ESA | EFTA Surveillance Authority

Brussels, 13 December 2019
Case No: 82920
Document No: 1093911

Discovery Networks Norway AS
Advokatfirmaet Wiersholm AS
Attn: Thomas Naalsund
Postboks 1400 Vika
0115 Oslo
Norway

By registered mail

Subject: Alleged unlawful aid to TV 2

Dear Mr. Naalsund,

1 Summary

(1) The EFTA Surveillance Authority ("the Authority") informs you that, having assessed the agreement between the Ministry of Culture and TV 2 AS ("TV 2"), under which TV 2 is granted compensation for providing public broadcasting services ("the measure"), the Authority concludes that the measure falls under the SGEI Decision[1] and is therefore block exempted. Consequently, your complaint is rejected as unfounded.

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

2 Procedure

(3) By letter dated 12 December 2018,[2] Discovery Networks Norway AS ("the complainant" or "Discovery") lodged a complaint against the measure.

(4) The Norwegian authorities submitted their comments to the complaint by letter dated 19 February 2019.[3]

[1] Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ L 7, 11.1.2012, p. 3). Referred to at point 1h of Annex XV to the EEA Agreement, see EEA Joint Committee Decision No 66/2012 of 30.3.2012.
[2] Document No 1043260.
[3] Document No 1053237.

(5) The Authority requested information from the Norwegian authorities by letter dated 2 April 2019,[4] and the Norwegian authorities replied on 14 June 2019.[5]

(6) The Authority discussed the case with the Norwegian authorities in a video conference on 15 May 2019 and at the annual package meeting in Oslo on 27 September 2019.

(7) The complainant sent additional information on 26 April 2019,[6] 19 July 2019[7] and 28 November 2019.[8] In addition, the Authority met with the complainant in Brussel on 9 September 2019.[9]

3 The measure, its context and the main arguments put forward

3.1 The beneficiary

(8) TV 2 was established in 1991 and started broadcasting in 1992. TV 2 is, through several companies, owned by the Danish media group Egmont International Holding A/S. TV 2 is the largest commercial television broadcaster in Norway. TV 2 has its headquarters in Bergen and has approximately 770 employees, mainly divided between Bergen and Oslo. TV 2 also has local offices in Tromsø, Bodø, Trondheim, Stavanger and Hamar.[10]

(9) TV 2 operates a main channel ("the Main Channel"), in addition to a number of other channels focused on specific audiences and types of content, including the News Channel, Zebra, Lifestyle, Humour and Sport. TV 2 also operates the subscription-based streaming service TV 2 Sumo.

3.2 The measure

(10) On 26 September 2018, the Ministry of Culture made a decision to award a public service broadcasting remit to TV 2 ("the Decision").[11] On the same day, the Ministry of Culture and TV 2 entered into a contract.[12] The Decision is attached to the contract and forms an integral part of the agreement between the Ministry of Culture and TV 2. The contract also comprises the following attachments: the notice to tender,[13] TV 2's application to the tender[14] and the guidelines for separation of accounts in TV 2 ("the guidelines for separation of accounts").[15] The contract, together with the abovementioned documents,[16] will be collectively referred to below as "the Agreement". When referencing sections in the Agreement, this refers to the sections in the main document, while sections in the attachments are specified as such.

---

[4] Document No 1062426.
[5] Document No 1075591.
[6] Document No 1066564.
[7] Document No 1082744.
[8] Document No 1100393.
[9] Document No 1097867.
[10] https://www.tv2.no/9160401/.
[11] Enclosure 3 to the complaint, Document No 1043263.
[12] Enclosure 4 to the complaint, Document No 1043265.
[13] Enclosure 2 to the complaint, Document No 1043262.
[14] Enclosures 2–32 to Norway's reply to the RFI, dated 14.6.2019, Documents No 1075509–1075581.
[15] Guidelines for the separation of accounts in TV 2, Document No 1043266.
[16] Section 1 of the Agreement.

(11) Under the Agreement, TV 2 is obliged to provide the following public broadcasting services:[17]

- Self-produced nationwide daily news programmes, including sports news.
- Weekly Norwegian language programmes for children, totalling 72 hours annually, and programmes for youth totalling 20 hours annually.
- First-time viewings[18] of Norwegian film and TV drama. TV 2 will invest a minimum of NOK 250 million in Norwegian film and TV drama during the contract period.

(12) There are also several requirements related to providing a diversified programme offering, including programmes aimed at the wider population, as well as niche programmes,[19] 50% of the programmes to be in the Norwegian language, and the use of both official versions of the Norwegian language.[20] All these requirements relate to the Main Channel.

(13) It is further required that TV 2 have its main editorial office and central news desk in Norway, at least 100 km outside of Oslo. The majority of the editorial workforce must be located there, and the decisions on editorial content must be taken in the main office ("the localisation requirements").[21]

(14) TV 2 is obliged to distribute the public service content through linear television on the Main Channel, reaching at least 95% of households in Norway. Furthermore, TV 2 must make non-linear public service broadcasting content available on the on-demand audio-visual media service TV 2 Sumo.[22]

(15) The above listed requirements constitutes the public service obligation ("PSO").

(16) TV 2 receives an annual compensation (to cover the net cost, including a reasonable return) limited to NOK 135 million for the PSO. According to section 1.1 of the guidelines for separation of accounts, the following is to be included in the PSO accounts:

- Revenues and costs for self-produced daily national news programmes based in the central news division (PSO News), i.e. regular news and sports news broadcasted on the Main Channel.
- Revenues and costs for the production of Norwegian language programmes for children and for youth on the Main Channel.
- Revenues and cost for first-time viewing of Norwegian film and TV drama on the Main Channel.
- Additional costs related to the localisation requirements.

[17] Section 3-1 of the Agreement together with section 5 of the Decision.
[18] First time viewing is defined as first time on linear TV, in accordance with chapter 7 of the notice to tender, forming part of the Agreement, Document No 1043262.
[19] Section 4 of the Agreement, and section 4 of the Decision.
[20] Norway has two official written standards of the Norwegian language: *bokmål* and *nynorsk*.
[21] Section 3-3 of the Agreement.
[22] Section 3-2 of the Agreement.

(17) The Agreement entered into force 1 January 2019 and has a 5-year duration, until 31 December 2023.

(18) As stated in Section 2 of the Decision, the Agreement is designed to comply with the SGEI Decision.

3.3 Background

3.3.1 The Norwegian broadcasting market

(19) Norway has one state-owned broadcasting corporation: Norsk rikskringkasting AS ("NRK"). Based on numbers provided by the complainant, NRK has a market share of 41.5%. TV 2 is a commercial broadcaster that also provides public broadcasting services (commercial public service broadcaster). TV 2 has a market share of 26.8%. Then there are two big commercial broadcasters, which focus on entertainment and sports: Discovery with a market share of approximately 15.8%, and the Nordic Entertainment Group Norway AS with a market share of approximately 7.5%.[23] Other smaller broadcasters make up the remaining 8.4%.

3.3.2 The establishment of a commercial public service broadcaster in Norway

(20) In 1990, the Norwegian Parliament decided that there should be a nationwide commercial public service broadcaster in Norway and announced the possibility to apply for a concession. The concession was awarded to TV 2 in 1991 and TV 2 started broadcasting in 1992. The concession was renewed in 2004, with a duration until the end of 2010. The concession was based on an exclusive license to nationwide frequencies and an exclusive right to provide commercial broadcasting in the analogue terrestrial network.[24] The terrestrial network was digitised in 2007. After the analogue terrestrial network was shut off, all main commercial broadcasters were able to get the same coverage.[25]

(21) In December 2010, the Ministry and TV 2 entered into an agreement that TV 2 would continue to provide public service broadcasting services from January 2011 until the end of 2015. In return, the Ministry guaranteed TV 2 terms with the cable TV distributors on market conditions.[26] In February 2015, the agreement was extended until 31 December 2016.[27]

(22) In May 2016, the Ministry published a tender for the status as commercial public service broadcaster. However, it did not receive any bids to the tender.

(23) On 23 June 2017, the Ministry published a new notice to tender (the tender leading to the measure assessed here), with a deadline of 22 September 2017.[28]

---

[23] Numbers provided by the complainant for market shares in the age group 10–79, Document No 1097867.
[24] Norway's reply to the complaint, dated 18.2.2019, Document No 1053237, and timeline, Document No 1075565.
[25] Timeline, Document No 1075565.
[26] During this period there was an obligation on all cable TV distributes to distribute TV 2's Main Channel, based on an agreement entered into on market terms. See further the public consultation Meld. St. 38 (2014–2015). "Open and enlightened", p. 125.
[27] Norway's reply to the complaint, dated 18.2.2019, Document No 1053237; NOU 2017:7, "Norwegian media pluralism, a strengthened media policy for the people".
[28] Document No 1043262.

(24) To ensure participation in the tender, the Ministry of Culture invited all interested parties to one-on-one dialogues, and to provide feedback on the main elements of the tender and other relevant factors that the Ministry should take into account in drafting the tender. The Ministry received feedback and requests for meetings from TV 2 and the Nordic Entertainment Group Norway AS.[29]

(25) TV 2 was the only bidder, and was awarded the contract on 26 September 2018.[30]

3.4 The complaint

(26) The complainant alleges that the Agreement between the Ministry of Culture and TV 2 entails unlawful state aid, since the aid was not granted in accordance with the provisions of the SGEI Decision.

(27) Specifically, the complainant alleges that the PSO does not constitute a genuine SGEI, as TV 2 would have provided the relevant services without the aid. Moreover, the complainant alleges that the method for calculating the compensation for the SGEI is not in line with the SGEI Decision. The complainant also argues that the allocation of costs and revenues is inconsistent, and that the method for calculating revenues fails to take account of all revenues under the Agreement.

3.5 Comments by the Norwegian authorities

(28) The Norwegian authorities argue that the PSO constitutes a genuine SGEI.

(29) Further, they argue that the model for calculating the net cost of the Agreement comply with the SGEI Decision, as it is designed to ensure a robust, transparent and objective system, which prevents any overcompensation.

(30) The Norwegian authorities have also argued that the measure does not constitute aid, but have not provided further information in support of this argument.

4 Applicability of the SGEI Decision

4.1 Introduction

(31) As will be shown below, the measure falls under Article 3 of the SGEI Decision. In light of this, the Authority does not assess whether the cumulative conditions of state aid within the meaning of Article 61(1) of the EEA Agreement are fulfilled.[31]

(32) The SGEI Decision sets out the conditions under which state aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest ("SGEI") is compatible with the functioning of the EEA Agreement and exempt from the requirement of notification under Article 1(3) of Part I of Protocol 3 to the SCA.[32]

---

[29] Letter from the Norwegian authorities, dated 26.4.2019, Document No 1075573.

[30] Norway's reply to the complaint, dated 18.2.2019, Document No 1053237.

[31] The Commission took the same approach in its decision C(2016)6689 final in case SA.36798 (2016/NN) – Germany – Alleged unlawful State aid for Klinikum Osnabrück GmbH. See also the Authority's Decision No 083/19/COL Trondheim Spektrum, section 7.1.1, and the Authority's letter to Iceland dated 15.4.2015 (Document No 753677) concerning the public service compensation to finance a broadband network in Hvalfjarðarsveit.

[32] Article 1 and 3 of the SGEI Decision.

(33) The SGEI Decision constitutes a qualification of the general rule that notification is required. The provisions of the SGEI Decision and the conditions laid down by it must therefore be interpreted strictly.[33]

4.2 Using the SGEI Decision for aid to public service broadcasting

(34) The Authority has issued guidelines on the application of state aid rules to public service broadcasting ("the Broadcasting Guidelines").[34] They mirror the EU Commission's Broadcasting Communication.[35]

(35) The fact that there are specific guidelines for state aid to public service broadcasting does not mean that an EEA State cannot rely on the SGEI Decision – provided the aid remains below the threshold in Article 2(1)(a) of the SGEI Decision. This is also explicitly stated in the Broadcasting Guidelines.[36]

4.3 A genuine SGEI

(36) The SGEI Decision is only applicable to compensation paid to an undertaking that is entrusted with the operation of a genuine SGEI.

(37) The concept of an SGEI is an evolving notion that depends, among other things, on the needs of citizens, technological and market developments and social and political preferences in the EEA State concerned.[37]

(38) EEA States enjoy a broad discretion in defining what they regard as services of general economic interest. The Authority's assessment in this respect is limited to checking whether the national authorities have made a manifest error when defining the SGEI.[38]

(39) Public service broadcasting, although having a clear economic relevance, is not comparable to a public service in other economic sectors. There is no other service that at the same time has access to such a wide sector of the population, provides it with so much information and content, and by doing so conveys and influences

---

[33] See to this effect the judgment in *Eesti Pagar*, C-349/17, EU:C:2019:172, para. 60, concerning the application of the GBER.

[34] The Authority's guidelines on the application of state aid rules to public service broadcasting, No 35/10/COL (OJ L 124, 11.5.2012, p. 40 and the EEA Supplement No 26, 11.5.2012, p. 1).

[35] Communication from the Commission on the application of State aid rules to public service broadcasting (OJ C 257, 27.10.2009, p. 1).

[36] The Broadcasting Guidelines, para. 19. The section refers to the old SGEI Decision from 2005, however, the same must be considered to apply to the SGEI Decision from 2012.

[37] The Authority's guidelines on the application of the state aid rules to compensation granted for the provision of services of general economic interest, para. 45.

[38] Joined Cases E-10/11 and E-11/11 *Hurtigruten and Norway* v *ESA* [2012] EFTA Ct. Rep. 758, para. 150; judgments in *BUPA and Others* v *Commission*, T-289/03, EU:T:2008:29, paras 166–169 and 172; *TV2/Danmark and Others* v *Commission*, T-309/04, T-317/04, T-329/04 and T-336/04, EU:T:2008:457, para. 101; the Authority's Decision No 70/17/COL the Coastal Agreement for Hurtigruten Maritime Services 2012-2019, OJ L 158, 21.6.2018, p. 19, and EEA Supplement No 44, 21.6.2018, p. 1, paras 89–102; Commission Decision, SA.19864, Public financing of Brussels public IRIS hospitals, OJ L 351, 22.12.2016, p. 68, para. 153; recital 8 of the preamble to the SGEI Decision.

both individual and public opinion.[39] This is recognised both in EU legislation and in case law.[40]

(40) Paragraph 48 of the Broadcasting Guidelines states: "As regards the definition of the public service in the broadcasting sector, the role of the Authority is limited to checking for manifest error. It is not for the Authority to decide which programmes are to be provided and financed as a service of general economic interest, nor to question the nature or the quality of a certain product."

(41) This is also in line with the European Courts', the EU Commission's and the Authority's approach in cases concerning public service broadcasting services.[41]

(42) The Norwegian media policy is based on the so-called "infrastructure requirement" in the Norwegian Constitution, under which it is incumbent upon the government to create conditions that facilitate an open and enlightened public discourse.[42] The main media policy objective for public service broadcasting is to ensure diversified content for all groups of the population and to provide content that fulfils social, democratic and cultural needs of society.[43]

(43) In 2015, the Ministry of Culture appointed a Media Pluralism Committee to review the use of economic media policy instruments. The Media Pluralism Commission delivered an interim report on models for commercial public service compensation on 17 October 2016 ("the interim report"),[44] where it also refers to several other analyses, including reports commissioned by the complainant,[45] TV 2[46] and the Ministry of Culture.[47] In its final report, the Committee underlined the importance of commercial public service broadcasting for Norwegian culture, freedom of speech and information and as an alternative to NRK.[48]

(44) Following this process, the Norwegian Government brought a White Paper to the Parliament.[49] In the White Paper it is stated that the Ministry of Culture's media policy goals for commercial public service broadcasting shall be: (i) maintaining

---

[39] Paragraph 9 of the Broadcasting Guidelines.

[40] Protocol 29 to the TFEU; judgments in *TV 2 Denmark A/S* v *Commission*, T-309/04, 317/04, 329/04 and 336/04, EU:T:2008:457, paras 232–233; *SIC* v *Commission*, T-442/03, EU:T:2008:228, para. 204. See also the Authority's Decision No 306/09/COL on Financing of the Norwegian Broadcasting Corporation, section 3.2.1.

[41] Judgment in *SIC* v *Commission*, T-442/03, EU:T:2008:228, para. 204; the Authority's Decision No 306/09/COL Financing of the Norwegian Broadcasting Corporation, section 3.2; the Authority's Decision No 38/11/COL Financing of the Icelandic National Broadcasting Service, section 4.2.1; Commission Decision E2/2008, Financing of the Austrian public service broadcaster ORF, section 6.1.7; Commission Decision SA.32019 Danish radio channel FM4, paras 73–79.

[42] *Grunnloven* (LOV-1814-05-17), section 100, sixth paragraph.

[43] Norway's comments to the complaint, dated 18.2.2019, Document No 1053237

[44] The Media Pluralism Commission's interim report "Assessment of models for public support to commercial public service broadcasting", 17.10.2016. The interim report was subsequently included in the white paper Meld. St. 14 (2016–2017), "Commercial public broadcasting".

[45] The Foros and Kind report, Document No 1043267.

[46] Bjørnenak, "Public service broadcasting without a licence – What is the costs and why will it increase?" (2014).

[47] Oslo Economics, "Assessment of the report "Public service broadcasting without a licence – What is the costs and why will it increase?" (2016), Document 1043268.

[48] NOU 2017:7, "Norwegian media pluralism, a strengthened media policy for the people", p. 11.

[49] Meld. St. 14 (2016–2017), "Commercial public broadcasting".

media pluralism, (ii) securing a genuine competitor to the NRK, and (iii) securing nationwide newscasts, produced and broadcasted from outside Oslo.[50]

(45) Accordingly, the Norwegian authorities have defined a PSO which sets out specific programmes that must be provided, in addition to several criteria to ensure media pluralism, such as a diversified programme schedule, localisation and language requirements.

(46) The definition of the public service mandate falls within the competence of the Norwegian authorities, and it is not for the Authority to question the types of programmes, the nature, or the quality of the PSO.

(47) The complainant argues that the PSO is not a genuine SGEI, as there is allegedly no indication that TV 2 would discontinue the programme offerings that form part of the PSO, in the absence of compensation. Thus, the service would be provided on the market without compensation.

(48) The complainant argues that TV 2 did not discontinue or downscale the production of news in the two interim periods in which it did not receive compensation for providing the service (2010–2011 and 2017–2018). The complainant refers to a report that it has commissioned, "the Foros and Kind report",[51] which suggests that it is unlikely that TV 2 would make substantial changes to its programming profile, even absent the compensation. The complainant also refers to the report that TV 2 commissioned, "the Bjørnenak report",[52] which states that one argument for maintaining the news production, even if it is not profitable as such, is that news can create loyalty to the channel.

(49) The complainant has further cited Kåre Valebrokk, a former CEO of TV 2: "News is a money machine for TV 2. The News Channel only needs a few percent rating to make good money. I'm proud of the News Channel. It has secured news as part of the business model forever".[53]

(50) Additionally, the complainant argues that TV 2 would not relocate from Bergen even if it did not receive the compensation. In this respect, the complainant refers to an interview with the current CEO of TV 2, Olav Sandnes.[54]

(51) The Norwegian authorities state that the relevant SGEI does not only consist of the news production. They argue that it is highly unlikely that the PSO will be performed

---

[50] Meld. St. 14 (2016–2017), "Commercial public broadcasting", section 3.3. In relation to the localisation requirement, it is further stated: Having nationwide news broadcasts produced and broadcasted from outside the Oslo area is important for media pluralism. Most national news media in Norway are established in the Oslo region. Being established in Oslo may influence the media coverage from other parts of the country, by misrepresentation or underrepresentation of certain geographical areas, interests or issues. A nationwide commercial public service broadcaster situated outside Oslo may therefore contribute to multiple perspectives in news coverage and serve as an alternative to the Oslo dominance in most nationwide media. (The Authority's translation.)
[51] Foros and Kind "Market Failure in News Production" (2016), section 3, Document No 1043267.
[52] Bjørnenak, "Public service broadcasting without a licence – What is the costs and why will it increase?" (2014), page 13.
[53] Eckblad, Skaalmo, "See what happened – the Story of TV 2" (2012), Cappelen Damm AS. The complainant's translation of the quote from Norwegian.
[54] The interview can be accessed here: https://www.medier24.no/artikler/med-kaptein-olav-46-bak-roret-har-tv-2-fatt-vind-i-seilene-og-en-storm-eller-to/447459%20%20.

to the same extent and under the same conditions without the compensation.[55] TV 2 has also confirmed that it would be unable to continue its public service operations, unless an adequate compensation was in place.[56]

(52) TV 2 has further stated that the fact that it did not discontinue the news broadcast in the interim periods (2010–2011 and 2017–2018) does not mean that it would continue to provide these services if there were no prospects of obtaining a contract. TV 2's profile has been invested in and built up over several years. Making changes in the interim periods could have increased the total costs, as the changes would have to be reversed if TV 2 were successful in a subsequent tender.[57] Because of this, TV 2 chose to not make any substantial changes to its operations and profile in the interim periods.[58]

(53) The Authority also notes that there are no other commercial broadcasters that provide daily Norwegian news services per today. TVNorge, owned by the complainant, discontinued its news production in 2009.[59]

(54) Further, there were no bidders for the tender published in 2016, and TV 2 was the only bidder in the tender in 2017. This suggests that there is little interest in the market to provide these services.

(55) The Authority further notes that the PSO does not only consist of the production of daily news services, but equally of other programme offerings and requirements. The Media Pluralism Commission's interim report states that there is considerable uncertainty as to whether the market will be able to finance news, debate, culture and content aimed at children, youth, elderly, linguistic and ethnic minorities, on a commercial TV channel in the future.

(56) The interim report also highlights that after TV 2's public service obligations decreased, debate, cultural and life vision programmes, as well as content aimed at children, youth, elderly, linguistic and ethnic minorities, were given less time in TV 2's broadcast schedule. The report concludes that this gives reason to believe that an unregulated market will offer such programmes only to a limited extent.

(57) The Media Pluralism Commission further finds considerable uncertainty as to whether there is a financial basis to maintain a heavy editorial presence outside Oslo/at two locations in Norway, without any compensation.[60] Also the Foros and Kind report states that TV 2 has moved journalistic tasks from Bergen to Oslo in recent years (page 5). This way, several reports show that it is unlikely that the market would provide the SGEI to the extent required under the PSO, without the compensation.

[55] The Norwegian authorities' comments, Document No 1075573.
[56] Letter from TV 2, dated 15.2.2019, Document No 1053243.
[57] The Norwegian authorities' reply to the RFI, dated 14.6.2019, Document No 1075593.
[58] Letter from TV 2, dated 15.2.2019, Document No 1053243.
[59] Norway's reply to the complaint, dated 18.2.2019, Document No 1053237.
[60] Media Pluralism's interim report, "Assessment of models for public service compensation to commercial broadcasters", 17 October 2016, pp. 38–39.

(58) In conclusion, the Authority cannot find that the Norwegian authorities have made a manifest error in defining the PSO as an SGEI, or that the services would be provided by the market without the compensation.

4.4 The measure falls within the scope of the SGEI Decision – Article 2(1)(a)

(59) The SGEI Decision applies to state aid in the form of public service compensation, granted to undertakings entrusted with the operation of SGEI, which falls within one of the different categories in Article 2(1) of the SGEI Decision.

(60) Article 2(1)(a) lists: “compensation not exceeding an annual amount of EUR 15 million for the provision of services of general economic interest in areas other than transport and transport infrastructure”.

(61) The compensation under the Agreement is limited to NOK 135 million per year, which is less than EUR 15 million. The Agreement also contains an adjustment clause, providing that the compensation will be reduced if changes in the exchange rate result in the annual sum exceeding EUR 15 million on average, for the duration of the agreement.[61]

(62) Consequently, the measure falls under Article 2(1)(a) of the SGEI Decision.

4.5 Entrustment period – Article 2(2)

(63) Article 2(2) provides that the SGEI Decision only applies where the period of entrustment does not exceed 10 years.

(64) Section 2 of the Agreement provides that entrustment is limited to a period of 5 years.

(65) The Agreement therefore complies with Article 2(2) of the SGEI Decision.

4.6 Entrustment – Article 4

4.6.1 Entrustment act

(66) Article 4 of the SGEI Decision provides that the SGEI shall be entrusted to the undertaking concerned by way of one or more acts, the form of which may be determined by each EEA State. Article 4(a) to (f) of the SGEI Decision lists all the elements that must be included in the entrustment act.

(67) TV 2 was entrusted with the public service obligation by way of the Agreement, which constitutes the entrustment act.

4.6.2 The content and duration of the public service obligations – Article 4(a)

(68) According to Article 4(a), the Agreement shall include the content and duration of the public service obligations.

(69) Section 3 of the Agreement, together with sections 3 to 5 of the Decision, present the content of the PSO. The content of the obligation is set out in detail, as

[61] Section 5 of the Agreement, Document No 1043265.

described in section 3.2 above. The duration of the entrustment is set out in section 2 of the Agreement.

(70) Consequently, the Agreement complies with Article 4(a) of the SGEI Decision.

4.6.3 The undertaking and, where applicable, the territory concerned – Article 4(b)

(71) According to Article 4(b), the Agreement shall include the undertaking and, where applicable, the territory concerned.

(72) The Agreement nominates TV 2 as the entity entrusted with the PSO. The Agreement, section 3-2(1) states that TV 2 is obliged to provide the content on a linear TV channel which is available to at least 95% of households in Norway.

(73) Consequently, the Agreement complies with Article 4(b) of the SGEI Decision.

4.6.4 The nature of any exclusive or special rights assigned to the undertaking by the granting authority – Article 4(c)

(74) According to Article 4(c), the Agreement shall include the nature of any exclusive or special rights assigned to the undertaking by the granting authority.

(75) The Agreement does not assign any exclusive rights. Article 4(c) of the SGEI Decision is therefore not relevant for the matter at hand.

4.6.5 A description of the compensation mechanism and the parameters for calculating, controlling, and reviewing the compensation – Article 4(d)

(76) According to Article 4(d), the Agreement shall include a description of the compensation mechanism and the parameters for calculating, controlling, and reviewing the compensation.

(77) Section 1.1 of the guidelines for separation of accounts provides that there shall be a separation of accounts between the PSO and non-PSO content.

(78) Section 5 of the Agreement, together with the guidelines for separation of accounts, set out the model for calculating the compensation. Section 1.3 of the guidelines for separation of accounts sets out a detailed description of how to calculate the net cost of the PSO. This is described in more detail in section 4.7 below.

(79) Section 4-5 of the Agreement and section 1.2 of the guidelines for separation of accounts stipulate that TV 2 must provide the Media Authority (*Medietilsynet*) with its annually audited accounts, as well as the separate accounts for the PSO. TV 2 must also provide a report from an external auditor confirming that there is no cross-subsidisation and that the business covered by the PSO complies with ordinary market principles.

(80) According to section 5-2 of the Agreement, it is the Media Authority that makes the final calculations of the compensation.

(81) Consequently, the Agreement complies with Article 4(d) of the SGEI Decision.

4.6.6 *The arrangements for avoiding and recovering any overcompensation – Article 4(e)*

(82) According to Article 4(e), the Agreement shall include the arrangements for avoiding and recovering any overcompensation.

(83) As described above, the Agreement includes guidelines for separation of accounts, setting out in detail the calculation of net costs, to ensure the avoidance of overcompensation. Section 5-3 of the Agreement also provides that overcompensation must be recovered.

(84) Pursuant to section 6 of the Agreement, the Media Authority oversees that TV 2 fulfils all the requirements under the Agreement. Section 1.2 of the guidelines for separation of accounts provides for a review of TV 2's accounts by the Media authority, to ensure the proper allocation between the PSO and the non-PSO accounts and to avoid any overcompensation. The Media Authority can also request any other documentation which it needs in order to control that the Agreement and the guidelines on separation of accounts are complied with.

(85) The control mechanisms are also assessed further in section 4.8 below.

(86) Consequently, the Agreement complies with Article 4(e) of the SGEI Decision.

4.6.7 *A reference to the SGEI Decision – Article 4(f)*

(87) According to Article 4(f), the Agreement shall include a reference to the SGEI Decision.

(88) Section 2 of the Decision includes a reference to the SGEI Decision. The Decision forms part of the Agreement, see paragraph (10) above.

(89) Consequently, the Agreement complies with Article 4(f) of the SGEI Decision.

4.7 Compensation determined in line with the SGEI Decision – Article 5(1) to (9)

4.7.1 *Introduction*

(90) According to Article 5(1) of the SGEI Decision, "the amount of compensation shall not exceed what is necessary to cover the net cost incurred in discharging the public service obligations, including a reasonable profit".

(91) Article 5(2) of the SGEI Decision provides that the net cost may be calculated as the difference between the costs and the revenues of the SGEI (so-called cost allocation methodology). Alternatively, the net cost may be calculated as the difference between the net cost for the undertaking of operating with the public service obligation and the net cost or profit of the same undertaking operating without the public service obligation (so-called net avoided cost methodology). The Norwegian authorities have chosen the first alternative, the cost allocation methodology.

(92) Since broadcasting has certain particular characteristics, the Authority has issued specific Broadcasting Guidelines, which are also helpful in relation to aid for public service broadcasting that is implemented under the SGEI Decision.

(93) Case law has further established that the EEA States have a level of discretion when defining the compensation for the costs connected with an SGEI, both in relation to the assessment of whether an SGEI measure constitutes state aid and when assessing compatibility of an SGEI measure.[62]

(94) In *CBI* v *Commission*,[63] the General Court assessed the existence of procedures for avoiding overcompensation under Article 5 in the 2005 SGEI Decision[64] and stated that "those provisions take account of the third criterion of the *Altmark* judgment,[65] according to which the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations".[66]

(95) In relation to the requirement for previously established compensation parameters under the 2005 SGEI Decision, the General Court further referred to the second *Altmark* criterion and stated: "There is nothing to prevent the national legislature from allowing the national authorities a certain discretion to determine the compensation for the costs incurred in discharging an SGEI mission. However, the parameters must be defined in such a way as to preclude any abusive recourse to the concept of an SGEI on the part of the Member State. (…) Thus, the criterion at issue leaves Member States free to choose how to comply with it in practical terms, provided that the rules for determining the compensation are objective and transparent".[67]

(96) Also the EFTA Court has recognised the EEA States' discretion in assessing the costs for SGEI. In *Hurtigruten*, the EFTA Court assessed the evidence and arguments relating to the pleas in law that the measure satisfied the third *Altmark* criterion and that there had not been any overcompensation for the purposes of Article 59(2) of the EEA Agreement, together. In this regard, the EFTA Court stated: "Normally, EEA States enjoy a discretion in defining a service of general economic interest mission and the conditions of its implementation, including the assessment of the additional costs incurred in discharging the mission, which depends on complex economic facts. The scope of the control which ESA is entitled to exercise in that regard is limited to one of manifest error."[68]

---

[62] Judgments in *CBI* v *Commission*, T-137/10, EU:T:2012:584, paras 191–192, *BUPA and Others* v *Commission*, T-289/03, EU:T:2008:29, paras 214 and 220-222; *TV2/Danmark and Others* v *Commission*, T-309/04, T-317/04, T-329/04 and T-336/04, EU:T:2008:457, paras 227 and 228; and Joined Cases E-10/11 and E-11/11 *Hurtigruten and Norway* v *ESA* [2012] EFTA Ct. Rep. 758, para. 150; the Authority's Decision No 70/17/COL the Coastal Agreement for Hurtigruten Maritime Services 2012-2019, OJ L 158, 21.6.2018, p. 19, and EEA Supplement No 44, 21.6.2018, p. 1, paras 173–179.

[63] Judgment in *CBI* v *Commission*, T-137/10, EU:T:2012:584.

[64] Commission Decision 2005/842/EC of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, OJ L 312, 29.11.2005, p. 67.

[65] Judgment in *Altmark Trans and Regierungspräsidium Magdeburg*, C-280/00, EU:C:2003:415.

[66] Judgment in *CBI* v *Commission*, T-137/10, EU:T:2012:584, para. 247.

[67] Judgments in *CBI* v *Commission*, T-137/10, EU:T:2012:584, paras 191–192, *BUPA and Others* v *Commission*, T-289/03, EU:T:2008:29, para. 214; and *TV2/Danmark and Others* v *Commission*, T-309/04, T-317/04, T-329/04 and T-336/04, EU:T:2008:457, paras 227 and 228.

[68] Joined Cases E-10/11 and E-11/11 *Hurtigruten and Norway* v *ESA* [2012] EFTA Ct. Rep. 758, para. 150.

(97) Accordingly, EEA States have a level of discretion in how they choose to implement an SGEI, including in how to calculate the required compensation. As long as all costs and revenues described in Article 5(3) and (4) of the SGEI Decision are taken into account in accordance with generally accepted cost accounting principles, it is for the State to device an appropriate cost and revenue allocation mechanism, given the market context and the cost structure of the undertaking concerned.

(98) The complainant alleges that the aid granted to TV 2 is not in accordance with the SGEI Decision, as the allocation of costs and revenues is inconsistent and amounts to a hybrid solution with elements of both cost allocation and the net avoidable costs methodology. The complainant holds that the guidelines for separation of accounts set out one method for cost allocation, based on actual costs; and a different method for revenue allocation, based on a hypothetical scenario resembling a net avoided cost approach, which does not account for the entire revenue.

(99) The Norwegian authorities argue that the allocation model ensures that all costs and revenues are taken into consideration, in line with the SGEI Decision.

4.7.2 The main principles in the Agreement and separation of accounts

(100) Section 1.1 of the guidelines for separation of accounts provides that there shall be a separation of accounts between the PSO content and TV 2's other activity ("OA"), as well as between the News Channel and OA. This entails setting up separate accounts for the PSO ("the PSO accounts"), for the News Channel and for OA, respectively. In addition, there shall be a separate account consisting of costs and revenue for the entire news area ("News Total"). News Total forms the basis for the allocation of costs and revenues between the news forming part of the PSO ("the PSO News") and the News Channel.

(101) Section 1.3 of the guidelines for separation of accounts sets out the main principles for separation. The starting point is actual accounting variables: revenues and costs shall be allocated directly to the various departments and projects as a part of the ordinary accounting system. Where revenues and costs cannot be allocated directly, the allocation must be determined in accordance with a causality principle; that is, according to the factors that cause (drive) the revenues or costs.

4.7.3 Separation of accounts

(102) Article 5(9) of the SGEI Decision states that where an undertaking carries out activities falling both inside and outside the scope of the service of general economic interest, the internal accounts shall show separately the costs and receipts associated with the service of general economic interest and those of other services, as well as the parameters for allocating costs and revenues.

(103) As shown in in section 4.7.2 above, the Agreement ensures that TV 2 has internal accounts that show the costs and receipts associated with the PSO and those of other services, as well as the parameters for allocating costs and revenues, in accordance with Article 5(9) of the SGEI Decision.

4.7.4 The allocation of costs

(104) Pursuant to Article 5(3) of the SGEI Decision, "the costs to be taken into consideration shall comprise all the costs incurred in operating the service of

general economic interest". Further details on the allocation of costs are set out in Article 5(3)(a) to (d) of the SGEI Decision.

(105) Notably, Article 5(3)(b) states that where the undertaking also carries out activities falling outside the scope of the PSO, which TV 2 does, only the costs related to the PSO shall be taken into consideration. Article 5(3)(c) provides that the costs allocated to the PSO may cover all the direct costs incurred in operating the service of general economic interest and an appropriate contribution to costs common to both the PSO and other activities.

(106) Article 5(9) of the SGEI Decision states that where an undertaking carries out activities falling both inside and outside the scope of the service of general economic interest, the costs linked to any activities outside the PSO shall cover all the direct costs, an appropriate contribution to the common costs.

(107) Section 3 of the guidelines for separation of accounts sets out the principles for allocating costs for the PSO services, other than production of news.

(108) Direct costs are to be attributed directly. This follows from section 3.1 of the guidelines for separation of accounts. An example of direct costs are costs for the external production of a programme.

(109) Indirect costs are costs that cannot be attributed directly, but for which a causal link can be established between the level of cost and the driver for the cost. Indirect costs are regulated in section 3.2 and are allocated based on the causality principle; an allocation key based on what is considered the most relevant cost driver for the cost group:

- Expenses related to the sale of advertisement are allocated between programmes based on the same allocation key as advertising revenue.
- Personnel expenses are allocated according to the actual number of FTEs (full time equivalents) in the different areas, unless it can be substantiated that the causality principle indicates the allocation should be different.
- Indirect technology costs are allocated using the same allocation key as for direct technology costs.
- Expenses related to the cost of sales and business development in the distribution area are distributed with the same key as distribution revenue (see section 4.7.5.4 below for further information on the allocation of distribution revenue).

(110) True common costs are costs that are substantially unaffected by the programme contents and other cost drivers and which cannot be attributed directly or indirectly. True common costs are allocated to channels and programmes in the same proportion as the direct costs, see section 3.3 of the guidelines for separation of accounts.

(111) Actual additional costs arising out of the localisation requirements are attributed to the PSO accounts, excluding cost items already included in the PSO financial statements, see section 3.4. The causal relationship must be documented in accordance with the principles in section 1.3. Actual additional costs are defined as necessary costs for travel and stay, doubling of reception, security and technical

functions. However, the costs of travel and stay for TV 2's management team (*ledergruppen*), shall not be allocated to the PSO accounts.

(112) The costs relating to the production of news are regulated separately. The Authority will assess this in section 4.7.6.2 below.

(113) In the Authority's view, the Agreement contains clear principles for cost allocation, which are in accordance with generally accepted cost accounting principles. In particular, all direct costs are attributed directly to the relevant activity, indirect costs are allocated based on the causality principle, using the most relevant cost driver, and true common costs are allocated proportionately with the direct costs.

(114) The Agreement therefore ensures that costs allocated to the PSO account comprise only the costs incurred in operating the PSO, in line with the SGEI Decision. The complainant has not disputed this.

(115) The Agreement further ensures that the costs linked to the non-PSO activities cover an appropriate contribution to the common costs, so that no compensation is granted in respect of such costs.

(116) Consequently, this allocation of costs complies with Article 5(3) and (9) of the SGEI Decision.

4.7.5 The allocation of revenues

4.7.5.1 Introduction

(117) According to Article 5(4) of the SGEI Decision, the revenue to be taken into consideration "shall include at least the entire revenue earned from the service of general economic interest, regardless of whether the revenue is classified as State aid within the meaning of Article 107 of the Treaty".

(118) Section 2.1 of the guidelines for separation of accounts requires that revenues be attributed directly, as far as possible. Any revenue that cannot be directly attributed is to be allocated between the PSO accounts and OA, in accordance with further specified allocation keys.

(119) There are three types of revenues that are regulated in the guidelines for separation of accounts; advertisement revenue, subscription revenue and distribution revenue. These are assessed separately below.

4.7.5.2 Advertisement revenue

4.7.5.2.1 Introduction

(120) The complainant argues along three lines. First, the allocation of advertisement revenue is not sufficient to ensure that at least the entire revenue is attributed to the PSO, as the model for allocating advertisement revenue does not reflect the manner in which TV 2 sells advertisement. Second, the relevant weight applied in the allocation model does not reflect the underlying realities. Third, the allocation of advertisement revenue fails to take into consideration other benefits that TV 2 obtains through the PSO.

(121) The Norwegian authorities hold that the Agreement ensures that the entire revenue earned from the PSO is allocated to the PSO, in line with the SGEI Decision.

(122) The three lines of argument are assessed separately below.

4.7.5.2.2 Sale of TV advertisement

(123) A large share of TV 2's revenues is from sales of advertisement between programmes ("sale of advertisement"). The demand-side of the market consists of advertisers seeking to market their products and services to consumers. The supply-side consists of different marketing channels, such as newspapers, digital services, radio and TV. In addition, there is a number of intermediaries and auditors assisting advertisers in choosing marketing channels and controlling and measuring how well the marketing channels reach different target groups. It is thus a highly professional market.

(124) In Norway, the main broadcasters (including Discovery and TV 2) have co-operated to establish a common service that provides data on the viewing of TV programmes. The analysis is carried out by an independent third party (TNS Kantar). TNS Kantar provides daily data on traditional linear TV and delayed and on-demand viewing, for each broadcaster and each programme. The data is available to all actors in the market.

(125) Advertisement is mainly purchased in bulk, as a bundled service and rarely designated to an individual programme, or even to an individual channel. Most broadcasters sell advertising either based on Gross Rating Points ("GRP"), or Target Rating Points ("TRP").

(126) A GRP is the percentage of the total amount of viewers watching a given television programme. Sale of advertisement using GRP means that advertisers purchase exposure to a specific number of viewers in the age group 10–79. The price the advertiser pays per viewer is the same, regardless of the advertiser's preferred target audience. GRP is therefore the sale of the "total audience" exposure to advertising messages.

(127) A TRP is a percentage of the target audience that advertisers wish to reach. Target audiences are groups of customers who are most likely to purchase an advertiser's products and services. TRP is therefore the sale of the "target audience" exposure.

(128) TV 2 sells advertisement based on GRP. Many other broadcasters, including the complainant, sell advertisement based on the TRP model. The actual viewing delivered to the advertiser does not depend on the pricing strategy of the broadcaster.

4.7.5.2.3 The allocation of advertisement revenue under the Agreement

(129) Section 2.2 of the guidelines for separation of accounts provides that advertisement revenue directly related to an individual programme shall be allocated directly to that programme. An example of directly related advertisement revenue is revenue from advertisers sponsoring a particular programme.

(130) Advertisement not directly related to a programme or channel, which is most of the advertisement revenue, is to be allocated according to "weighted actual viewing". This entails that the advertisement revenue is allocated according to actual viewing figures for each channel and programme, in accordance with the value that each age group (target group) has from an advertisement perspective.

(131) Each target group is allocated a weight according to the value it has for the advertisers. Then the number of viewers that each channel/programme has within each target group is multiplied with the set weight for the target group, to determine the proportion of the entire advertisement revenue to be attributed to the relevant channel/programme. Thus, the allocation of advertising revenue takes into account and allocates the entirety of TV 2's advertisement revenue.

(132) The weighting model included in section 2.2 of the guidelines for separation of accounts is set out below:

Age group	Weight	Consideration
10–19	25–35%	Age group without any particular buying power. In addition, advertising directed at children and youth is prohibited by law. Interest for advertisers increases when the viewer approaches 20 years of age.
20–49	100%	The most commercially attractive age group for advertisers and therefore the age group that contributes the most to advertising revenue.
50–59	50–75%	Age group of some commercial attractiveness and with a particularly high buying power.
60–69	25–35%	Strongly declining commercial interest for this age group.
70–79	10–15%	Age group of little commercial interest for advertisers, but since TV 2's using the GRP pricing model (10–79), some revenue may be generated from these viewers.

(133) The Norwegian authorities have provided a simplified example, assuming that there is only one TV channel broadcasting two programmes, one PSO programme and one OA programme. Each programme has the same number of viewers (1 000), but the distribution of viewers between age groups is different:

Target group	Weight	PSO actual viewing	PSO weighted viewing	OA actual viewing	OA weighted viewing
10–19	30%	50	15	50	15
20–29	100%	100	100	100	100
30–39	100%	200	200	200	200
40–49	100%	200	200	300	300
50–59	60%	200	120	250	150
60–69	30%	200	60	50	15
70–79	20%	50	10	50	10
Total		1 000	705	1 000	790
Allocation key = share			**47%**		**53%**

4.7.5.2.4 The model for allocating advertisement revenue

(134) The complainant argues that the allocation model does not reflect the economic realities, as it does not take into account the manner in which TV 2 obtains advertisement revenue. TV 2 sells advertisement based on GRP, which according to the complainant means that TV 2 assigns the same value to all viewers.

However, the allocation model for advertisement revenue is based on allocating different values to different age groups, which is more similar to a TRP model.

(135) The complainant alleges that the model does not reflect the actual advertisement revenue that TV 2 obtains for the PSO. This is particularly so because some of the PSO content, such as the news, is content that reaches a high number of older viewers, who are attributed less weight under the allocation model. Therefore, the model allocates less revenue for the viewers that are watching the PSO content.

(136) The Norwegian authorities hold that Discovery and TV 2 operate in the same market offering advertisement to the same customers, and regardless of the model for pricing, the product is exposure to viewers.

(137) The market is characterised by professional purchasers and because of the availability of data, the advertisers can compare how well the marketing channels perform in different target groups, regardless of whether the broadcaster is pricing the product based on GRP or TRP. Therefore, when the advertisers purchase advertisement they are able to convert GRP and TRP into their own "currency", to compare the offers and prices of TV 2 and other broadcasters.[69]

(138) Therefore, the Norwegian authorities argue that the price per GRP is closely linked to the relevant spread in the average target groups actually reached. This means that the weighted actual viewing is a transparent and objective mechanism ensuring that at least the entire revenue earned from the PSO is allocated to the PSO account.

(139) The Authority notes that there seems to be a general consensus that the different target groups have a different value for the advertisers.[70] The complainant also appears to agree with this, although it disagrees with the relative weight allocated to the different target groups in the model.

(140) Further, the characteristics of the market – professional customers with a good understanding of the market, and a high level of transparency – indicate that the advertisers have a good understanding of the product they purchase and the target groups they will reach through the different broadcasters. The pricing model is therefore of less relevance.

(141) The Ministry of Culture's external consultant, BDO, assisted in assessing different alternatives for allocating the advertisement revenue. BDO stated that there is a relationship between the target groups that the channel/programme reaches and the price that advertisers are willing to pay. A model that allocates the same value to all viewers, regardless of the target groups viewing the programmes, would allocate a disproportionately high share of revenue to programmes that attract less valuable viewers and artificially low revenue to the most commercial content. However, BDO also notes that through its programme profile, TV 2 has a wider viewer base, and through its model for sale of advertisement, TV 2 is able to obtain some profit also for the viewers in the younger and older target groups.[71]

[69] Letter from TV 2, dated 15.2.2019, Document No 1053243.
[70] The Foros and Kind report, section 2.1; Memo from BDO, Document No 1075561; the Bjørnenak report, p. 10.
[71] Memo from BDO, Document No 1075561.

(142) Accordingly, there is a causal relationship between TV 2's ability to attract viewers in the most attractive target groups and the price it can obtain in the market for advertisement on its channels.

(143) BDO concluded that an allocation of revenues based on weighted actual viewing, where also the younger and older viewer base is allocated a certain value, is the most appropriate approach.[72]

(144) The model ensures that programmes attracting the – from the advertiser's point of view – commercially most attractive viewers, will be allocated a larger share of advertisement revenue, than programmes that attract less attractive viewers.

(145) The Authority finds that weighted actual viewing constitutes an objective and transparent basis for the allocation. The model allocates the advertisement revenue to the different programmes based on the value that the programme has for advertisement purposes. Accordingly, there is a causal link between the target groups TV 2 reaches and the advertisement revenue it obtains. This is in line with generally accepted cost accounting principles.

(146) The weighted actual viewing allocation model is therefore an appropriate allocation model for ensuring that at least the entire revenue earned from the PSO is allocated to the PSO accounts.

4.7.5.2.5 The weight awarded to the different target groups

(147) The complainant has also argued that the relevant weight awarded to the different target groups is not in line with market conditions. The complainant takes the view that the weight attributed to the different target groups, in particular viewers in the older age groups, underestimates the value these viewers have for advertisers.

(148) The Norwegian authorities argue that the allocation of advertisement revenues is based on an assessment of actual demand for different target groups.

(149) The Authority notes that the Norwegian authorities have a level of discretion when determining the compensation, hereunder in choosing the appropriate mechanism to ensure that all relevant revenue is taken into consideration.

(150) There seems to be a general consensus in the market that the most attractive group for advertisers are young adults.[73] The main source of market data, TNS Kantar, operates with the age range 20–49. When establishing the model, the Ministry of Culture contacted the advertiser association, media agencies and TNS Kantar, which confirmed that the target group 20–49 has the highest value for advertisers.[74]

(151) Viewers on the older end of the age spectrum are less attractive. They are assumed less likely to change their habits or be influenced by advertisement. Viewers on the younger end have less spending power. Moreover, under section 3-1, first paragraph, of the Broadcasting Act, advertisements may not be broadcast in connection with children's programmes, or specifically target children.

[72] Memo from BDO, Document No 1075561.
[73] The Foros and Kind report, section 2.1, however, Foros and Kind refers to the age group as 15-49; Memo from BDO, Document No 1075561; the Bjørnenak report, p. 10.
[74] Memo from BDO, Document No 1075561.

(152) On behalf of the Ministry of Culture, BDO proposed an interval weight for the different target groups. The final proposal is included in the table in section 4.7.5.2.3 above. BDO underlined that the specified weights cannot be regarded as accurate or objectively documentable, but that such a model would provide a more relevant distribution of TV 2's advertising revenue between the PSO content and OA, than allocating the same weight to all viewers, or allocating based only on the most valuable viewers.[75]

(153) At the time, TV 2 considered that the weighting provided by BDO did not provide an appropriate representation of the relevant market. It therefore suggested an alternative weighting, where the age groups 10–19 and 50–59, 60–69, and 70–79 were all allocated a weight that was 5–15% lower than that proposed by BDO. In TV 2's view, its suggestion would provide sufficient consideration to the differences in the advertisers' actual demand for the different target groups.[76]

(154) The Norwegian authorities, however, decided on a conservative approach, and implemented the weights suggested by BDO in the guidelines for separation of accounts.

(155) Further, as part of the annual control process, TV 2 will provide the Media Authority with all relevant information,[77] and the final weight awarded to each group is to be determined by the Media Authority *ex post* each year.[78] The control mechanisms are assessed in more detail section 4.8 below. The Media Authority has also contracted an external adviser[79] to assist with determining the final weighting of the target groups.[80]

(156) Thus, in allocating the relevant weight to the different age groups, the Ministry of Culture has consulted a number of interested parties and appointed an external consultant in order to ensure that the model is based on available and objective market information. The Norwegian authorities have also taken a conservative approach to the weighting.

(157) Furthermore, there are appropriate *ex post* control mechanisms in place to ensure that the target groups will be set annually, according to the best available information and adjusted if the market conditions change.

(158) Consequently, the Authority considers that the mechanism for allocating revenue, including the relevant weight awarded to the different target groups, have been determined in an objective and transparent manner, in line with generally accepted cost accounting principles.

4.7.5.2.6 Taking into account at least the entire revenue

(159) The complainant argues that the calculation of the required compensation does not take into account all the benefits TV 2 derives from the PSO content in terms of

[75] Memo from BDO, Document No 1075561.
[76] E-mail from TV 2, dated 20.4.2018, Document No 1043270.
[77] Section 6 of the Agreement.
[78] Section 2.2 of the guidelines.
[79] The Media Authority has entered into an agreement with BDO. BDO also assisted the Ministry of Culture in establishing the allocation model. BDO will assist the Media authority independently of its previous assignment for the Ministry.
[80] Email from the Norwegian authorities, dated 6.12.2019, Document No 1102590.

brand reputation and viewers. In particular, the complainant argues that TV 2, through its PSO news content, has been able to build credibility and to reach a high number of simultaneous viewers, for which advertisers are willing to pay a premium.

(160) The complainant refers to the Foros and Kind report, which states that TV 2's programme profile seems to allow them to charge a premium price of around 20% per viewer in the most attractive target groups,[81] compared to competitors such as TVNorge and TV 3.[82] The report argues that the daily news broadcast contributes to this premium position.[83]

(161) The Norwegian authorities do not dispute that advertisers may place a value on for example the ability to reach a high number of simultaneous views. However, they argue that TV 2's ability to reach a high number of persons is not in itself due to TV 2's status as commercial public service broadcaster.[84]

(162) The Norwegian authorities further argue that in the event that TV 2 does obtain additional benefits from providing the PSO, such benefits are already accounted for under the revenue allocation model.

(163) The Authority notes that the Foros and Kind report does not appear to conclude that TV 2's alleged ability to charge a premium price is exclusively due to the PSO content. In fact, the authors also tie the ability to take a premium to TV 2's entertainment offering. It is stated that TV 2's relatively high costs for entertainment programmes might be profitable if it helps build up under TV 2's brand and make TV 2 able to charge a premium price for advertisement.[85]

(164) Further, the Authority notes that TV 2 has the highest market share, meaning it reaches the higher number of simultaneous viewers. However, in addition to the news broadcast, TV 2 also has several non-PSO programmes that contributes to the market share and a high number of simultaneous viewers. Based on an overview of average viewing numbers for TV 2's programmes in the age group 20–49,[86] TV 2 has 11 programmes (excluding reruns, ad-hoc programmes and sports) which have a higher number of average viewers in the age group 20–49 than any of the news broadcasts. TV 2 also has several programmes that reach a higher number of viewers in the target group 20–49 than TV 3 and TVNorge. TV 2 has six programmes with a higher number of average viewers in the target group 20–49 (excluding reruns, ad-hoc programmes and sports) than the best ranking one on TVNorge or TV 3, and another six before the next one.[87]

(165) Based on this, it seems probable that TV 2's alleged ability to charge a premium price is not exclusively linked to the PSO content, but that TV 2's non-PSO programmes also contribute to TV 2 being in such a position.

---

[81] According to the Foros and Kind report, section 2.1, the most attractive age group is 15–49.
[82] Based on information the authors of the report have collected, the Foros and Kind report, p. 4.
[83] The Foros and Kind report, p. 4.
[84] The Norwegian authorities' comments, dated 18.6.2019, Document No 1075573.
[85] The Foros and Kind report, pp. 13 and 16–17.
[86] Overview of viewings in the age group 20–49, year to date 2019. Provided to the Authority in July 2019, Document No 1082747.
[87] Overview of viewings in the age group 20–49, year to date 2019. Provided to the Authority in July 2019, Document No 1082747.

(166) The chosen allocation model, which allocates the revenue based on causality (weighted actual viewing), is therefore an appropriate mechanism for allocating the revenue, including any premium achieved, between the PSO and non-PSO content, and ensures that at least the entire revenue earned from the PSO is allocated to the PSO accounts.

4.7.5.2.7 Conclusion

(167) The chosen model for allocating advertisement revenue, weighted actual viewing, provides an objective and transparent basis for the allocation of advertisement revenue, in line with the causality principle. The chosen model is therefore an appropriate model for ensuring that the entire revenue earned from the PSO is allocated to the PSO accounts, in accordance with generally accepted cost accounting principles.

(168) Accordingly, the allocation of advertisement revenue ensures that at least the entire revenue earned from the PSO is taken into consideration, in accordance with Article 5(4) of the SGEI Decision.

4.7.5.3 Subscription revenue

(169) TV 2 has a streaming service, TV 2 Sumo, which allows subscribers to purchase access to on-demand streaming for a monthly fee.

(170) The basic package contains news and current affairs. In addition, the subscribers can upgrade to other packages, which also include film and series, sport and sport premium. The basic package is included in all subscription packages, all the packages therefore contain both PSO and non-PSO content.[88]

(171) Per November 2019, the available TV Sumo packages are as follows:[89]

- News & current affairs: NOK 99
- Film and series (includes news & current affairs): NOK 129
- Sport (includes news & current affairs): NOK 149
- Sport, film and series; (includes sport, film & series and news & current affairs): NOK 179
- Sport Premium (includes news & current affairs): NOK 399
- Total (all the above packages): NOK 429

(172) Section 2.4 of the guidelines for separation of accounts provides that subscription revenue is allocated based on the actual viewing of the different programmes. For the subscription revenue, all subscribers pay the same fee for the same package. It is therefore not relevant to apply the weighted viewing allocation key. The allocation key is therefore "actual viewing".

(173) The revenue is allocated between the PSO content and non-PSO content based on the percentage of viewing the programmes in each category obtain. In other words,

---

[88] See the different packages at: https://sumo.tv2.no/pakker.
[89] Document No 1075593.

the actual viewing of PSO programmes determines the allocation of revenues to the PSO accounts for subscription revenues.

(174) The complainant argues that the allocation method for subscription revenue deviates from how TV 2 accounts for and prices a subscriber under the zero VAT regime for electronic news services ("the zero VAT").[90] The Norwegian VAT Regulation,[91] section 6-2, provides that user payment for electronic news services are subject to zero VAT. The purpose of the zero VAT is the promotion of media pluralism and media diversity.[92]

(175) The news and current affairs package on TV 2 Sumo falls under the definition of electronic news services and is therefore subject to zero VAT. As the news and current affairs package is included in all of TV 2 Sumo's packages, all packages are subject to zero VAT in proportion to the cost of the news and current affairs package.

(176) The complainant argues that TV 2 applies one method for calculating revenue from news content under the zero VAT and a different method for calculating revenue from news content under the Agreement, in order to maximise the compensation under the two measures respectively. The complainant claims that this is not in line with ensuring that at least the entire revenue earned from the PSO is attributed to the PSO.

(177) The Norwegian authorities argue that the relevant allocation, based on actual viewing, accurately reflects the revenues earned from the PSO content, in accordance with Article 5(4) of the SGEI Decision.

(178) Further, they argue that comparing the allocation of revenue under the Agreement to a method used by TV 2 when calculating eligibility for zero VAT, is irrelevant for the compatibility assessment. Programmes qualifying for the zero VAT and calculating revenue from the PSO content are two different matters, subject to different criteria. PSO News content consists of the news produced for the Main Channel, while the definition of electronic news services under the zero VAT is much broader, encompassing current affairs programmes, such as talk shows and consumer programmes.[93] Further, for the purpose of the zero VAT, electronic news services only need to consist mainly of weekly news or current affairs, which means that it can also include a proportion of other content.[94] The requirements for content to be subject to the zero VAT and the definition of PSO under the Agreement are therefore materially different and cannot be compared as such.

(179) Moreover, the basic TV 2 sumo package consisting of news and current affairs also includes a lot of content that is not part of the PSO, such as current affairs. There is PSO content which is not included in the news and current affairs package, but rather in some of the other packages, such as children and youth programmes.[95]

[90] This aid scheme was approved by the Authority in Decision No 023/16/COL, OJ C 396, 27.10.2016, p. 6, and EEA Supplement No 59, 27.10.2016, p. 38.
[91] *Merverdiavgiftsforskriften* (FOR-2009-12-15-1540).
[92] Section 3.1 of the Authority's Decision No 023/16/COL, OJ C 396, 27.10.2016, p. 6, and EEA Supplement No 59, 27.10.2016, p. 38.
[93] The VAT Regulation, section 6-2-1.
[94] Document No 1075593.
[95] The Norwegian authories' comments, Document No 3027181.

Therefore, there is not one package containing only PSO content, for which the entire revenue can be allocated directly to the PSO.

(180) The revenue is allocated based on the content that the subscribers actually watch. It must be assumed that there is a link between the programmes the subscriber watches and being willing to purchase a subscription. An allocation model based on actual viewing therefore reflects the value that the content has for TV 2 in the form of attracting subscription revenue.

(181) Further, the zero VAT applies to content both inside and outside the PSO. Any potential increase in revenue due to increase in volumes, is therefore counted for when the revenue is allocated between the PSO accounts and OA in accordance with the causality principle.

(182) Accordingly, the allocation of subscription revenue is in accordance with generally accepted cost accounting principles and ensures that at least the entire revenue earned from the PSO is allocated to the PSO accounts, in line with Article 5(4) of the SGEI Decision.

4.7.5.4 Distribution revenue

(183) TV 2 also obtains revenues through the sale of rights to broadcast the Main Channel and other TV 2 channels to operators of TV services such as Telenor and Get.

(184) The distributors purchase the distribution rights for the different channels. However, the packaging and pricing models vary. A distributor can pay a fixed amount per subscriber per month per channel, or for a bundle of channels. Others pay a price for a bundle of all the channels.[96]

(185) The complainant has encouraged the Authority to check whether the allocation of distribution revenue is in line with the agreements that TV 2 has entered into with the distributors.

(186) Under section 3.2 of the guidelines for separation of accounts, the distribution revenue is first allocated between channels in accordance with the contracts with the distributors, and then between the PSO and the non-PSO content by using the allocation key “actual viewing”.[97]

(187) The allocation model therefore reflects the actual agreements entered into by TV 2 and the distributors. Thereafter, the revenue is allocated based on actual viewing, which is an appropriate allocation key based on the causality principle.

(188) The allocation of distribution is therefore based on generally accepted cost accounting principles and ensures that at least the entire revenue earned from the PSO is allocated to the PSO accounts, in line with Article 5(4) of the SGEI Decision.

[96] Document No 1075593.
[97] The guidelines for separation of accounts, Document No 1043266, section 2.3, and examples of distribution contracts, Documents No 1075567 and 1075587.

4.7.6 The calculation of costs and revenues for News Total

4.7.6.1 Introduction

(189) The Agreement requires TV 2 to broadcast daily news on the Main Channel. TV 2 also produces a commercial 24/7 breaking news channel, which utilises the same editorial and technical resources as those used for the PSO News. For example, a journalist may cover a story in the morning on the News Channel, and in the evening on the Main Channel. In addition, TV 2 may reuse its PSO content on the News Channel, for example by looping news stories produced for the PSO News. All resources utilised in the production of news content are also allocated in a single organisational unit that produces news for all of TV 2's news platforms.

(190) The Norwegian authorities have explained that it was challenging to find a method for separating the costs between PSO News and the News Channel. Even if it might be possible to allocate time between different news stories, there would still be significant problems in allocating news stories between channels and programmes.

(191) This is also recognised in paragraph 65 of the Broadcasting Guidelines, stating that "in the public broadcasting sector, separation of accounts may be more difficult on the cost side. This is because, in particular in the field of traditional broadcasting, EEA States may consider the whole programming of a broadcaster covered by the public service remit, while at the same time allowing for its commercial exploitation. In other words, public service and non-public service activities may share the same inputs to a large extent and the costs may not always be severable in a proportionate manner".

(192) Paragraph 67 of the Broadcasting Guidelines states that whenever the same resources are used to perform public service and non-public service tasks, the common input costs should be allocated on the basis of the difference in the firm's total costs with and without non-public service activities. In such cases, costs that are entirely attributable to public service activities, while also benefiting non-public service activities, need not be apportioned between the two and can be entirely allocated to the public service activity. This difference to the approach generally followed in other utilities sectors is explained by the specificities of the public broadcasting sector. In the field of public broadcasting, the net benefits of commercial activities related to the public service activities have to be taken into account for the purpose of calculating the net public service costs and therefore to reduce the public service compensation level. This reduces the risk of cross-subsidisation by means of accounting common costs to public service activities.

(193) As set out above, there is nothing preventing the Norwegian authorities from drawing on the Broadcasting Guidelines, as long as the allocation mechanism also complies with the SGEI Decision.

4.7.6.2 The allocation of costs and revenues for News Total in the Agreement

(194) The Ministry of Culture sought guidance from an external consultant, BDO, in devising an appropriate model for allocating production costs between the PSO News and the News Channel.[98]

[98] Document No 1075593.

(195) Section 1.4 of the guidelines for separation of accounts states that the combined news production in TV 2 shall be presented in a single account ("News Total"). This account shall be further sub-divided into two separate accounts: PSO News and the News Channel.

(196) When allocating costs to the sub-accounts within the News Total account, the costs shall be classified as falling within one of three categories: (i) costs that can be allocated directly to PSO News, (ii) costs that can be allocated directly to the News Channel, and (iii) costs that are not possible to allocate directly, including common production resources, indirect costs and true common costs.

(197) Therefore, all direct costs shall be allocated to the PSO News and the News Channel respectively, while costs that cannot be allocated directly or in a meaningful way, shall in their entirety be allocated to the PSO News. In parallel, all revenues from the News Channel shall in in their entirety be allocated to the PSO News, save for a 10% operating margin. Thus, all common costs and all revenues from TV 2's total news production, both PSO News and the News Channel, are allocated to PSO accounts.

(198) The complainant argues that the full allocation of costs to the PSO accounts implies that compensation in reality subsidises the News Channel, which is not part of the PSO.

(199) The complainant further argues that the weighted actual viewing allocation key does not ensure that the entire revenue is allocated to the News Channel as the News Channel has a high number of older viewers. According to the complainant, 54.5% of the viewers of the News Channel are in the age segment 60–79, which are awarded less weight under the weighted actual viewing allocation key for advertisement revenue.[99] The complainant claims that this means the News Channel's revenues are underestimated. Therefore, the fact that the entire revenue from the News Channel is allocated to the PSO accounts is insufficient to rule out overcompensation.

(200) The Norwegian authorities argue that the allocation model ensures that the costs and revenues are allocated in accordance with the SGEI Decision. All direct costs are allocated directly, while all common costs are attributed in their entirety to the PSO News. However, as the entire revenue for the News Channel, save for 10% operating margin, is also allocated to the PSO News, the Norwegian authorities argue that the surplus ensures that the News Channel covers an appropriate contribution to the common costs.

(201) The Norwegian authorities further argue that as long as the News Channel's revenues cover the News Channel's direct costs and a fair share of common costs, there is no risk of cross-subsidisation.

(202) The Authority has concluded, in section 4.7.5.2 above, that the allocation model chosen for advertisement revenues ensures that at least the entire revenue earned by the PSO is allocated to the PSO accounts, in accordance with Article 5(4) of the SGEI Decision.

[99] Document No 1043260.

(203) When it comes to the allocation of costs, there is not one established allocation model that can be applied to all common costs. For such costs, it is necessary to find a model which is in accordance with generally accepted cost accounting principles. This means that the Agreement must provide a reasonable allocation model for common costs, taking into consideration the specific circumstances for the relevant undertaking and sector concerned.

(204) The Norwegian authorities have drawn on the Broadcasting Guidelines to establish an appropriate model for allocating common costs for News Total. Considering that the Broadcasting Guidelines provide specific guidance on allocating costs in the broadcasting sector, it is prudent to draw on these guidelines to find the best allocation mechanism for these costs.

(205) As long as the revenues generated by the News Channel cover all incremental costs associated with the News Channel and an appropriate contribution to the costs common to both, the News Channel and the PSO News, the allocation model is in line with Article 5(3) and (9) of the SGEI Decision.

(206) The Norwegian authorities have provided documentation showing that the News Channel's revenues, based on TV 2's 2018 accounts, will provide a considerable surplus to the PSO account.[100] The News Channel is therefore a significant net contributor to the PSO accounts; the revenues from the News Channel reduce the overall need for public financing of the PSO News.

(207) The Agreement further provides that the Media Authority will review the profitability of the News Channel on a regular basis, based on the actual accounts, prior to the annual settlement of the financial contribution under the Agreement.[101] Therefore, the Agreement provides for control mechanisms to ensure that the News Channel's revenues will continue to cover both direct costs and an appropriate contribution of the true common costs.

(208) Moreover, the Norwegian authorities have stated that it is a premise for the single account (News Total) that the News Channel continues to be profitable.[102] In case the News Channel ceases to be profitable, an alternative model to the single account will have to be established. If such an alternative model cannot be established, the Ministry of Culture is entitled to terminate the Agreement before the end of the compensation period, pursuant to section 7 of the Agreement.[103]

(209) The guidelines for separation of accounts therefore ensure that costs allocated to the PSO include the direct costs in providing the service and an appropriate contribution to costs common to both the PSO and non-PSO activities. Additionally, the non-PSO activities also cover an appropriate contribution to the common costs

---

[100] Document No 1075593.
[101] Section 1.2 of the guidelines for separation of accounts.
[102] Document No 1075593.
[103] See for comparison the Authority's Decision 125/06/COL regarding the Norwegian Energy Fund, OJ L 189, 17.7.2008, p. 36, and EEA Supplement No 43, 17.7.2008, p. 1, section 3.2.1, to ensure that the aid component would not exceed the investment costs, and consequently the maximum aid intensities, the aid scheme was amended so that projects with a negative discounted cash flow from operations would not be eligible for the aid.

through the allocation of the revenue of the News Channel account to PSO News, in accordance with Article 5(3) and (9) of the SGEI Decision.

(210) In accordance with Article 5(4) of the SGEI Decision, the allocation of the total revenue from the PSO News and the News Channel (save for 10% operating margin) to the PSO News accounts, ensures that at least the entire revenue earned from the PSO is taken into consideration.

4.7.7 Reasonable profit

(211) According to Article 5(5) of the SGEI Decision, "reasonable profit" means the rate of return on capital that would be required by a typical undertaking considering whether or not to provide the service of general economic interest for the whole period of entrustment, taking into account the level of risk.

(212) Further, Article 5(8) of the SGEI Decision provides that where, by reasons of specific circumstances, it is not appropriate to use the rate of return on capital, the state may rely on other profit level indicators such as return on sales. Whatever indicator is chosen, the EEA State shall be able to provide the Authority with evidence that the profit does not exceed what would be required by a typical undertaking considering whether or not to provide the service, for instance by providing references to returns achieved on similar types of contracts awarded under competitive conditions.

(213) The Norwegian authorities have explained that broadcasting operations invest mainly in immaterial assets, such as programme rights and editorial production capacities. Such investments are not commonly recorded as assets on the balance sheet and return on capital invested would therefore be misleading as a profitability indicator of the actually committed capital. The Norwegian authorities have further explained that companies with operations other than SGEI will often rely on shared assets recorded on the balance sheet, which would complicate using a return on capital indicator further. The Norwegian authorities therefore decided that return on sales (operating margin) would be the most appropriate profitability indicator for the Agreement. This decision was also supported by the Norwegian Media Authority.[104]

(214) In preparation for the tender, the Norwegian Authorities requested the Norwegian Media Authority to conduct a benchmarking exercise to establish a reasonable operating margin for the PSO.[105] The exercise was carried out by investigating the profit levels of the five largest commercial broadcasters in the Nordics, namely TV 2, TV 2 Denmark, TVNorge, TV 4 Sweden, and MTG Nordic Entertainment, based on publicly available annual accounting information.

(215) The table below shows the operating margins (calculated as earnings before tax and interest (EBIT-margin)) of the broadcasters included in the benchmarking exercise, for the years 2013 through 2016:[106]

---

[104] Memo from the Media Authority, Document No 1075585.

[105] Memo from the Media Authority, Document No 1075585.

[106] Memo from the Media Authority, Document No 1075585, stating that TV 2 was the sole commercial public service broadcaster in Norway until 2016, and that there were no separate accounts available for TV2's previous public service broadcasting channel, the Main Channel. The numbers for TV 2 are therefore at a group level, which includes all of TV 2's channels and TV 2 Sumo. The figures for TV 2 Denmark also reflect the company's activities at a group level. TV4

Broadcaster	2013	2014	2015	2016
TV 2	7.21%	3.63%[107]	6.42%	
TV 2 Denmark	6.92%	8.39%	7.39%	5.02%
TVNorge	17.71%	21.12%	13.72%	
TV4 Sweden (EBITA)			15.64%	17.01%
MTG Nordic Entertainment	14.17%	14.15%	13.73%	12.47%

(216) The conclusion drawn by the Norwegian Media Authority was that the return allowance should be between 7% and 10% for the activities included in the public service remit.[108] Based on the recommendation, the Norwegian authorities included a reasonable profit level in the tender documents of 10%.[109] This was also the profit margin that TV 2 submitted as its required rate of return in the bid, and which was ultimately implemented in section 5-4 of the Agreement.

(217) The complainant argues that the choice of a 10% operating margin level is disproportionate, as it does not bear similarity to the operating margin of other Scandinavian broadcasters with public service obligations. Further, the complainant argues that the margin is not justified in light of the fact that TV 2's actual operating margin has decreased in recent years and was consistently lower than 10% for the three years included in the benchmarking overview (2013–2015).

(218) Furthermore, the complainant questions the appropriateness of using the numbers listed in the table above for the benchmarking exercise. The complainant argues that the numbers display the return on sales for TV 2 at a group level, which includes all of TV 2's TV channels and the streaming service. The return on sales may thus vary depending on the broadcaster's success outside the public service sphere. The same argument applies to the other broadcasters included in the benchmarking.

(219) The Authority notes that the Media Authority conducted an assessment of a reasonable return based on the information available for comparable broadcasters in the Nordic countries and that disaggregated numbers (non-group level numbers) were not available.

(220) As explained by the Norwegian authorities, the level of profit in the Agreement is based on a benchmarking exercise conducted by the Media Authority in preparation for the tender.

(221) The benchmarking showed a significant variation in profitability for the different broadcasters in each year. The recorded margins ranged between 3.6% and 21%. The benchmarking further revealed that those operators who provided SGEI content (TV 2 and TV 2 Denmark) were less profitable than those without SGEI.

Sweden does not publish its accounts. The information available about TV4 Sweden's profitability is based on excerpts from the accounts from 2015 and 2016. MTG publishes segment information relating to their combined TV operations in the Nordic countries. This includes both free to air and pay-TV channels. TVNorge's revenue includes service fees paid by Discovery's UK-based TV channels aimed at the Norwegian audience.

[107] The profit level for TV 2 in this year is low due to a change in TV2's pension scheme.

[108] Document No 1075585.

[109] The notice to tender, Document No 1043262, section 8.1.2.

Margins for TV 2 and TV 2 Denmark ranged between 3.6% and 8.4%, while margins for the purely commercial broadcasters ranged between 12.5% and 21%.

(222) The Norwegian Media Authority recommended that the reasonable operating margin for the PSO should be set at a level below the operating margins of the purely commercial broadcasters due to the lower risk involved in carrying out PSO. Thus, the 10% operating margin under the Agreement is set considerably lower than the 12.5% to 21% margins achieved by the purely commercial broadcasters, but higher than the 5% to 8.4% margins achieved by the commercial public service broadcasters.

(223) Regarding the margin range in the benchmarking for the commercial public service broadcasters, the Authority further notes that TV 2 provided PSO content during the relevant years, based on a must-carry status with distributors. TV 2 has explained that this arrangement was not sufficiently beneficial to cover the true costs of carrying out the PSO and that this affected TV 2's profit levels. As a result, the historical operating margins for TV 2 appear lower than what would be required by a typical undertaking considering whether or not to provide the PSO.

(224) The Norwegian authorities also state that the profit margin must be seen in relation to the risk on the relevant market. The TV-broadcasting industry, like the rest of the media industry, is in a period of profound market changes, which means that the service provider will face risks related to future advertising revenues and changing viewer habits.[110]

(225) The relevant rate of return is supposed to reflect a level which would be required by a typical undertaking considering whether or not to provide the relevant PSO for the period of entrustment. In this assessment, it is relevant also to look at the profit margins obtained by the purely commercial broadcasters. The Authority therefore considers it reasonable to establish an operating margin which is lower than that achieved by purely commercial operators, but higher than margins achieved by operators on the lower end of the scale.

(226) In accordance with Article 5(8) of the SGEI Decision, the Authority finds the rate of return reasonable and not exceeding what would be required by a typical undertaking considering whether or not to provide the PSO for the whole period of entrustment.

4.7.8 Conclusion

(227) The model for calculating the compensation for the PSO complies with generally accepted cost accounting principles and ensures that the compensation does not exceed what is necessary to cover the net cost incurred in discharging the public service obligations, including a reasonable profit, in line with Article 5 of the SGEI Decision.

4.8 Control of overcompensation and recovery of overcompensation – Articles 5(10) and 6

(228) Article 6(1) of the SGEI Decision requires the EEA States to ensure that the undertaking does not receive compensation in excess of the amount determined in

[110] The Norwegian authorities' reply to the RFI, dated 14.6.2019, Document No 1075593.

accordance with Article 5. To ensure this, they shall carry out regular checks, or ensure that such checks are carried out, at least every 3 years during the period of entrustment and at the end of that period.

(229) Pursuant to Article 5(10) and 6(2) of the SGEI Decision, where an undertaking has received compensation in excess of the amount determined in accordance with Article 5, the EEA State shall require the undertaking concerned to repay any overcompensation received. However, where the amount of overcompensation does not exceed 10% of the amount of the average annual compensation, such overcompensation may be carried forward to the next period and deducted from the amount of compensation payable in respect of that period.

(230) Section 6 of the Agreement provides that the Media Authority is to control that TV 2 fulfils its obligation under the agreement. The Media Authority shall prepare an annual report to verify that TV 2 has complied with its obligations under the Agreement. TV 2 is obliged to provide the Media Authority with the information necessary to verify the fulfilment of the Agreement.

(231) Section 1.2 of the guidelines for separation of accounts includes detailed provisions on the basis and auditing of costs and revenues. An independent accountant shall annually control the accounting principles and the correct use of the allocation methods in the guidelines for separation of accounts. The control shall be based on principles laid down by the Media Authority, and includes:

- A verification that TV 2 has established systems for the registration, processing and reporting of revenues and costs associated with the PSO, in accordance with generally accepted cost accounting principles.
- A verification that the company's revenues and expenses, which forms the basis for further allocation to the PSO accounts, correspond with the underlying internal accounts and accounting systems.
- A verification that any additional expenses attributable to the PSO, as a result of the localisation requirements, are documented by TV 2 and that these expense items are not also allocated to other parts of the PSO accounts.

(232) In addition, TV 2 is obliged to provide the Media Authority with the information listed in section 4-5 of the guidelines for separation of accounts, on an annual basis. This includes the obligation to provide the Media Authority with:

- A report of the company's activities in the previous year related to the PSO.
- An annual financial statement.
- A report from an external auditor confirming that there is no cross-subsidisation and that the business covered by the PSO is in accordance with market principles.
- A separate account regarding the PSO, which is to be reconciled with the total accounts for the business.

(233) Further, according to section 5-2 of the Agreement, it is the Media Authority that conducts the final calculation of the compensation and pays the compensation in instalments each quarter, *ex post*.

(234) The fact that the final calculation and settlement is made *ex post* means that the Media Authority can withhold payments if there appears to be a risk of overcompensation.

(235) Furthermore, any decision made by the Media Authority is a decision under the Norwegian Public Administration Act, and may be appealed to the Media Appeals Board *(Medieklagenemda)*.[111]

(236) Section 5-3 of the Agreement also provides the Media Authority with a right to recover any potential overcompensation. However, overcompensation which does not exceed 10% of the average annual compensation may be carried forward to the next year and deducted from the amount of compensation payable in respect of that period. This is in line with Article 6(2) of the SGEI Decision.

(237) The above provisions enable the Media Authority to ensure that the compensation paid to TV 2 complies with the SGEI Decision and that TV 2 does not receive any overcompensation. The Agreement also provides mechanisms for recovering any potential overcompensation.

(238) Consequently, there are sufficient arrangements in place to avoid, detect and recover overcompensation under the Agreement, in line with Articles 5(10) and 6 of the SGEI Decision.

4.9 Transparency – Article 7

(239) Article 7 of the SGEI Decision includes additional transparency criteria for compensation above EUR 15 million granted to an undertaking which also has activities outside the scope of the service of general economic interest.

(240) The transparency criteria apply to measures exceeding EUR 15 million annually.[112] The requirement must be seen in conjunction with Article 2(1)(b) and (c) in particular, and is intended for large social services that benefit from the application of the SGEI Decision, regardless of any thresholds.[113]

(241) The amount under the Agreement is limited to NOK 135 million, which is less than EUR 15 million.

(242) Accordingly, Article 7 is not applicable.

5 Conclusion

(243) In conclusion, the Authority finds that the measure meets the conditions laid down in the SGEI Decision. Therefore, pursuant to Article 3 of the SGEI Decision, the

[111] *Forvaltningsloven*, LOV-1967-02-10, section 28. This is also explicitly stated in section 9 of the Agreement.
[112] Commission Decision, SA.19864, Public financing of Brussels public IRIS hospitals, OJ L 351, 22.12.2016, p. 68, paras 261–262.
[113] The Commission's Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest, SWD(2013) 53 final/2, question 147.

measure is block exempted.[114] Accordingly, the complaint is rejected as unfounded.[115]

(244) The present letter is a challengeable act. Any appeal must be brought before the EFTA Court within two months, in accordance with Article 36(3) SCA.

(245) A copy of this letter will be sent to the Norwegian authorities, in line with the Authority's Guidelines on Best Practice for the conduct of state aid procedures.[116]

Yours sincerely,

Gjermund Mathisen
Director
Competition and State Aid Directorate

[114] See also the Commission's decisions C(2016)6689 final in case SA.36798 (2016/NN) – Germany – Alleged unlawful State aid for Klinikum Osnabrück GmbH and SA.38121 (2016/FC) – Slovakia Investment aid to the Slovak glass sand producer NAJPI a.s.
[115] Decision No 098/19/COL.
[116] 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, para. 51.