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EFTA SURVEILLANCE
AUTHORITY

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

1. Introduction

Reference is made to your complaint to the Competition and State Aid directorate of the EFTA Surveillance Authority (“the Authority”) dated 12 February 2018 regarding alleged state aid to Perpetuum Circuli AS (“Perpetuum”).

In your complaint, you allege that the Norwegian authorities have granted unlawful and incompatible state aid to the privately owned company Perpetuum Circuli AS (“Perpetuum”), by paying overprice for the service of treatment and handling of waste.

Since receiving your complaint, the Authority has gathered information from the Norwegian authorities. Following a preliminary examination, the Authority is of the view that Perpetuum has not received aid in breach of the EEA state aid rules.

2. No advantage

Pursuant to Article 61(1) of the EEA Agreement, a measure constitutes state aid if the following conditions are cumulatively fulfilled: the measure (i) is granted by the state or through state resources; (ii) confers a selective advantage on the beneficiary; and (iii) is liable to affect trade between Contracting Parties and to distort competition.

The Authority has come to the preliminary view that the measure covered by your complaint does not confer an advantage on the beneficiary.

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, that is to say in the absence of state intervention.¹ However, economic transactions carried out by public bodies do not confer an advantage on its counterpart, and therefore do not constitute aid, if they are carried out in line with normal market

¹ See the Guidelines on the notion of state aid as referred to in Article 61(1) of the EEA Agreement (the “NoA”) ([OJ L 342, 21.12.2017, p. 35](#)), paragraph 66.

conditions.² To examine whether a transaction fulfils this criterion, the Authority applies the ‘market economy operator’ (“MEO”) test whereby the conduct of states or public authorities is compared to that of private economic operators.³

One method of establishing compliance with the MEO test is to assess the transaction in light of the terms under which comparable transactions carried out by comparable private operators have taken place in comparable situations, normally referred to as benchmarking.⁴ In the present case, the Norwegian authorities have explained that the negotiated price for the service of treatment and handling of waste is based on an independent and external report, the objective of which was to assess the price level for comparable services in the area in question at the relevant point in time. The report provides that the price range for the relevant service is between NOK 800 and NOK 2000 per ton. The Authority’s preliminary view is that in examining normal market conditions, there is no reason to disregard the prices generally charged by Perpetuum, especially as they are Northern Norway’s largest privately owned waste operator. Therefore, the Authority is not convinced by the argument that the relevant benchmark in the report is NOK 800-1400 per ton as this range excludes Perpetuum prices altogether. Consequently, the price NOK 1750 per ton paid for the service is within the relevant price range of between NOK 800 to NOK 2000 per ton.

Accordingly, based on an overall assessment of the above indications, and in light of the available evidence, the Authority has reached the preliminary conclusion that the alleged state aid measure does not confer an advantage on the alleged beneficiary and therefore does not constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

3. Preliminary view

Therefore, with reference to paragraph 48(b) of the Authority’s Guidelines on Best Practice for the conduct of state control procedures⁵ and based on the information available, it is the Authority’s preliminary view that Perpetuum has not received any aid in breach of the EEA state aid rules.

If you have any additional information you would like to submit that might change this preliminary view, please do so **by 31 January 2019**. Otherwise, the case will be closed without further notice. A copy of this letter will be sent to the Norwegian authorities, in line with the Authority’s Guidelines on Best Practice.⁶

Yours faithfully,

Gjermund Mathisen
Director
Competition and State aid

This document has been electronically authenticated by Gjermund Mathisen.

² See, for instance, judgment of 11 July 1996, SFEI and Others, C-39/94, EU:C:1996:285, paragraphs 60 and 61.

³ See the Guidelines on the notion of state aid as referred to in Article 61(1) of the EEA Agreement (the “NoA”) ([OJ L 342, 21.12.2017, p. 35](#)), paragraph 75.

⁴ See NoA, Section 4.2.3.2 (i).

⁵ Guidelines on Best Practice for the conduct of state aid control procedures, [OJ L 82, 22.3.2012, p. 7](#).

⁶ Guidelines on Best Practice for the conduct of state aid control procedures, paragraph 51.