

(10) En el caso de las medidas i) y ii), el Órgano de Vigilancia tiene dudas sobre si el municipio de Tromsø y Remiks Husholdning AS, respectivamente, han pagado el precio de mercado por los servicios adquiridos. Por lo que se refiere a la medida iii), el Órgano tiene dudas sobre si las transacciones entre el municipio de Tromsø y Remiks Group tuvieron lugar en condiciones de mercado, en consonancia con el principio del operador privado en una economía de mercado.

(11) Si las medidas constituyen ayuda estatal, no se ha respetado la obligación, enunciada en el artículo 1, apartado 3, de la parte I del protocolo 3 del Acuerdo entre los Estados de la AELC por el que se instituyen un Órgano de Vigilancia y un Tribunal de Justicia, de informar al Órgano de Vigilancia antes de ejecutarlas. Por ello, dicha ayuda estatal sería ilegal.

(12) Las autoridades noruegas no han aportado argumentos que confirmen que las medidas, en la medida en que constituyen ayuda estatal, puedan considerarse compatibles con el funcionamiento del Acuerdo del EEE. Por consiguiente, el Órgano tiene dudas acerca de la compatibilidad de las tres medidas.

Decision No 085/19/COL of 4 December 2019 to open a formal investigation into potential state aid granted to the Remiks Group related to waste handling services

1. **Summary**

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

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

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

2. **Procedure**

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

([1]) Reference is made to Article 4(4) of Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

([2]) Case No 78085.

([3]) Document No 814858.

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

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

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

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

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

3. Background

3.1 *Historical development*

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

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

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

([4]) Document No 821154.
([5]) Document No 840687.
([6]) Document No 844198.
([7]) Document No 848555.
([8]) Document No 854974.
([9]) Document No 862433.
([10]) Document No 870978.
([11]) Document No 870978.
([12]) Documents No 880582 and 884931.
([13]) Document No 882703.
([14]) Document No 901145.
([15]) Documents No 831575, 873959, 882172, 896066, 895954 and 914528.
([16]) *Forurensningsloven*, LOV-1981-03-13-6.
([17]) Attachments 2, 3 and 4b to letter dated 3.5.18, Documents No 901215, 901211 and 901203; Tromsø municipality's letter dated 31 de octubre de 2017, Document No 880582, and Attachment 7 to the letter, Document No 880592.
([18]) Preparatory papers from Tromsø municipality's administration to the municipality council, Attachment 2 to letter dated 5.3.18, Document No 901215.
([19]) A municipal enterprise (in Norwegian: *kommunalt foretak*, shortened KF) is an administrative branch of the central municipality, and not a separate legal entity. Municipal enterprises are regulated by the Local Government Act chapter 11.
([20]) Tromsø municipality's letter, dated 31 de octubre de 2017, Document No 880582, and Attachments 6 and 7 to the letter, Documents No 880590 and 880592.
([21]) Letter from Tromsø municipality, dated 5 de marzo de 2018, Document No 901145, and Attachment 4 to the letter, Document No 901219, and Tromsø municipality's letter dated 31 de octubre de 2017, Document No 880582 and Attachment 7 to the letter, Document No 880592.

3.2 ***Transactions involving the Remiks Group in 2010 and 2012***

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

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

3.3 ***The current company structure***

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

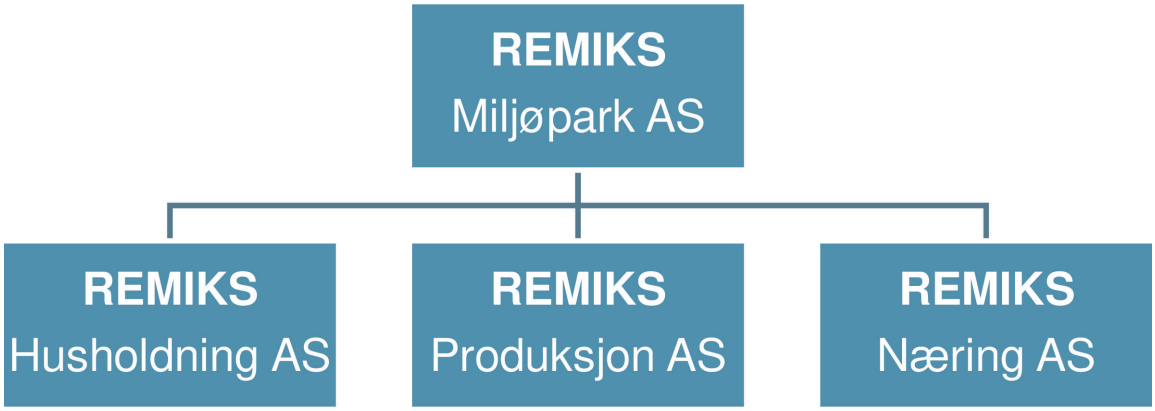
— Remiks Miljøpark AS is the parent company in the Remiks Group. It is owned 99,99 % by Tromsø municipality and 0,01 % by Karlsøy municipality ([28]). It provides services and rents out property to its subsidiaries.

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

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

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

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



3.4 ***Household waste***

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

([22]) Attachment 8a to Tromsø municipality's letter dated 5 de marzo de 2018, Document No 901189. The transfers were decided on in 2010, but backdated to the establishment of Remiks Miljøpark AS in 2009.
([23]) Attachments 4, 4c and 8a to Tromsø municipality's letter dated 5 de marzo de 2018, Documents No 901219, 901205 and 901189.
([24]) Letter from Tromsø municipality, dated 5 de marzo de 2018, Document No 901145, and attachments 8, 8b, 8c, 8d and 9 to the letter, Documents No 901183, 901181, 901177, 901179 and 901175.
([25]) In Norwegian: *saksfremlegg*.
([26]) Attachment 9 to the letter from Tromsø municipality, dated 5 de marzo de 2018, Document No 901175.
([27]) Based on information obtained at www.purehelp.no 21 de noviembre de 2019.
([28]) The 0,01 % ownership by Karlsøy municipality seems to be related to intentions that Tromsø and Karlsøy would cooperate on waste handling, but this seems not to have materialised. See letter from Tromsø municipality, dated 5 de marzo de 2018, Document No 901145.

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

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

3.5 ***Industrial waste***

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

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

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

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

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

(25) Remiks Husholdning foresaw a total price for the services in 2017 of approximately NOK 8,2 million. This was NOK 3,2 million less than the combined total price all the individual municipal units paid to Remiks Næring in 2016 ([39]).

([29]) This means that any private operator needs an explicit permission from the municipality, in order to provide the service.

([30]) The Pollution Control Act, section 34. The fees can be secured through a statutory charge pursuant to the Mortgage Act (*panteloven*, LOV-1980-02-08-2).

([31]) The Waste Regulation (*avsfallsforskriften*, FOR-2004-06-01-930), chapter 15.

([32]) The Pollution Control Act, section 32, first paragraph.

([33]) Letter from Tromsø municipality, dated 5 de marzo de 2018, Document No 901145.

([34]) Letter from Tromsø municipality, dated 5 de marzo de 2018, Document No 901145.

([35]) Letter from Tromsø municipality, dated 5 de marzo de 2018, Document No 901145.

([36]) Letter from Tromsø municipality, dated 5 de marzo de 2018, Document No 901145.

([37]) Letter from Tromsø municipality, dated 5 de marzo de 2018, Document No 901145, and letter of 31 de octubre de 2017, Document No 880582.

([38]) Letter from Tromsø municipality, dated 5 de marzo de 2018, Document No 901145, and attachment 16 to the letter, Document No 901161.

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

4. Measures covered by the complaint

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

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

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

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

5. Presence of state aid

5.1 *Introduction*

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

«Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties be incompatible with the functioning of this Agreement.»

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

5.2 *Presence of state resources*

5.2.1 *Introduction*

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

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

5.2.2 *Tromsø municipality's purchase of industrial waste collection services*

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

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

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

([40]) See the Authority's Guidelines on the notion of state aid («NoA») (OJ L 342, 21.12.2017, p. 35), and EEA Supplement No 82, 21 de diciembre de 2017, p. 1, para. 48.

([41]) NoA, para. 51.

([42]) See NoA, para. 58; Decision No 306/09/COL of 8 de julio de 2009 on the Norwegian Broadcasting Corporation, section 1.2.1, and judgment in *Italy* v *Commission*, 173/73, EU:C:1974:71, para. 16.

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

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

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

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

5.2.4 *The transactions involving the Remiks Group in 2010 and 2012*

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

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

5.3 ***Undertaking***

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

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

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

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

([43]) The fifth paragraph of section 34 of the Pollution Control Act.
([44]) Decision No 91/13/COL of 27 de febrero de 2013, on the financing of municipal waste collectors, para. 26.
([45]) Judgment in *France* v *Commission*, C-482/99, EU:C:2002:294, para. 52.
([46]) Letter from Tromsø municipality, dated 5 de marzo de 2018, Document No 901145.
([47]) Letter from Tromsø municipality, dated 5 de marzo de 2018, Document No 901145. See also NoA, para. 43.
([48]) NoA, para. 52.
([49]) Judgment in *Congregación de Escuelas Pías Provincia Betania*, C-74/16, EU:C:2017:496, para. 42.
([50]) NoA, section 2.1.
([51]) Judgment in *Havenbedrijf Antwerpen and Maatschappij van de Brugse Zeehaven* v *Commission*, T-696/17, EU:T:2019:652, para. 56.
([52]) Case E-29/15 *Sorpa* [2016] EFTA Ct. Rep. 825, paras 51–64.

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

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

5.4 ***Advantage***

5.4.1 *Introduction*

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

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

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

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

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

5.4.2.1 Introduction

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

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

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

([53]) NoA, para. 11.
([54]) Judgment in *AceaElectrabel Produzione* v *Commission*, C-480/09 P, EU:C:2010:787, para. 49.
([55]) NoA, para. 11.
([56]) NoA, para. 66.
([57]) NoA, para. 68.
([58]) Judgment in *SFEI and others*, EU:C:1996:285, C-39/94, paras 60–62.
([59]) NoA, para. 76.
([60]) NoA, para. 101.
([61]) NoA, para. 79.
([62]) NoA, para. 78.
([63]) NoA, paras 98–100.
([64]) NoA, paras 101–105.

5.4.2.2 Benchmarking

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

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

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

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

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

5.4.2.3 Negotiating a better price

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

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

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

5.4.2.4 Increase in remuneration during the contract period

(63) The complainant further points out that the total compensation paid to Remiks Næring for the relevant services increased from NOK 7,7 million in 2010 to NOK 11,4 million in 2016, so almost 50 % over six years.

([65]) The Complaint, dated 15 de agosto de 2016, Document No 814858, and Annexes IV–VII to the complaint, Documents No 818909–818911.
([66]) Letter from Remiks Group, dated 30 de octubre de 2017, Document No 880602.
([67]) See also the Authority's letter dated 24 de mayo de 2017, Document No 854974.
([68]) Letter from the complainant, dated 15 de diciembre de 2016, Document No 831575.
([69]) NoA, para. 66.
([70]) NoA, para. 98.
([71]) Letter from Remiks Næring, dated 29 de septiembre de 2016, Document No 821156.

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

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

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

(66) As of 1 February 2017, Tromsø municipality terminated the agreement with Remiks Næring, and instructed Remiks Husholdning to collect the municipal industrial waste on an in-house basis, at a price not exceeding the costs (self-cost). Remiks Husholdning estimated budget for 2017 was NOK 8,2 million, which is NOK 3,2 million less than the NOK 11,4 million that Remiks Næring received for the services in 2016.

(67) The complainant argues that, provided the costs for the waste collection services were the same in 2016 and 2017, Remiks Næring would have had a profit of NOK 3,2 million for the services it provided in 2016. This would entail a margin on these services of 30 %, which is considerably higher than the market standard, which the complainant estimates at 0–8 % ([73]).

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

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

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

5.4.2.6 Conclusion

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

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

([72]) Letter from Tromsø Municipality, dated 5 de marzo de 2018, Document No 901145.
([73]) Letter from the complainant, dated 13 de noviembre de 2017, Document No 882862.
([74]) Further explained in section 7.4.2.2.

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

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

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

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

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

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

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

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

5.4.4 *Transactions to the Remiks Group in 2010 and 2012*

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

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

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

([75]) Letter from Tromsø municipality, dated 5.3.18, Document No 901145.
([76]) *Lov om aksjeselskaper*, LOV-1997-06-13-44.
([77]) NoA, para. 74.
([78]) Attachment 8a to letter dated 5 de marzo de 2018, Document No 901189.
([79]) Attachments 4, 4a, 4b and 4c to the letter from Tromsø municipality dated 5 de marzo de 2018, Documents No 901219, 901213, 901203 and 901205.
([80]) Attachment 9 to letter dated 5 de marzo de 2018, Document No 901175.
([81]) The same assessment is included in the preparatory paper in relation to the 2010 transfer, Attachment 4 to the letter from Tromsø municipality dated 5 de marzo de 2018, Document No 901219.
([82]) Attachments 8, 8b, 8c, 8d to letter dated 5.3.18, Documents No 901183, 901181, 901177 and 901197.

(83) The complainant further argues that the 9 % level of return set in 2012 was determined based on only 40 % of the Remiks Group's turnover originating from the group's commercial activities (Remiks Næring and Remiks Produksjon). According to the complainant, the division between commercial and non- commercial activity shifted, and in 2016, 58 % of the turnover was linked to the commercial activities in Remiks Næring and Remiks Produksjon ([83]). Allegedly, as the conditions for setting the relevant rate of return changed, Tromsø municipality should have adjusted the level of return ([84]).

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

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

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

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

5.5 ***Selectivity***

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

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

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

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

5.6 ***Effect on trade and distortion of competition***

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

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

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

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

([83]) Note that some of the revenues in Remiks Produksjon stem from treating household waste from Remiks Husholdning. The complainant has not explained whether or how this affects the calculations.
([84]) The complainant's letter dated 22 de mayo de 2018, Document No 914528.
([85]) Judgment in *Commission* v *EDF*, C-124/10 P, EU:C:2012:318, paras 83–85 and 105; judgment in *France* v *Commission*, C-482/99, EU:C:2002:294, paras 71–72.
([86]) NoA, para. 187.
([87]) NoA, para. 189.

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

(97) The Authority has previously found that public support to waste collection services in Norway is liable to distort competition and affect trade between EEA States ([89]). Waste collection and treatment is increasingly an international industry. In 2017, Norway exported 1,7 million tons of waste ([90]). The practice of tendering out waste services also means that undertakings from other EEA States can compete for waste handling contracts in other municipalities ([91]).

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

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

5.7 *Conclusion*

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

6. Procedural requirements

(101) Pursuant to Article 1(3) of Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice («Protocol 3»): «The EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. […] The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision.»

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

7. Compatibility of the aid measure

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

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

8. Conclusion

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

(106) Consequently, and in accordance Article 4(4) of Part II of Protocol 3, the Authority hereby opens the formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3. The decision to open a formal investigation procedure is without prejudice to the final decision of the Authority, which may conclude that the measures do not constitute state aid, or are compatible with the functioning of the EEA Agreement.

([88]) Judgment in *Eventech*, C-518/13, EU:C:2015:9, para. 66.

([89]) Decision No 91/13/COL of 27 de febrero de 2013, on the financing of municipal waste collectors, para. 41.

([90]) Report from the Nordic Competition Authorities, Competition in the waste management sector, section 3.2.4: https://konkurransetilsynet.no/wp-content/uploads/2018/08/Nordic-Report-2016-Waste-Management-Sector.pdf

([91]) Judgment in *Altmark*, C-280/00, EU:C:2003:415, paras 78–79.

([92]) Preparatory paper 29 de abril de 2009, attachment 2 to letter dated 5 de marzo de 2018, Document 901215. The Authority's office translation.

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

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

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

For the EFTA Surveillance Authority

Bente ANGELL-HANSEN	Frank J. BÜCHEL	Högni KRISTJÁNSSON	Carsten ZATSCHLER
President	*College Member*	*College Member*	*Countersigning as Director,*
Responsible College Member			*Legal and Executive Affairs*

([93]) OJ L 154, 8.6.2006, p. 27 and EEA Supplement No 29, 8 de junio de 2006, p. 1.

Decisión n.º 86/19/COL, el 5 de diciembre de 2019, por la que se abre una investigación formal sobre la presunta ayuda estatal concedida a Gagnaveita Reykjavíkur

Invitación a presentar observaciones con arreglo al artículo 1, apartado 2, de la parte I del protocolo 3 del Acuerdo entre los Estados de la AELC por el que se instituyen un Órgano de Vigilancia y un Tribunal de Justicia en el ámbito de las ayudas estatales

(2020/C 40/03)

Por medio de la Decisión citada, reproducida en la versión lingüística auténtica en las páginas siguientes al presente resumen, el Órgano de Vigilancia de la AELC notificó a las autoridades islandesas su decisión de incoar un procedimiento de conformidad con el artículo 1, apartado 2, de la parte I del protocolo 3 del Acuerdo entre los Estados de la AELC por el que se instituyen un Órgano de Vigilancia y un Tribunal de Justicia en relación con la medida mencionada.

Las partes interesadas podrán presentar sus observaciones sobre la medida en cuestión en el plazo de un mes a partir de la fecha de publicación enviándolas a la siguiente dirección:

Órgano de Vigilancia de la AELC
Registro
Rue Belliard 35
1040 Bruxelles/Brussel
BELGIQUE/BELGIË
registry@eftasurv.int

Las observaciones se comunicarán a las autoridades islandesas. La identidad de las partes interesadas que presentan observaciones podrá tratarse de modo confidencial, previa solicitud por escrito aduciendo las razones para ello.

Resumen

Procedimiento

El 26 de octubre de 2016, el Órgano recibió una denuncia de la empresa islandesa de telecomunicaciones Síminn hf. relativa a la supuesta ayuda estatal concedida por Orkuveita Reykjavíkur (en lo sucesivo, «OR») a su filial Gagnaveita Reykjavíkur (en lo sucesivo, «GR»). El Órgano recibió información adicional y observaciones del denunciante mediante cartas y correos electrónicos de 23 de noviembre de 2016, 16 de enero y 28 de marzo de 2017, 1 de enero, 20 de abril y 21 de septiembre de 2018, y 26 de marzo y 13 de septiembre de 2019.

Tras haberla solicitado, el Órgano recibió información de las autoridades islandesas mediante cartas de 7 de febrero y 22 de junio de 2017, 25 de mayo de 2018 y 4 de junio de 2019.

Descripción de las medidas

La denuncia se refiere a las inversiones de OR en banda ancha a partir de 1999, cuando el predecesor de GR, Lina.net, fue creado, y hasta la actualidad. Sin embargo, la denuncia se refiere principalmente al período a partir del 1 de enero de 2007, tras la creación de GR y en particular a una presunta ayuda estatal concedida por OR a GR a través de diversos medios, tales como aportaciones de capital y préstamos que no se otorgaron en condiciones de mercado.

OR se creó el 1 de enero de 1999 como empresa pública cuando el ayuntamiento de Reikiavik decidió fusionar las operaciones de los servicios de electricidad y de calefacción propiedad de la ciudad. OR es propiedad de tres municipios islandeses: i) el ayuntamiento de Reikiavik (93,5 %), ii) el municipio de Akranes (5,5 %) y iii) el municipio de Borgarbyggð (1 %). El ayuntamiento de Reikiavik nombra a cinco miembros del consejo de administración de OR y uno es designado por el municipio de Akranes.

GR es una empresa de telecomunicaciones que se creó en 2007 como entidad jurídica independiente para cumplir los requisitos de la Administración de Correos y Telecomunicaciones de Islandia sobre la separación entre las operaciones competitivas y no competitivas de OR. GR es propiedad en su totalidad de OR. De acuerdo con sus estatutos, el objetivo de GR es la explotación de una red de telecomunicaciones y transmisión de datos.

GR es un operador registrado a efectos de la transmisión y el servicio de datos con arreglo a la Ley de comunicaciones electrónicas n.º 81/2003. El artículo 36 de dicha ley pretende garantizar que las operaciones de telecomunicaciones competitivas no se subvencionen con ingresos procedentes de operaciones protegidas por derechos exclusivos o por otros medios.

En virtud de dicho artículo 36, la Administración de Correos y Telecomunicaciones de Islandia garantiza que los ingresos procedentes de sectores no competitivos no subvencionen operaciones en el sector competitivo de las telecomunicaciones. Por lo tanto, la Administración de Correos y Telecomunicaciones de Islandia está encargada de examinar las inversiones de OR en el mercado de las telecomunicaciones y las relaciones comerciales entre GR y OR. Estas investigaciones pueden comenzar a iniciativa de dicha Administración o de denuncias de partes interesadas. GR también está obligada a notificar las medidas específicas a la Administración de Correos y Telecomunicaciones.

Entre 2006 y 2019, la Administración de Correos y Telecomunicaciones adoptó nueve decisiones formales relativas a la separación financiera entre OR y GR. Las investigaciones de dicha Administración incluyeron un análisis del plan de negocios de GR, que debe revisarse anualmente en función de los datos financieros reales. En su revisión, la Administración de Correos y Telecomunicaciones, por ejemplo, comprueba si la tasa de rendimiento para el inversor (OR) es conforme con la del mercado de las telecomunicaciones en general, y examina la estructura del capital y si los precios aplicados entre OR y GR lo son en condiciones de mercado.

En tres casos, la Administración de Correos y Telecomunicaciones constató infracciones concretas del artículo 36 de la Ley de comunicaciones electrónicas. En dos de ellos, la Administración ordenó la recuperación del importe de las medidas, y en el tercer caso no lo hizo.

Las autoridades islandesas mantienen que, en todas sus relaciones con GR, OR ha actuado de conformidad con el criterio del operador en una economía de mercado y que no se ha concedido ninguna ayuda a GR. A este respecto, subrayan que todas las medidas objeto de la denuncia relativas a las relaciones financieras entre OR y GR han sido evaluadas por la Administración de Correos y Telecomunicaciones con arreglo al artículo 36 de la Ley de comunicaciones electrónicas. Según las autoridades islandesas, la prueba realizada por la Administración de Correos y Telecomunicaciones es comparable al criterio aplicado por el Órgano a la hora de determinar si una medida se aplica en condiciones de mercado (es decir, la prueba del operador privado en una economía de mercado). Las autoridades islandesas también señalaron que el Órgano ya desestimó las alegaciones del denunciante en relación con las inversiones de OR en Lina.net en su Decisión n.º 300/11/COL, de 5 de octubre de 2011.

Evaluación de las medidas

Teniendo en cuenta, entre otros elementos, el estatuto jurídico de OR, el acuerdo de colaboración de la empresa y la composición de su consejo de administración, el Órgano no puede descartar que las medidas sean imputables al Estado y que supongan la transferencia de recursos estatales siempre y en la medida en que confieran ventajas a GR.

Por otra parte, aunque GR no vende sus propios servicios a través de su red de fibra óptica, ofrece un acceso neutral y abierto a todos los proveedores de telecomunicaciones interesados. El Órgano considera que la provisión de acceso a la red a un precio fijo para proveedores de servicios terceros constituye una actividad económica y que, por lo tanto, GR parece operar como una empresa en el sentido del artículo 61, apartado 1, del Acuerdo EEE.

La opinión preliminar del Órgano, considerando la práctica decisoria de la Administración de Correos y Telecomunicaciones islandesa con arreglo al artículo 36 de la Ley de comunicaciones electrónicas sobre la financiación de GR y el nivel de análisis que implica la evaluación de las distintas medidas, es que la prueba aplicada por dicha Administración con arreglo al artículo 36 garantiza, en general, que todas las transacciones realizadas entre GR y OR, u otras empresas vinculadas, se realizan en condiciones de mercado. El enfoque de la Administración de Correos y Telecomunicaciones puede no ser idéntico a la evaluación del principio del operador en una economía de mercado que llevaría a cabo el Órgano con arreglo a las normas sobre ayudas estatales del EEE, pero no obstante garantiza el mismo resultado, es decir, impide que las transacciones no se realicen en condiciones de mercado. Por lo tanto, en esta fase el Órgano opina preliminarmente que la Administración de Correos y Telecomunicaciones ofrece una evaluación equivalente a la evaluación del Órgano sobre un operador en una economía de mercado.

En los casos en que la Administración de Correos y Telecomunicaciones constata infracciones *a posteriori* del artículo 36 de la Ley de comunicaciones electrónicas, es decir, cuando comprueba que una determinada operación no se ha realizado en condiciones de mercado, tiene la facultad de ordenar a las partes que eliminen cualquier ventaja potencial mediante la adopción de las medidas pertinentes. Sin embargo, para que la Administración de Correos y Telecomunicaciones ordene la eliminación de una ventaja, la medida incompatible debe ser claramente definida e incontestable, por ejemplo, una suma monetaria concreta, una cláusula de un contrato de préstamo, etc. Por otra parte, cuando dicha Administración ha ordenado la eliminación de ventajas concedidas a GR, no ha exigido la recuperación con intereses de dichas ventajas.

En tres casos, la Administración de Correos y Telecomunicaciones constató infracciones concretas del artículo 36 de la Ley de comunicaciones electrónicas. En dos de ellos, ordenó la eliminación de las medidas y, en el tercero, no lo ordenó. El Órgano consideró que las medidas evaluadas por la Administración de Correos y Telecomunicaciones en esos casos habían conferido ventajas a GR que no habría obtenido en condiciones normales de mercado. Por otra parte, estas ventajas no fueron devueltas completamente por GR.

Por consiguiente, el Órgano de Vigilancia considera preliminarmente que GR ha obtenido una ventaja en el sentido del artículo 61, apartado 1, del Acuerdo EEE: i) al no pagar intereses en condiciones de mercado sobre una ventaja obtenida mediante una suspensión temporal del pago de intereses, ii) al recibir fondos indirectamente de OR para la instalación de una red de cable de fibra óptica en el municipio de Ölfus, iii) al recibir préstamos a corto plazo de OR, y iv) mediante la inclusión de una condición en los acuerdos de préstamo de GR con prestamistas privados en relación con la participación mayoritaria de OR en GR.

La opinión preliminar del Órgano es que estas medidas son selectivas, ya que son medidas individuales dirigidas solo a GR. Además, parece que las medidas podrían falsear la competencia y afectar al comercio en el EEE.

Si las medidas constituyen ayuda estatal, no se ha respetado la obligación, enunciada en el artículo 1, apartado 3, de la parte I del protocolo 3 del Acuerdo entre los Estados de la AELC por el que se instituyen un Órgano de Vigilancia y un Tribunal de Justicia, de informar al Órgano de Vigilancia antes de ejecutarlas. Tal ayuda estatal sería ilegal.

Las autoridades islandesas no han aducido argumentos que confirmen que las medidas, en la medida en que constituyan ayuda estatal, puedan considerarse compatibles con el funcionamiento del Acuerdo del EEE. Por consiguiente, el Órgano tiene dudas acerca de la compatibilidad de las cuatro medidas.

Decision No 86/19/COL of 5 December 2019 to open a formal investigation into alleged state aid granted to Gagnaveita Reykjavíkur

1 Summary

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

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

2 Procedure

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

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

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

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

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

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

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

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

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

2.1 ***The complainant - Síminn hf.***

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

2.2 ***Scope of the complaint***

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

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

2.3 ***Arguments brought forward by the complainant***

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

([11]) Document No 882024.
([12]) Document No 910552 and Annexes 1 and 2 (Document No 910554).
([13]) Document No 911001.
([14]) Document No 915072.
([15]) Document No 919903.
([16]) Document Nos 931137, 931138 and 931139.
([17]) Document No 1060941.
([18]) Document No 1066345.
([19]) Document No 1073306 and Annexes 1–5 (Document Nos 1073308, 1073310, 1073312, 1073314 and 1073316).
([20]) Document No 1087462 and Annexes 1–5 (Document Nos 1087456–1087460).
([21]) Earnings before interest, tax, depreciation and amortization (EBITDA) is a measure of a company's operating performance.

(15) According to the complainant, a major part of the alleged unlawful state aid has been in the form of interest rates for loans granted by OR to GR, which have not corresponded to market terms. Furthermore, after the majority of GR's loans were gradually replaced by loans financed by private lenders (with full replacement at the end of 2017), the interest rates have continued to not correspond to normal market conditions, as OR has provided lenders with a guarantee that it would maintain its majority ownership of GR. The complainant considers that this must be considered as state aid that is incompatible with the functioning of the EEA Agreement.

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

3 **Description of the measures**

3.1 ***Background***

3.1.1 *OR – Orkuveita Reykjavíkur*

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

(18) On 1 December 2001, OR merged with a utility company owned by several small municipalities in the western part of Iceland. After the merger, the City of Reykjavík owns 93,5 % of the company, the municipality of Akranes owns 5,5 % and the municipality of Borgarbyggð 1 %. Five members of the board of directors are appointed by the City Council of Reykjavík and one is appointed by the Municipality Council of Akranes ([22]). OR currently operates as a public partnership company, *sameignarfélag* ([23]), on the basis of Act No 136/2013 on OR ([24]) and Regulation No 297/2006 ([25]).

3.1.2 *GR – Gagnaveita Reykjavíkur*

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

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

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

([22]) https://www.or.is/um-or/skipulag-og-stjornhaettir/stjorn/.
([23]) https://www.rsk.is/fyrirtaekjaskra/leit/kennitala/5512983029.
([24]) https://www.althingi.is/lagas/nuna/2013136.html.
([25]) https://www.reglugerd.is/reglugerdir/allar/nr/297-2006.
([26]) OJ C 10, 12.1.2012, p. 6 and EEA Supplement No 2, 12 de enero de 2012, p. 4.

3.2 **National legal basis**

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

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

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

3.3 **The PTA's monitoring role**

3.3.1 *General*

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

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

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

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

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

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

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

([29]) Ibid.

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

([31]) PTA Decision No 14/2010 of 21 de mayo de 2010.

([32]) PTA Decision No 20/2013 of 10 de octubre de 2013.

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

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

([35]) PTA Decision of 13 de noviembre de 2006, p. 1.

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

3.3.3 *The establishment and financing of GR as a separate legal entity*

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

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

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

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

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

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

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

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

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

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

([36]) Attachments contained in Document No 862628.
([37]) PTA Decision of 13 de noviembre de 2006, p. 5.
([38]) PTA Decision of 13 de noviembre de 2006, p. 16.
([39]) PTA Decision of 13 de noviembre de 2006, p. 15–23.
([40]) Article 5 of the Act (available in English here) concerns the special provisions that a Memorandum of Association should contain. According to section 5 in paragraph 2 there should be attached to the Memorandum of Association a report containing «a declaration to the effect that the specific valuables correspond at least to the agreed remuneration, including the nominal value of the shares to be issued plus a conceivable surcharge on account of overprice; the remuneration must not exceed the amount at which these valuables may be credited in the Company's accounts».
([41]) PTA Decision No 32/2008 of 30 de diciembre de 2008.
([42]) PTA Decision No 14/2010 of 21 de mayo de 2010, p. 15.
([43]) PTA Decision No 25/2010 of 7 de septiembre de 2010.

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

(36) To urgently restore the viability of GR, OR decided to increase the share capital before the end of 2008. The capital was increased by ISK 1,2 billion, setting an equity ratio of 23 %. The PTA Decision states that in absence of the share capital increase, «practically all equity would have been wiped out», due to the financial collapse and sharp devaluation of the operating currency whilst the liabilities were all linked to foreign currency rates ([44]).

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

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

3.3.5 *The conversion of debt into equity in 2014*

(39) Like many companies in Iceland, GR needed to reorganize its financial affairs after the financial crisis of 2008. OR's application for permission to increase the share capital of GR in July and August 2013 was the subject of PTA's Decision No 2/2014 of 24 March 2014. The reorganisation involved: (i) a conversion of ISK 3,5 billion of debt into equity, and (ii) that GR would enter the financial markets to refinance all remaining debt owed to OR. Finally, OR intended to dispose of a large portion of its shares post-refinancing.

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

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

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

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

([44]) PTA Decision No 39/2010 of 22 de diciembre de 2010, p. 21.
([45]) PTA Decision No 39/2010 of 22 de diciembre de 2010, p. 21.
([46]) Document No 840229, p. 8.
([47]) PTA Decision No 39/2010 of 22 de diciembre de 2010, p. 24 and 26.
([48]) PTA Decision No 2/2014 of 24 de marzo de 2014, p. 35.
([49]) PTA Decision No 2/2014 of 24 de marzo de 2014, p. 40–42.
([50]) According to Article 13, paragraph 4, of the Act on the Post and Telecom Administration No 69/2003, a party can decide to avoid the Ruling Committee and appeal a decision of the PTA directly to the District Court within 3 months from the time they are aware of the decision.
([51]) Supreme Court of Iceland judgment of 27 de marzo de 2015 in Case No 219/2015.
([52]) PTA Decision No 3/2019 of 20 de marzo de 2019.

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

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

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

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

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

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

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

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

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

3.3.7 *Other cases*

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

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

([53]) PTA Decision No 3/2019 of 20 de marzo de 2019, paragraphs 372–373.
([54]) PTA Decision No 3/2019 of 20 de marzo de 2019, paragraph 375.
([55]) PTA Decision No 3/2019 of 20 de marzo de 2019, paragraph 353.
([56]) PTA Decision No 3/2019 of 20 de marzo de 2019, paragraph 353.
([57]) PTA Decision No 3/2019 of 20 de marzo de 2019, paragraph 354.
([58]) PTA Decision No 26/2013 of 1 de noviembre de 2013.
([59]) PTA Decision No 11/2015 of 2 de junio de 2015.

4 Comments by the Icelandic authorities

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

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

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

5 Presence of state aid

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

> «[…] any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.»

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

5.1 *Presence of state resources*

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

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

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

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

([60]) Reply from the Icelandic authorities, dated 7 de febrero de 2017, pages 2 and 3. Document No 840228.
([61]) The Authority's Guidelines on the notion of state aid («NoA») (OJ L 342, 21.12.2017, p. 35), and EEA Supplement No 82, 21 de diciembre de 2017, p. 1, paragraph 49.
([62]) Judgment in *SFEI and others*, C-39/94, EU:C:1996:285, paragraph 62.
([63]) NoA, paragraph 41.
([64]) Judgment in *France* v *Commission (Stardust Marine)*, C-482/99, EU:C:2002:294, paragraph 55.

— the nature of the undertaking's activities and the extent to which the activities were exercised on the market in normal conditions of competition with private operators;

— the intensity of the supervision exercised by the public authorities over the management of the undertaking, and the degree of control which the state has over the public undertaking; and

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

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

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

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

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

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

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

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

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

5.2 ***Conferral of an advantage on an undertaking***

5.2.1 *General*

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

5.2.2 *Does GR constitute an undertaking?*

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

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

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

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

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

5.2.3 *PTA's monitoring and decisional practice*

(71) The measures complained of, concerning the financial relations between OR and GR, have, as described in Section 3.3 above, all been assessed by the PTA on the basis of Article 36 of the Electronic Communications Act.

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

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

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

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

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

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

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

([78]) See the Authority's Decision No 444/13/COL, *The Deployment of a Next Generation Access network in the municipality of Skeiða- and Gnúpverjahreppur* (OJ C 66, 6.3.2014, p. 6) and EEA Supplement No 82, 21 de diciembre de 2017, p. 1, paragraph 56.

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

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

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

(77) The purpose of the MEO test is to assess whether the state has granted an advantage to an undertaking by not acting like a private market economy operator with regard to a certain transaction, e.g. loan agreements or the sale of asset ([82]). In order to fulfil the test, the public authority must disregard public policy objectives and instead focus on the single objective of obtaining a market rate of return or profit on its investments and a market price for the sale or lease of assets ([83]). This assessment must take into account any special rights or obligations attached to the asset concerned, in particular those that could affect the market value.

(78) It follows from this test that an advantage is present whenever a state makes funds available to an undertaking, which, in the normal course of events, would not be provided by a private investor applying ordinary commercial criteria and disregarding other considerations of a social, political or philanthropic nature ([84]).

(79) The PTA, as described above, has examined the strategy and financial prospect of the relevant measures, in order to determine whether the financing of the operations of GR has been carried out in line with normal market conditions. In its assessment, the PTA has considered independent expert reports and drawn comparisons with other, private operators in the same market. The PTA's assessment is normally carried out on an *ex ante* basis. However, there are also examples of the PTA having carried out an *ex post* assessment of the financial separation between OR and GR, as well as individual measures.

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

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

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

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

([80]) NoA, chapter 4.2.

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

([82]) NoA, paragraph 133.

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

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

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

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

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

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

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

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

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

(90) As described in Section 4.3 above, there are three examples of the PTA having established concrete infringements of Article 36 of the Electronic Communications Act. In two of those cases, the PTA ordered that the measures be clawed back. In the third case, the PTA did not order any clawback.

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

([85]) Document No 931139.
([86]) PTA Decision No 3/2019 of 20 de marzo de 2019, paragraphs 338–340.
([87]) Document No 1073308.
([88]) Judgment in *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraph 89.
([89]) Document No 1073308.
([90]) PTA Decision No 25/2010 of 7 de septiembre de 2010.

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

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

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

(95) Finally, in its latest decision concerning the implementation of GR's financial separation for 2016–2017 (see Section 4.3.6 above), the PTA found two infringements of Article 36 of the Electronic Communications Act ([94]):

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

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

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

5.2.4 *Preliminary conclusions*

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

5.3 ***Selectivity***

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

([91]) PTA Decision No 25/2010 of 7 de septiembre de 2010.
([92]) Judgment in *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraph 142.
([93]) PTA Decision No 11/2015 of 2 de junio de 2015.
([94]) PTA Decision No 3/2019 of 20 de marzo de 2019.
([95]) PTA Decision No 3/2019 of 20 de marzo de 2019, paragraph 353.
([96]) PTA Decision No 3/2019 of 20 de marzo de 2019, paragraph 353.

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

5.4 ***Effect on trade and distortion of competition***

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

(101) According to CJEU case law, it is not necessary to establish that the aid has a real effect on trade between the Contracting Parties to the EEA Agreement and that competition is actually being distorted, but only to examine whether the aid is liable to affect such trade and distort competition ([97]). Furthermore, it is not necessary that the aid beneficiary itself is involved in intra-EEA trade. Even a public subsidy granted to an undertaking, which provides only local or regional services and does not provide any services outside its state of origin, may nonetheless have an effect on trade if such internal activity can be increased or maintained as a result of the aid, with the consequence that the opportunities for undertakings established in other Contracting Parties are reduced ([98]).

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

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

5.5 ***Conclusion***

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

6 **Procedural requirements**

(105) Pursuant to Article 1(3) of Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice («Protocol 3»): «The EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. …. The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision.»

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

7 **Compatibility**

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

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

([97]) Case E-6/98 *Norway* v *ESA* [1999] EFTA Ct. Rep. 76.

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

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

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

8 **Conclusion**

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

(112) Consequently, and in accordance with Article 4(4) of Part II of Protocol 3, the Authority hereby opens the formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3. The decision to open a formal investigation procedure is without prejudice to the final decision of the Authority, which may conclude that the measures do not constitute state aid or are compatible with the functioning of the EEA Agreement.

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

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

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

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

For the EFTA Surveillance Authority

Bente ANGELL-HANSEN	Frank J. BÜCHEL	Högni KRISTJÁNSSON	Carsten ZATSCHLER
President	*College Member*	*College Member*	*Countersigning as Director,*
Responsible College Member			*Legal and Executive Affairs*

([99]) Judgment in *Italy* v *Commission*, C-364/90, EU:C:1993:157, paragraph 20.
([100]) OJ L 154, 8.6.2006, p. 27 and EEA Supplement No 29, 8 de junio de 2006, p. 1.

V

(Anuncios)

PROCEDIMIENTOS JURISDICCIONALES

TRIBUNAL DE LA AELC

TRIBUNAL DE LA AELC SENTENCIA DEL TRIBUNAL DE JUSTICIA

de 13 de noviembre de 2019

en el asunto E-2/19

D y E

(Libre circulación de personas - Adaptaciones sectoriales para Liechtenstein - Derecho de residencia - Derecho de residencia derivado de los miembros de la familia - Directiva 2004/38/CE)

(2020/C 40/04)

En el asunto E-2/19, D y E - SOLICITUD al Tribunal de Justicia, en virtud del artículo 34 del Acuerdo entre los Estados de la AELC por el que se instituyen un Órgano de Vigilancia y un Tribunal de Justicia, presentada por el Tribunal Administrativo del Principado de Liechtenstein (*Verwaltungsgerichtshof des Fürstentums Liechtenstein*), relativa a la interpretación de la Directiva 2004/38/CE del Parlamento Europeo y del Consejo, de 29 de abril de 2004, relativa al derecho de los ciudadanos de la Unión y de los miembros de sus familias a circular y residir libremente en el territorio de los Estados miembros, tal como fue adaptada al Acuerdo sobre el Espacio Económico Europeo, el Tribunal, integrado por Páll Hreinsson, presidente (juez ponente), Bernd Hammermann y Ola Mestad (*ad hoc*), jueces, dictó sentencia el 13 de noviembre de 2019, cuyo fallo es el siguiente:

Las adaptaciones sectoriales de los anexos V y VIII del Acuerdo EEE, en particular su punto III, no privan al miembro de la familia de un nacional del EEE, titular de un permiso de residencia válido y que resida en Liechtenstein, del derecho a acompañar al nacional del EEE o a reunirse con él en Liechtenstein sobre la base del artículo 7, apartado 1, letra d), de la Directiva 2004/38/CE, aunque el permiso de residencia del nacional del EEE en Liechtenstein no se haya concedido sobre la base del sistema previsto en las adaptaciones sectoriales.

PROCEDIMIENTOS RELATIVOS A LA APLICACIÓN DE LA POLÍTICA COMERCIAL COMÚN

COMISIÓN EUROPEA

Anuncio de expiración inminente de determinadas medidas antidumping

(2020/C 40/05)

1. Conforme a lo dispuesto en el artículo 11, apartado 2, del Reglamento (UE) 2016/1036 del Parlamento Europeo y del Consejo, de 8 de junio de 2016, relativo a la defensa contra las importaciones que sean objeto de dumping por parte de países no miembros de la Unión Europea ([1]), la Comisión anuncia que, salvo que se inicie una reconsideración de conformidad con el procedimiento expuesto a continuación, las medidas antidumping que se mencionan en el presente anuncio expirarán en la fecha indicada en el cuadro que figura más adelante.

2. **Procedimiento**

Los productores de la Unión pueden presentar una solicitud de reconsideración por escrito. Esta solicitud debe contener pruebas suficientes de que la expiración de las medidas acarrearía probablemente la continuación o reaparición del dumping y del perjuicio. En el caso de que la Comisión decida reconsiderar las medidas en cuestión, se dará a los importadores, a los exportadores, a los representantes del país de exportación y a los productores de la Unión la oportunidad de completar, refutar o comentar los elementos contenidos en la solicitud de reconsideración.

3. **Plazo**

Con arreglo a lo anteriormente expuesto, los productores de la Unión pueden remitir por escrito una solicitud de reconsideración a la Comisión Europea, Dirección General de Comercio (Unidad H-1), CHAR 4/39, 1049 Bruselas, Bélgica ([2]), a partir de la fecha de publicación del presente anuncio y, a más tardar, tres meses antes de la fecha indicada en el cuadro que figura más adelante.

4. El presente anuncio se publica de conformidad con el artículo 11, apartado 2, del Reglamento (UE) 2016/1036.

Producto	País de origen o de exportación	Medidas	Referencia	Fecha de expiración ([1])
Determinados productos laminados planos de acero magnético al silicio	República Popular China Japón República de Corea Federación de Rusia Estados Unidos de América	Derecho antidumping	Reglamento de Ejecución (UE) 2015/1953 de la Comisión, de 29 de octubre de 2015, por el que se establece un derecho antidumping definitivo relativo a las importaciones de determinados productos laminados planos de acero magnético al silicio, de grano orientado, originarios de la República Popular China, Japón, la República de Corea, la Federación de Rusia y los Estados Unidos de América (DO L 284 de 30.10.2015, p. 109)	31.10.2020

([1]) La medida expirará a las doce de la noche del día mencionado en esta columna.

([1]) DO L 176 de 30.6.2016, p. 21.

([2]) TRADE-Defence-Complaints@ec.europa.eu.

PROCEDIMIENTOS RELATIVOS A LA APLICACIÓN DE LA POLÍTICA DE COMPETENCIA

COMISIÓN EUROPEA

Notificación previa de una concentración

(Asunto M.9714 — Viacom/beIN/Miramax)

Asunto que podría ser tramitado conforme al procedimiento simplificado

(Texto pertinente a efectos del EEE)

(2020/C 40/06)

1. El 29 de enero de 2020, la Comisión recibió la notificación de un proyecto de concentración de conformidad con el artículo 4 del Reglamento (CE) n.º 139/2004 del Consejo ([1]).

Dicha notificación se refiere a las empresas siguientes:

— Viacom International Inc. («Viacom», Estados Unidos), propiedad de ViacomCBS Inc.,

— beIN Media Group, LLC («beIN», Qatar), propiedad de beIN Corporation,

— MMX Media Finance, LLC («Miramax», Estados Unidos), actualmente bajo el control exclusivo de beIN.

Viacom y beIN adquieren, con arreglo a lo dispuesto en el artículo 3, apartado 1, letra b), y en el artículo 3, apartado 4, del Reglamento de concentraciones, el control conjunto de Miramax.

La concentración se realiza mediante la adquisición de acciones.

2. Las actividades comerciales de las empresas mencionadas son:

— Viacom: empresa dedicada a los medios de comunicación y el sector del ocio a escala mundial,

— beIN: empresa del sector del ocio activa, entre otros ámbitos, en el sector de los medios de comunicación deportivos,

— Miramax: empresa del sector del ocio dedicada a la producción y distribución de películas y programas de televisión.

3. Tras un examen preliminar, la Comisión considera que la operación notificada podría entrar en el ámbito de aplicación del Reglamento de concentraciones. No obstante, se reserva su decisión definitiva al respecto.

En virtud de la Comunicación de la Comisión sobre el procedimiento simplificado para tramitar determinadas operaciones de concentración con arreglo al Reglamento (CE) n.º 139/2004 del Consejo ([2]), el presente asunto podría ser tramitado conforme al procedimiento establecido en dicha Comunicación.

4. La Comisión invita a los terceros interesados a que le presenten sus posibles observaciones sobre la operación propuesta.

Las observaciones deberán obrar en poder de la Comisión en un plazo máximo de diez días a partir de la fecha de la presente publicación, indicando siempre la referencia siguiente:

M.9714 — Viacom/beIN/Miramax

Las observaciones podrán enviarse a la Comisión por correo electrónico, fax o correo postal a la dirección siguiente:

([1]) DO L 24 de 29.1.2004, p. 1 («Reglamento de concentraciones»).
([2]) DO C 366 de 14.12.2013, p. 5.

Correo electrónico: COMP-MERGER-REGISTRY@ec.europa.eu

Fax +32 22964301

Dirección postal:

Comisión Europea
Dirección General de Competencia
Registro de Concentraciones
1049 Bruselas
BÉLGICA

Notificación previa de una concentración

(Asunto M.9719 — Fairfax Financial Holdings Limited/OMERS Administration Corporation/Riverstone Barbados Limited)

Asunto que podría ser tramitado conforme al procedimiento simplificado

(Texto pertinente a efectos del EEE)

(2020/C 40/07)

1. El 30 de enero de 2020, la Comisión recibió la notificación de un proyecto de concentración de conformidad con el artículo 4 del Reglamento (CE) n.º 139/2004 del Consejo ([1]).

La presente notificación se refiere a las siguientes empresas:

— Fairfax Financial Holdings Limited («FFHL», Canadá);

— Kingston Infrastructure Holdings Inc. («Kingston», Canadá), controlada por OMERS Administration Corporation («OMERS», Canadá);

— Riverstone Barbados Limited («Riverstone», Barbados).

FFHL y Kingston adquieren, con arreglo lo dispuesto en el artículo 3, apartado 1, letra b), y en el artículo 3, apartado 4, del Reglamento de concentraciones, el control conjunto de la totalidad de Riverstone.

La concentración se realiza mediante adquisición de acciones.

2. Las actividades comerciales de las empresas mencionadas son:

— FFHL es una sociedad de cartera dedicada a los seguros y reaseguros de bienes y de accidentes y riesgos diversos y a la gestión de inversiones asociadas a ellos.

— OMERS es el administrador del Ontario Municipal Employees Retirement System Primary Pension Plan (plan primario de pensiones de los empleados municipales de Ontario) y fideicomisario del fondo de pensiones. Gestiona a nivel mundial una cartera diversificada de acciones y obligaciones, además de inversiones inmobiliarias, fondos de capital no cotizado e inversiones en infraestructuras.

— Riverstone lleva a cabo la gestión de negocios y carteras de seguros de adquisición de empresas.

3. Tras un examen preliminar, la Comisión considera que la operación notificada podría entrar en el ámbito de aplicación del Reglamento de concentraciones. No obstante, se reserva su decisión definitiva al respecto.

En virtud de la Comunicación de la Comisión sobre el procedimiento simplificado para tramitar determinadas operaciones de concentración con arreglo al Reglamento (CE) n.º 139/2004 del Consejo ([2]), el presente asunto podría ser tramitado conforme al procedimiento establecido en dicha Comunicación.

4. La Comisión invita a los terceros interesados a que le presenten sus posibles observaciones sobre la operación propuesta.

Las observaciones deberán obrar en poder de la Comisión en un plazo máximo de diez días a partir de la fecha de la presente publicación, indicando siempre la siguiente referencia:

M.9719 — FFHL / OMERS / Riverstone

Las observaciones podrán enviarse a la Comisión por correo electrónico, fax o correo postal a la siguiente dirección:

Correo electrónico: COMP-MERGER-REGISTRY@ec.europa.eu

Fax +32 22964301

Dirección postal:

Comisión Europea
Dirección General de Competencia
Registro de Concentraciones
1049 Bruselas
BÉLGICA

([1]) DO L 24 de 29.1.2004, p. 1 («Reglamento de concentraciones»).
([2]) DO C 366 de 14.12.2013, p. 5.

OTROS ACTOS

COMISIÓN EUROPEA

Publicación de una comunicación relativa a la aprobación de una modificación normal del pliego de condiciones de una denominación del sector vitivinícola, tal como se menciona en el artículo 17, apartados 2 y 3, del Reglamento Delegado (UE) 2019/33 de la Comisión.

(2020/C 40/08)

La presente comunicación se publica con arreglo al artículo 17, apartado 5, del Reglamento Delegado (UE) 2019/33 ([1]) de la Comisión.

COMUNICACIÓN RELATIVA A LA APROBACIÓN DE UNA MODIFICACIÓN NORMAL

«Coteaux d'Ancenis»

Número de referencia: PDO-FR-A0928-AM01

Fecha de la comunicación: 12 de noviembre de 2019

DESCRIPCIÓN Y MOTIVOS DE LA MODIFICACIÓN APROBADA

1. **Zona Geográfica**

La zona geográfica queda modificada como sigue: «Todas las fases de producción tendrán lugar en la zona geográfica aprobada por el Instituto Nacional de Origen y Calidad en la reunión del comité nacional competente celebrada el 28 de septiembre de 2011. El perímetro de esta zona, en la fecha en que el comité nacional competente apruebe el presente pliego de condiciones, abarca el territorio de los siguientes municipios sobre la base del Nomenclátor geográfico oficial del año 2018:

— Departamento de Loire-Atlantique: Ancenis, Carquefou, Le Cellier, Couffeé, Divatte-sur-Loire (únicamente para el territorio del municipio delegado de Barbechat), Ligné, Loireauxence (únicamente para el territorio del municipio delegado de Varades), Mauves-sur-Loire, Mésanger, Montrelais, Oudon, Saint-Géréon, Thouaré-sur-Loire y Vair-sur-Loire.

— Departamento de Maine-et-Loire: Mauges-sur-Loire (únicamente para el territorio del municipio delegado de La Chapelle-Saint-Florent), Orée d'Anjou (únicamente para el territorio de los municipios delegados de Bouzillé, hamptoceaux, Drain, Landemont, Liré y La Varenne).

Los mapas que representan la zona geográfica pueden consultarse en el sitio web del Instituto Nacional de Origen y Calidad».

Cambio de redacción: la nueva lista de entidades administrativas tiene en cuenta las fusiones u otros cambios en la división administrativa desde la aprobación del pliego de condiciones. En aras de una mayor seguridad jurídica, se hace referencia a la versión actual del Nomenclátor geográfico oficial, que publica anualmente el INSEE.

Por último, en el sitio web del INAO están a disposición del público los mapas que representan la zona geográfica para una mejor información pública.

El documento único relativo a la zona geográfica se modifica en consecuencia en el punto 6.

2. **Superficie Parcelaria Delimitada**

En el punto 2.º, sección IV, del capítulo I, el término «delimitado» se sustituye por «de producción».

Se trata de una enmienda de redacción que no modifica la superficie parcelaria delimitada.

Esta modificación no afecta al documento único.

([1]) DO L 9 de 11.1.2019, p. 2.

3. **Zona de proximidad inmediata**

En el punto 3.º, sección IV, del capítulo I, la lista de municipios se sustituye por el texto siguiente:

— Departamento de Loire-Atlantique: La Boissière-du-Doré, La Chapelle-Heulin, Divatte-sur-Loire (únicamente para el territorio del municipio delegado de La Chapelle-Basse-Mer), Gorges, Haute-Goulaine, Le Landreau, Le Loroux-Bottereau, Maisdon-sur-Sèvre, Mouzillon, La Remaudière, Saint-Julien-de-Concelles y Vallet.

— Departamento de Maine-et-Loire: Montrevault-sur-Èvre (únicamente para el territorio de los municipios delegados de Puiset-Doré y Saint-Rémy-en-Mauges), Orée d'Anjou (únicamente para el territorio de los municipios delegados de Saint-Laurent-des-Autels y Saint-Sauveur-de-Landemont), Sèvremoine (únicamente para el territorio del municipio delegado de Tillières).

Cambio de redacción: la nueva lista de entidades administrativas tiene en cuenta las fusiones u otros cambios producidos en la división administrativa desde la aprobación del pliego de condiciones.

El documento único relativo a la zona geográfica se modifica en consecuencia en el punto 9.

4. **Encepamiento**

Los vinos tintos y rosados tienen ahora la posibilidad de ser elaborados con Cabernet franc mediante una variedad de cepa accesoria.

El Cabernet franc es una variedad histórica de uva de la zona y la denominación que confiere al vino una estructura determinada sin alterar sus características típicas. Esto permite una cierta garantía de producción, ya que no es tan sensible al hielo como la cepa Gamay, ni a las enfermedades criptogámicas.

Esta modificación no afecta al documento único.

5. **Combinación**

— Se añade el siguiente párrafo a la sección V del capítulo I:

«2.o - Reglamentación relativa a la participación en la explotación

La proporción de la variedad de cepa accesoria será inferior o igual al 10 % de las variedades de uva de vinificación.

La conformidad de la variedad de las cepas se determinará, en función del color de que se trate, sobre la totalidad de las parcelas de la explotación que producen el vino de la denominación de origen controlada».

— Se añade la siguiente letra a) a la sección IX del capítulo I:

«a) - Combinación de variedades de uva

Los vinos tintos proceden de la combinación de uvas o de vinos en las mismas proporciones que las establecidas para la variedad de cepas en la explotación».

Con la adición de la variedad Cabernet franc fue necesario añadir una norma relativa a las variedades de cepa y a la combinación por la que se limitaba la proporción de esta variedad al 10 %.

Esta modificación no afecta al documento único.

6. **Envasado**

En el punto 2.º de la sección IX se modificó el período de conservación de los resultados analíticos de los lotes envasados, que ahora deberán conservarse durante 12 meses en lugar de seis, a fin de garantizar un mejor control.

Esta modificación no afecta al documento único.

7. **Circulación entre almacenistas autorizados**

Se suprime la letra b) del punto 4.º de la sección IX del capítulo I, relativa a la fecha de puesta en circulación de los vinos entre depositarios autorizados.

Esta modificación no afecta al documento único.

8. **Vínculo con la zona geográfica**

El vínculo se ha revisado para actualizar el número de municipios afectados (16 en lugar de 22).

El documento único relativo al vínculo con la zona geográfica se modifica en consecuencia en el punto 8.

9. **Medida transitoria**

Las medidas transitorias que deben adoptarse que han expirado han sido suprimidas del pliego de condiciones.

Esta modificación no afecta al documento único.

10. **Etiquetado**

En la sección XII se añade la letra c) siguiente: «c) - El etiquetado de los vinos de la denominación de origen controlada podrá precisar el nombre de una unidad geográfica menor, a condición de que:

— se trate de un lugar registrado en el catastro;

— figure en la declaración de cosecha.

El nombre del lugar registrado en el catastro se imprimirá en caracteres cuyas dimensiones no sean superiores, tanto en altura como en anchura, a la mitad de las de los caracteres que componen el nombre de la denominación de origen controlada. El nombre del lugar figurará en el mismo campo visual que el nombre de la denominación de origen controlada».

El documento único relativo a la zona geográfica se modifica en consecuencia en el punto 9.

11. **Declaración previa de asignación parcelaria**

En el punto 1.º de la sección I del capítulo II, se suprime el plazo de cinco años para la renovación tácita con el fin de evitar cualquier omisión problemática y, en consecuencia, mantener únicamente la renovación por acuerdo tácito en caso de que el operador no indique ninguna modificación.

Esta modificación no afecta al documento único.

12. **Declaración de solicitud**

La declaración de solicitud se envía ahora antes del 31 de diciembre en lugar de antes del 10 como se hacía previamente.

Esta modificación no afecta al documento único.

13. **Declaración previa de la transacción de un vino sin envasar**

En el primer párrafo del punto 3.º de la sección II del capítulo II, se añade la palabra «primera» antes de la palabra «transacción» y la frase «del primer lote del año de que se trate o la primera comercialización destinada al consumidor» tras la palabra «transacción».

Esta modificación no afecta al documento único.

14. **Declaración preliminar de envasado**

En el punto 4.º de la sección II del capítulo II se añade un nuevo guión:

«- la fecha previsible de envasado».

Esta modificación no afecta al documento único.

15. **Declaración de clasificación**

En el punto 6.º de la sección II, del capítulo II, la frase «en el plazo de un mes» se sustituye por «a más tardar el 15 de diciembre».

Esta modificación no afecta al documento único.

16. **Registro vitícola**

El punto 1.º de la sección II del capítulo II queda modificado como sigue:

«1.o Registro vitícola

a) Todo operador que utilice vides aptas para la producción de la denominación de origen controlada deberá comunicar, antes del 1 de junio del año de cosecha, un registro de las parcelas en las que renuncie a la producción con denominación de origen controlada y no desee aplicar las condiciones de producción a los viñedos de la denominación de origen controlada.

El organismo de defensa y gestión podrá solicitar a los operadores que envíen una copia de dicho registro.

b) Todo operador afectado por una o varias medidas transitorias pondrá a disposición del organismo de defensa y gestión y del organismo de control un inventario de las parcelas en cuestión en el que se indiquen:

— la referencia catastral de la parcela;

— la medida transitoria de que se trate».

Esta modificación no afecta al documento único.

17. **Registro de establecimientos**

En el punto 2.º de la sección II del capítulo II, el término «pliego» se sustituye por «registro» y se añade que las actividades de desclasificación estarán incluidas en dicho registro.

Esta modificación no afecta al documento único.

18. **Puntos principales objeto de control**

El capítulo III se ha revisado para garantizar la coherencia en la redacción de los principales puntos que deben controlarse en el pliego de condiciones de la zona de Nantes.

Esta modificación no afecta al documento único.

DOCUMENTO ÚNICO

1. **Nombre Del Producto**

Coteaux d'Ancenis

2. **Tipo De Indicación Geográfica**

DOP - Denominación de origen protegida

3. **Categorías De Productos Vitivinícolas**

1. Vino

4. **Descripción De Los Vinos**

Vinos tintos

Se trata de vinos tintos tranquilos.

Sus características analíticas son las siguientes:

— Grado alcohólico volumétrico natural mínimo: vinos tintos 10,5 %

— Grado alcohólico volumétrico total máximo tras el enriquecimiento: vinos tintos 12,5 %

— Contenido en acidez total; vinos tintos entre 57,1 y 102,1 miliequivalentes por litro

— Contenido máximo de acidez volátil: vinos tintos 13,3 miliequivalentes por litro

— Contenido máximo en azúcares fermentescibles (glucosa y fructosa): vinos tintos inferior o igual a 3 g/l

— Contenido máximo de ácido málico: inferior o igual a 0,3 g/l en el caso de los vinos tintos. La fermentación maloláctica debe haberse completado para los vinos tintos.

El contenido total de anhídrido sulfuroso y el grado alcohólico total de los vinos tintos deben respetar las normas establecidas en la normativa comunitaria.

Los tintos presentan a la vista un aspecto brillante, con diferentes tonalidades, del rojo cereza al granate. En nariz predominan los aromas de frutos rojos, a veces acompañados de notas de especias. Suelen ofrecer unos taninos elegantes, que les dan un carácter gustativo suave y tierno marcado por una cierta frescura.

Características analíticas generales	
Grado alcohólico volumétrico total máximo (en % vol.)	
Grado alcohólico volumétrico adquirido mínimo (en % vol.)	
Acidez total mínima	
Acidez volátil máxima (en miliequivalentes por litro)	
Contenido máximo de anhídrido sulfuroso total (en miligramos por litro)	

Vinos blancos

Se trata de vinos blancos tranquilos.

Sus características analíticas son las siguientes:

— Grado alcohólico volumétrico natural mínimo: vinos blancos 11,5 %

— Grado alcohólico volumétrico total máximo tras el enriquecimiento: vinos blancos 13,5 %

— Contenido en acidez total: vinos blancos entre 57,1 y 112,3 miliequivalentes por litro

— Contenido máximo de azúcares fermentescibles (glucosa y fructosa): vinos blancos entre 20 y 40 gramos por litro.

Los vinos blancos, cuyo color amarillo evoca la opulencia, suelen desarrollar notas aromáticas intensas que recuerdan a frutas muy maduras o a frutos exóticos. Las normas analíticas que les son aplicables garantizan en general un buen equilibrio de estos vinos en boca, con una redondez que aportan los azúcares fermentables que compensan la frescura característica de los vinos del Loira.

Características analíticas generales	
Grado alcohólico volumétrico total máximo (en % vol.)	
Grado alcohólico volumétrico adquirido mínimo (en % vol.)	10
Acidez total mínima	
Acidez volátil máxima (en miliequivalentes por litro)	13,3
Contenido máximo de anhídrido sulfuroso total (en miligramos por litro)	

Vinos rosados

Se trata de vinos rosados tranquilos.

Sus características analíticas son las siguientes:

— Grado alcohólico volumétrico natural mínimo: vinos rosados 10 %

— Grado alcohólico volumétrico total máximo tras el enriquecimiento: vinos rosados 12 %

— Contenido en acidez total: vinos rosados entre 57,1 y 102,1 miliequivalentes por litro

— Contenido máximo de acidez volátil: vinos rosados 10,2 miliequivalentes por litro

— Contenido máximo de azúcares fermentescibles (glucosa y fructosa): vinos rosados inferior o igual a 4 g/l.

El contenido total de anhídrido sulfuroso y el grado alcohólico total de los vinos rosados deben respetar las normas establecidas en la normativa comunitaria.

Los vinos rosados presentan un color claro que va del rosa pálido al rosa salmón. Sus aromas finos y discretos evocan la frescura y, por lo general, se inscriben en las notas afrutadas. En boca, suelen caracterizarse por su ligereza y su frescura, así como por una nota de vivacidad.

Características analíticas generales	
Grado alcohólico volumétrico total máximo (en % vol.)	
Grado alcohólico volumétrico adquirido mínimo (en % vol.)	
Acidez total mínima	
Acidez volátil máxima (en miliequivalentes por litro)	
Contenido máximo de anhídrido sulfuroso total (en miligramos por litro)	

5. **Prácticas Vitivinícolas**

a. *Prácticas enológicas esenciales*

Práctica de cultivo

Las viñas presentan una densidad mínima de plantación de 6 000cepas por hectárea.

La distancia entre hileras es inferior o igual a 1,60 metros y la distancia entre cepas de una misma hilera oscila entre 0,90 y 1,10 metros.

Las viñas se podan con un máximo de 12 yemas francas por planta:

— bien en corto (cordón de Royat, vaso, abanico);

— bien en poda Guyot simple o doble.

La poda finaliza antes del 31 de mayo del año de la vendimia.

En la fase fenológica denominada «granazón», el número de sarmientos fructíferos del año por cepa es inferior o igual a 10.

Práctica enológica específica

Se prohíbe la utilización de carbones de uso enológico, solos o mezclados en preparaciones, para la elaboración de los vinos rosados.

En el caso de los vinos tintos, se autorizan las técnicas sustractivas de enriquecimiento y se fija en el 10 % el porcentaje máximo de concentración parcial con respecto a los volúmenes utilizados.

Tras el enriquecimiento, los vinos no deben rebasar el grado alcohólico volumétrico total siguiente: blancos 13,5 %, rosados 12 %, tintos 12,5 %.

Además de las disposiciones anteriores, los vinos deben respetar, en materia de prácticas enológicas, las obligaciones impuestas a nivel comunitario y en el Código rural y de pesca marítima.

b. *Rendimientos máximos*

Vinos blancos

55 hectolitros por hectárea

Vinos tintos y rosados

66 hectolitros por hectárea

6. **Zona geográfica delimitada**

Todas las fases de producción tendrán lugar en la zona geográfica aprobada por el Instituto Nacional de Origen y Calidad en la reunión del comité nacional competente celebrada el 28 de septiembre de 2011. El perímetro de esta zona, en la fecha en que el comité nacional competente apruebe el presente pliego de condiciones, abarca el territorio de los siguientes municipios sobre la base del Nomenclátor geográfico oficial para el año 2018:

— Departamento de Loire-Atlantique: Ancenis, Carquefou, Le Cellier, Couffeé, Divatte-sur-Loire (únicamente para el territorio del municipio delegado de Barbechat), Ligné, Loireauxence (únicamente para el territorio del municipio delegado de Varades), Mauves-sur-Loire, Mésanger, Montrelais, Oudon, Saint-Géréon, Thouaré-sur-Loire y Vair-sur-Loire.

— Departamento de Maine-et-Loire: Mauges-sur-Loire (únicamente para el territorio del municipio delegado de La Chapelle-Saint-Florent), Orée d'Anjou (únicamente para el territorio de los municipios delegados de Bouzillé, Champtoceaux, Drain, Landemont, Liré y La Varenne).

7. **Principales uvas de vinificación**

Gamay N

Pinot gris G

8. **Descripción de los vínculos**

Descripción de los factores naturales que contribuyen al vínculo

La zona geográfica abarca las dos orillas del Loira, a medio camino entre las ciudades de Nantes y Angers. Las viñas están plantadas en su mayoría en las laderas que descienden directamente hacia el río y a veces también en las laderas de los valles secundarios. Ocupan las laderas a altitudes normalmente situadas entre 20 y 80 metros, y se distinguen claramente en el paisaje con respecto a las mesetas circundantes, dedicadas a cultivos mixtos y ganadería. La zona geográfica se sitúa alrededor del municipio de Ancenis, en el territorio de 16 municipios de los departamentos de Loire-Atlantique y Maine-et-Loire.

Los viñedos se encuentran en las antiguas formaciones metamórficas del macizo Armoricano, constituidas principalmente por esquistos, micaesquistos y gneiss. Estas rocas duras han dado lugar a suelos silíceos y a menudo pedregosos, muy poco profundos en las pendientes, sometidas previamente a la erosión del Loira. Como reflejo de los usos, las parcelas delimitadas para la vendimia se dividen estrictamente entre las situadas en las laderas, predominantemente y tradicionalmente plantadas con vides, que presentan suelos sanos, poco profundos, dotados de reservas de agua limitadas y moderadamente fértiles. Estos suelos se desecan y calientan rápidamente.

La zona geográfica goza de un clima oceánico templado, y el Loira ayuda a transmitir la influencia del mar hacia el interior, especialmente porque en la región de Ancenis el río sigue la misma dirección que los vientos dominantes. La temperatura media anual se sitúa en torno a 11,5 °C, con inviernos suaves y veranos frescos. Las precipitaciones, aproximadamente 700 milímetros anuales, se reparten muy bien a lo largo del año, con un déficit hídrico significativo en verano. Con frecuencia, la zona geográfica conoce un período ventoso y seco a principios del otoño, antes de las grandes mareas del equinoccio.

Descripción de los factores humanos que contribuyen al vínculo

Presente desde muy antiguo, el cultivo de la vid se extendió en la región de Ancenis desde el siglo XI, con la creación de una serie de priorazgos a lo largo del Loira. Los diezmos con que se gravaban los productos vitivinícolas dan fe de una actividad vitícola intensa en las riberas del río en la Edad Media. Rápidamente, el puerto de Ancenis pasó a desempeñar un papel central en el comercio y el transporte de vinos de la región. Por ejemplo, en 1573, Carlos IX autoriza la creación de cuatro oficinas de corredores de vino en el puerto de Ancenis, que pasan a ser diez en 1584, y bajo Louis XVI la ciudad dispone de unos 20 buques que participan regularmente en el comercio del vino.

A partir del siglo XVII, los viñedos de Ancenis aumentaron su producción de vinos blancos semidulces con la introducción de la variedad de uva pinot gris G. El vino así producido va adoptando gradualmente la denominación «Malvoisie». Las otras variedades de cepas aparecen más tarde, como la Gamay N, introducida en mediados del siglo XIX. En ese momento el comercio del vino vive su apogeo y los vinos se embarcan hacia París a través de la ciudad de Orleans, o hacia el norte de Europa y Bretaña, pasando por Nantes.

Tras la crisis de la filoxera, se reconstruye el viñedo y se adoptan definitivamente las variedades de vid y las técnicas de cultivo que siguen aplicándose hoy en día, especialmente una densidad de plantación de entre 6 000 y 7 000 cepas por hectárea. La producción de vinos rosados secos y de tintos se impone a la de blancos de «Malvoisie». La creación, en 1907, del Sindicato vitícola del distrito de Ancenis refleja la continuidad del dinamismo de la viticultura local. Las normas de producción, establecidas por los vinateros después de la II Guerra Mundial, permiten el reconocimiento, en 1954, de la denominación de vino delimitado de calidad superior «Coteaux d'Ancenis».

En 2009, el viñedo cubría 180 hectáreas, explotadas por unos 30 productores y con una producción media anual de más de 10 000 hectolitros, distribuidos en un 45 % de vinos rosados, un 38 % de tintos y un 17 % de blancos. Los vinos blancos, de un color amarillo que evoca la opulencia, suelen desarrollar notas aromáticas intensas que recuerdan a frutas muy maduras o exóticas. Las normas analíticas que les son aplicables garantizan en general el equilibrio de estos vinos en boca, y la redondez que aportan los azúcares fermentables compensa la frescura.

Los tintos ofrecen a la vista un color brillante, con diferentes tonalidades que van desde el rojo cereza hasta el granate. La nariz suele estar dominada por aromas de frutos rojos, a veces acompañados de notas de especias. Suelen presentar unos taninos elegantes, que les atribuyen un carácter gustativo suave y tierno marcado por una cierta frescura.

Los vinos rosados presentan un color claro, entre rosa pálido y rosa salmón. Sus aromas finos y discretos evocan la frescura y presentan generalmente notas afrutadas. En boca, suelen caracterizarse por su ligereza, frescura y una cierta vivacidad. Con una zona geográfica situada en la convergencia entre los viñedos de Nantes y Angers, los productores de «Coteaux d'Ancenis» han podido beneficiarse de esta doble influencia para establecer técnicas de producción adaptadas a su entorno natural.

Las colinas de la zona geográfica, conformadas por el Loira en las formaciones metamórficas del macizo Armoricano, suelen tener suelos con una alta capacidad de calentamiento, drenaje natural rápido y reserva de agua limitada, que favorecen la maduración de las uvas. De ahí el desarrollo de una viticultura comercial activa en torno al puerto de Ancenis desde la Edad Media. Además, el clima de la zona geográfica, aunque de influencia oceánica, ofrece la peculiaridad de presentar a menudo un episodio ventoso y seco a finales del verano y principios del otoño. Este entorno natural, combinado con el paisaje abierto de las riberas del Loira, explica en gran medida el desarrollo de la producción de vinos tintos y rosados en la región. Los suelos pobres y ácidos de las parcelas destinadas a viñedos son particularmente adecuados para la variedad de uva Gamay N, lo que limita el vigor a menudo observado de esta variedad y explica que, a pesar de haberse introducido tarde, haya sustituido a las variedades tintas existentes. La gestión de los viñedos mediante un método adaptado y el control de los rendimientos, permiten a los vinos tintos revelar todos sus aromas y a los rosados, expresar notas afrutadas delicadas.

El clima también brinda la posibilidad de elaborar vinos blancos semidulces recogiendo uvas sanas en su plena madurez. También ha favorecido la rápida aclimatación de la frágil variedad de uva pinot gris G. La moderación de las temperaturas estivales en la zona geográfica es una ventaja real para preservar la delicadeza de sus aromas y, al limitar la degradación de los ácidos orgánicos presentes en las uvas, garantizar la frescura característica de los vinos. Denominados localmente «Malvoisie», estos vinos son realmente originales y representan un producto emblemático del sector vitícola local.

Organizados en sindicatos desde comienzos del siglo XX, los productores han trabajado constantemente para mejorar la calidad de los productos. El reconocimiento de «Coteaux d'Ancenis» como denominación de origen controlada, acompañado de un recentrado de las parcelas en las mejores pendientes, de la concentración en torno a las variedades gamay N y pinot gris G, y de reglas de producción más restrictivas, ofrecen una garantía de futuro al carácter típico reforzado de estos vinos.

9. **Condiciones complementarias esenciales (Envasado, etiquetado, otros requisitos)**

Marco jurídico:

Legislación nacional

Tipo de condición complementaria:

Excepción relativa a la producción en la zona geográfica delimitada

Descripción de la condición:

La zona de proximidad inmediata, definida por la excepción relativa a la vinificación, la elaboración y la crianza de los vinos, está constituida por el territorio de los siguientes municipios, sobre la base del Nomenclátor geográfico oficial para el año 2018:

— Departamento de Loire-Atlantique: La Boissière-du-Doré, La Chapelle-Heulin, Divatte-sur-Loire (únicamente para el territorio del municipio delegado de La Chapelle-Basse-Mer), Gorges, Haute-Goulaine, Le Landreau, Le Loroux-Bottereau, Maisdon-sur-Sèvre, Mouzillon, La Remaudière, Saint-Julien-de-Concelles y Vallet.

— Departamento de Maine-et-Loire: Montrevault-sur-Èvre (únicamente para el territorio de los municipìos delegados de Puiset-Doré y Saint-Rémy-en-Mauges), Orée d'Anjou (únicamente para el territorio de los municipios delegados de Saint-Laurent-des-Autels y Saint-Sauveur-de-Landemont) y Sèvremoine (únicamente para el territorio del municipio delegado de Tillières).

Marco jurídico:

Legislación nacional

Tipo de condición complementaria:

Disposiciones complementarias relativas al etiquetado

Descripción de la condición:

El nombre de la denominación de origen controlada puede completarse con la denominación geográfica «Val de Loire» según las normas establecidas en el pliego de condiciones sobre el uso de esta denominación.

El nombre de la denominación de origen controlada puede completarse con la denominación de uso «Malvoisie» según las normas establecidas en el pliego de condiciones sobre el uso de esta denominación. Este nombre está reservado para los vinos blancos tranquilos.

Los términos facultativos cuyo uso conforme a las disposiciones comunitarias puede ser regulada por los Estados miembros se anotarán en las etiquetas en caracteres cuyas dimensiones en altura, anchura y espesor no sean superiores al doble de los caracteres que constituyen el nombre de la denominación de origen controlada.

Las dimensiones de los caracteres de la denominación geográfica «Val de Loire» y de la denominación de uso son inferiores o iguales, tanto en altura como en anchura y espesor, a dos tercios de las de los caracteres que componen el nombre de la denominación de origen controlada.

Marco jurídico:

Legislación nacional

Tipo de condición complementaria:

Disposiciones complementarias relativas al etiquetado

Descripción de la condición:

En el etiquetado de los vinos que se acogen a la denominación de origen controlada se podrá precisar el nombre de una unidad geográfica menor, a condición de que:

— se trate de un lugar registrado en el catastro;

— figure en la declaración de cosecha.

El nombre del lugar registrado en el catastro se imprimirá en caracteres cuyas dimensiones no sean superiores, tanto en altura como en anchura y en espesor, a la mitad de las de los caracteres que componen el nombre de la denominación de origen controlada. El nombre aparecerá en el mismo campo visual que el nombre de la denominación de origen controlada.

Enlace al pliego de condiciones

https://info.agriculture.gouv.fr/gedei/site/bo-agri/document_administratif-0569c539-0b4c-4402-9b68-c63cca20f36f

Anuncio dirigido a las empresas que tengan la intención de comercializar hidrofluorocarburos a granel en la Unión Europea en 2021

(2020/C 40/09)

1. Este anuncio está dirigido a cualquier empresa que desee presentar una declaración para comercializar hidrofluorocarburos a granel en la Unión en 2021, de conformidad con el artículo 16, apartados 2 y 4, del Reglamento (UE) n.º 517/2014 del Parlamento Europeo y del Consejo ([1]), en lo sucesivo «el Reglamento»:

2. Se entiende por hidrofluorocarburos las sustancias que figuran en la sección 1 del anexo I del Reglamento o mezclas que contengan alguna de estas sustancias:

   HFC-23, HFC-32, HFC-41, HFC-125, HFC-134, HFC-134a, HFC-143, HFC-143a, HFC-152, HFC-152a, HFC-161, HFC-227ea, HFC-236cb, HFC-236ea, HFC-236fa, HFC-245ca, HFC-245fa, HFC-365mfc, HFC-43-10mee.

3. La comercialización de estas sustancias, salvo para los usos enumerados en el artículo 15, apartado 2, letras a) a f), del Reglamento o de una cantidad anual total de estas sustancias inferior a 100 toneladas equivalentes de CO_2 al año, está sujeta a límites cuantitativos, con arreglo al régimen de cuotas establecido en los artículos 15 y 16 y los anexos V y VI del Reglamento.

4. En el momento del despacho a libre circulación de HFC, los importadores deben contar con un registro válido como importadores de HFC a granel en el «portal F-Gas y sistema de licencias de HFC» ([2]), conforme al Reglamento de Ejecución (UE) 2019/661 de la Comisión ([3]). Dicho registro se considera una licencia obligatoria para importaciones. Para la exportación de HFC se necesita una licencia similar ([4]).

5. En el documento administrativo único (DAU), el importador debe figurar como «destinatario» (casilla 8). Se insta a los importadores a precisar las cantidades de HFC en equivalentes de CO_2 en el momento del despacho a libre circulación directamente en el DAU (casilla 44) pues ello facilitará enormemente el despacho de aduana de sus mercancías y la determinación de su cumplimiento del Reglamento (UE) n.º 517/2014.

6. Con arreglo al anexo VI del Reglamento, la suma de las cuotas asignadas sobre la base de valores de referencia se resta de la cantidad máxima disponible para 2021 a fin de determinar la cantidad que debe asignarse con cargo a esa reserva.

7. Todos los datos presentados por las empresas, las cuotas y los valores de referencia se almacenan en el «portal F-Gas y sistema de licencias de HFC» electrónico. Todos los valores introducidos en el «portal F-Gas y sistema de licencias de HFC», incluidos los valores de referencia, las cuotas y los datos comerciales y personales, serán tratados de forma confidencial por la Comisión Europea.

8. Las empresas que deseen obtener una cuota con cargo a esta reserva deberán seguir el procedimiento descrito en los puntos 9 a 12del presente anuncio.

9. Conforme al artículo 16, apartado 2, y al artículo 17, apartado 1, del Reglamento, la empresa debe tener un perfil válido de registro, aprobado por la Comisión con arreglo al Reglamento de Ejecución (UE) 2019/661, como productor y/o importador de hidrofluorocarburos en el «portal F-Gas y sistema de licencias de HFC» en línea. Para permitir la tramitación adecuada de la solicitud de registro y, en su caso, poder pedir información adicional, la solicitud de presentarse a más tardar un mes antes del comienzo del período de declaración, es decir, antes del 14 de marzo de 2020 (véase el punto 10). No puede garantizarse una decisión final antes del término del período de declaración (véase el punto 10) sobre las solicitudes de registro que se reciban después de esa fecha. Las empresas que aún no estén registradas pueden consultar las instrucciones para registrarse disponibles en la página web de la DG CLIMA ([5]).

10. La empresa deberá presentar una declaración relativa a las cantidades previstas para 2021 en el «portal F-Gas y sistema de licencias de HFC» en el período de declaración comprendido entre el 14 de abril y el 14 de mayo de 2020, a las 13.00 horas (hora central europea).

([1]) Reglamento (UE) n.º 517/2014 del Parlamento Europeo y del Consejo, de 16 de abril de 2014, sobre los gases fluorados de efecto invernadero y por el que se deroga el Reglamento (CE) n.º 842/2006 (DO L 150 de 20.5.2014, p. 195).

([2]) El registro establecido en virtud del artículo 17 del Reglamento (UE) 517/2014:https://webgate.ec.europa.eu/ods2/resources/domain

([3]) Reglamento de Ejecución (UE) 2019/661 de la Comisión, de 25 de abril de 2019, por el que se garantiza el buen funcionamiento del registro electrónico de las cuotas de comercialización de hidrofluorocarburos (DO L 112 de 26.4.2019, p. 11).

([4]) Véase asimismo el artículo 1, apartado 2, del Reglamento de Ejecución (UE) 2017/1375 de la Comisión (DO L 194 de 26.7.2017, p. 4).

([5]) https://ec.europa.eu/clima/sites/clima/files/f-gas/docs/guidance_document_en.pdf

11. La Comisión únicamente considerará válidas las declaraciones que estén debidamente cumplimentadas, exentas de errores y que hayan sido recibidas antes del 14 de mayo de 2020 a las 13.00 horas (hora central europea).

12. Sobre la base de estas declaraciones, la Comisión asignará cuotas a las empresas según lo dispuesto en el artículo 16, apartados 2, 4 y 5, y en los anexos V y VI del Reglamento.

13. En virtud del artículo 7 del Reglamento de Ejecución (UE) 2019/661, a efectos de la asignación de cuotas de comercialización de hidrofluorocarburos con arreglo al artículo 16, apartado 5, del Reglamento (UE) n.º 517/2014, todas las empresas con el mismo o los mismos titulares reales se considerarán un declarante único de conformidad con el artículo 16, apartados 2 y 4, del Reglamento.

14. La Comisión informará a las empresas de la cuota total asignada para 2021 mediante el «portal F-Gas y sistema de licencias de HFC».

15. La inscripción en el «portal F-Gas y sistema de licencias de HFC» y/o una declaración de la intención de comercializar hidrofluorocarburos en el año 2021 no da derecho por sí sola a comercializar hidrofluorocarburos en 2021.

ISSN 1977-0928 (edición electrónica)
ISSN 1725-244X (edición papel)

Oficina de Publicaciones de la Unión Europea
2985 Luxemburgo
LUXEMBURGO

ES