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Sent by email to egil@radioh.no

Subject: Haugaland (complaint)
- *Preliminary assessment of complaint*

1 Introduction

We refer to your complaint to the EFTA Surveillance Authority ("ESA") dated 6 June 2021 regarding alleged unlawful state aid to FK Haugesund AS and Haugaland Kraft AS ("the alleged beneficiaries").

The complaint concerns grants awarded by the Norwegian Media Authority (Medietilsynet) for the building of a DAB transmitter network for local radio in Norway to the alleged beneficiaries in the period 2016 to 2019 ("the grants").

As ESA understands, you allege that the grants do not comply with the *de minimis* Regulation, as the aid exceeds EUR 200 000 over three fiscal years. You base this on the following arguments:

- (i) The alleged beneficiaries should be considered as a single undertaking within the meaning of the *de minimis* Regulation, as Haugaland Kraft AS was the "biggest owner" of FK Haugesund AS, when the license was transferred.
- (ii) The grants were given to the same objective twice, as the facility license was transferred from FK Haugesund AS to Haugaland Kraft AS.

Since receiving your complaint, ESA has gathered information from the Norwegian authorities. Following a preliminary examination of the complaint, ESA takes the preliminary view that the alleged beneficiaries have not received aid in breach of the EEA state aid rules through the grants.

2 The grants

According to the Norwegian authorities, the grants from the scheme for subsidies to local audio and visual media comprise of:

To FK Haugesund AS

- (i) NOK 600 000 granted 18 July 2016 (EUR 64 084).¹
- (ii) NOK 350 000 granted 28 February 2017 (EUR 39 462).²

¹ According to the European Central Bank the exchange rate on this date was EUR 1 = NOK 9.3627.

² According to the European Central Bank the exchange rate on this date was EUR 1 = NOK 8.8693.

To Haugaland Kraft AS

(iii) NOK 600 000 granted 8 March 2018 (EUR 61 770).³

(iv) NOK 1 million granted 25 March 2019 (EUR 103 530).⁴

This gives a total of EUR 103 546 to FK Haugesund AS and a total of EUR 165 300 to Haugland Kraft AS in the period 2016 to 2019.

In addition to the grants, FK Haugesund received NOK 100 000 (around EUR 10 509)⁵ as *de minimis* aid in 2016 also pursuant to the scheme for subsidies to local audio and visual media.

According to the Norwegian authorities, the grants comply with the *de minimis* Regulation.

3 *De minimis* aid

An aid measure is deemed not to constitute state aid within the meaning of Article 61(1) of the EEA Agreement, if it fulfils the conditions laid down in the *de minimis* Regulation.⁶ According to the *de minimis* Regulation, the total amount of *de minimis* aid granted to a single undertaking may not exceed EUR 200 000 over any period of three fiscal years (“the aid ceiling”).⁷

As we understand from your complaint, FK Haugesund AS and Haugaland Kraft AS should be considered a ‘single undertaking’ according to Art 2(2)(a) of the *de minimis* Regulation. This is based on your description, that Haugaland Kraft AS was the “biggest owner” of FK Haugesund when the facility licence was transferred in 2017.

Several separate legal entities may indeed be considered to form one economic unit in a state aid assessment.⁸ In that context the existence of a controlling share and other functional, economic and organic links are relevant.⁹ The *de minimis* Regulation defines a ‘single undertaking’ as enterprises that have a close relationship with each other, such as holding a majority of the voting rights in another enterprise or having another form of dominant influence.¹⁰ As explained in the *de minimis* Regulation, that Regulation provides an exhaustive list of clear criteria for determining when two or more enterprises within the same Member State are to be considered as a single undertaking.¹¹

It appears from the shareholder register of FK Haugesund AS from the years 2016 to 2019, that Haugaland Kraft AS held shares in FK Haugesund AS amounting to 8,29% in 2016 and 8,94 % in 2017. Haugaland Kraft AS held no shares in FK Haugesund AS in 2018 and 2019. Accordingly, Haugaland Kraft AS did not hold a majority of the shares in

³ According to the European Central Bank the exchange rate on this date was EUR 1 = NOK 9.7135.

⁴ According to the European Central Bank the exchange rate on this date was EUR 1 = NOK 9.6590.

⁵ According to the European Central Bank the average exchange rate for the period 2016-2019 is EUR 1 = NOK 9.5161.

⁶ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty of the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1), incorporated into Article 1ea of Annex XV to the EEA Agreement, Article 3, paragraph 1.

⁷ The *de minimis* Regulation, Article 3(2).

⁸ See the Guidelines on the notion of state aid as referred to in Article 61(1) of the EEA Agreement (OJ L 342, 21.12.2017, p. 35), paragraph 11.

⁹ Judgment of the Court of Justice, 16 December 2010, *AceaElectrabel Produzione SpA v Commission*, C-480/09 P, ECLI:EU:C:2010:787, paragraphs 47 to 55; Judgment of the Court of Justice, 10 January 2006, *Cassa di Risparmio di Firenze SpA and Others*, C-222/04, ECLI:EU:C:2006:8, paragraph 112.

¹⁰ The *de minimis* Regulation, Article 2(2).

¹¹ The Preamble to the *de minimis* Regulation, recital 4.

FK Haugesund AS. Hence, the alleged beneficiaries do not constitute a 'single undertaking' within the meaning of Article 2(2)(a) of the *de minimis* Regulation. Therefore, each of the alleged beneficiaries could be granted aid up to the aid ceiling set out in the *de minimis* Regulation.

With regard to your point, that the grants were given to the same objective twice, ESA must point out, that the aid ceiling in the *de minimis* Regulation applies irrespective of the objective pursued by the *de minimis* aid.¹² Hence, the aid ceiling applies per single undertaking, not per objective. The sum of the *de minimis* aid per alleged beneficiary in the period 2016 to 2019 are respectively EUR 114 055 and EUR 165 300, and therefore below the aid ceiling.

Moreover, the Norwegian authorities have confirmed that the other conditions set out in the *de minimis* Regulation, including those set out in Article 6, have been complied with.

Based on the above, ESA takes the preliminary view that the grants received by FK Haugesund AS and Haugaland Kraft AS comply with the *de minimis* Regulation and consequently do not constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

4 Preliminary view

Therefore, with reference to paragraph 48(b) of the [ESA's Guidelines on Best Practice for the conduct of state control procedures](#)¹³ and based on the information available, it is ESA's preliminary view that FK Haugesund AS and Haugaland Kraft AS have not received any aid in breach of the EEA state aid rules through the grants.

If you have any additional information you would like to submit that might change this preliminary view,¹⁴ please do so **by 6 July 2022**. Otherwise, the case will be closed without further notice.

A copy of this letter will be sent to the Norwegian authorities in line with paragraph 51 of ESA's Guidelines on best practices for the conduct of state aid procedures. When the case is closed, a non-confidential version of this letter will be published on ESA's website,¹⁵ in line with Article 12(1) in conjunction with Appendix III of ESA's [rules on public access to documents](#).¹⁶

Yours faithfully,

Harald Evensen
Director
Competition and State aid

This document has been electronically authenticated by Harald Evensen.

¹² The *de minimis* Regulation, Article 3(5).

¹³ Guidelines on Best Practice for the conduct of state aid control procedures (OJ L 82, 22.3.2012, p. 7, and EEA Supplement No 17, 22.3.2012, p. 1).

¹⁴ See order of the General Court, 31.1.2020, *Irish Wind Farmers' Association*, T-6/19, EU:T:2020:20, paragraph 42.

¹⁵ <https://www.eftasurv.int/state-aid/preliminary-assessments>.

¹⁶ ESA Decision No 015/21/COL of 3.3.2021.