

EFTA SURVEILLANCE AUTHORITY DECISION

of 10 June 2015

raising no objections to aid in the form of a transfer of land to Vålerenga Fotball
(Norway)

The EFTA Surveillance Authority (“the Authority”),

HAVING REGARD to:

the Agreement on the European Economic Area (“the EEA Agreement”), in particular to Article 61,

Protocol 26 to the EEA Agreement,

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

Protocol 3 to the Surveillance and Court Agreement (“Protocol 3”), in particular to Article 1(3) of Part I and Article 4(3) of Part II,

Whereas:

I. FACTS

1 Procedure

- (1) The Norwegian authorities notified a proposed transfer of land to Vålerenga Fotball (“VF”), pursuant to Article 1(3) of Part I of Protocol 3 by letter dated 8 April 2015, which was submitted to and received by the Authority on 9 April 2015.¹

2 The aid measures

- (2) The notified transfer of land is intended to enable VF to build and operate a football stadium at Valle Hovin in eastern Oslo. VF will also receive a contribution of NOK 20 million towards the construction costs from the lottery funds administered by Norsk Tipping AS (see section I.2.2 below).

¹ Document No 753428 and annexes.

2.1 Transfer of land to VF

- (3) The City of Oslo plans to transfer to VF certain sections of land² for NOK 1: (i) the eastern section of plots B5 and T1 (“the Stadium Land”), on which the new football stadium will be built; and (ii) plots B2 and B6 (“the Commercial Land”), which VF will sell to help finance the cost of building the new stadium (together “the Donated Land”).³
- (4) On 14 May 2008, the City Council of Oslo adopted a decision in principle on this planned transfer to enable the construction of a football stadium.⁴ On 3 September 2014, the City Council of Oslo adopted a decision approving the zoning plan for the Stadium Land.⁵ On 24 September 2014, VF and the City of Oslo signed an option agreement.⁶ The actual transfer of the Donated Land has not yet taken place and is suspended pending the outcome of the state aid investigation.
- (5) In its decisions and the option agreement, the City Council of Oslo attached the following conditions to the intended transfer of the Donated Land:⁷
- VF is required to submit a proposal for the zoning of the specific area. The zoning has to contain a football stadium, an ice rink, properties for business and public use, including a kindergarten and an upper secondary school with a sports department. VF would assume the risks associated with the rezoning work.⁸
 - VF has to build the required general infrastructure, such as roads that make the area accessible as well as water pipes and drainage systems. Ownership of the infrastructure would later be transferred to the municipality. It would also upgrade parts of an existing municipal ice rink.
 - VF would make the stadium accessible to various non-governmental organisations, to activities for young people and children, and also for the social activities of VF.
 - VF cannot sell or in any other way transfer the stadium to commercial entities.
- (6) In 2010, VF conducted a pre-sale of the Commercial Land by way of a tender process carried out by an independent real-estate agent. Out of six offers, the bid of NCC Property Developments AS (“NCC”), a leading construction and property development company in the Nordic region, was selected as the best bid. On 4 February 2011, VF and NCC entered into an exclusivity agreement, which contains a future purchase price of NOK 245 million

² The land was originally titled 132/7, 130/12, 130/112 and 130/193. After rezoning, these correspond to the eastern section of plots B5 and T1, as well as plots B2 and B6.

³ See Document No 753428, page 1.

⁴ Document No 753409.

⁵ Document No 753421.

⁶ Documents No 753417 and 753418.

⁷ See Document No 753428, page 18.

⁸ The site at Valle Hovin for which VF has provided the zoning proposal accounts for approximately 164 000 sqm. Large portions of this site were zoned as public outdoor recreation areas and sports areas, and will remain as such and continue to be under municipal ownership. Of the total zoned area, the Donated Land to be transferred from the City of Oslo to VF measures 63 030 sqm. This consists first and foremost of the Stadium Land, which measures 39 450 sqm. This land will remain under VF's ownership and will be developed by VF to hold a new football stadium, school, kindergarten, fitness studio, and some office and commercial space. The Commercial Land measures a total of 23 580 sqm. These comprise plot B2, measuring 13 240 sqm and zoned for 60 000 sqm gross floor area for use as commercial/office/restaurant/café, and plot B6, which is zoned for 30 200 sqm gross floor area for use as residential/commercial/office/restaurant/café.

(in the meantime adjusted to NOK 250 million), as well as a further NOK 50 million to cover public infrastructure expenses, i.e. a total of NOK 300 million.⁹

- (7) VF also published a tender for the construction of the stadium in March 2011, which resulted in Hent AS being selected as the contractor.¹⁰ A public works contract was signed on 30 May 2012. The estimated total costs of the stadium construction amount to NOK 720 million.
- (8) The stadium will be owned and operated by VF through its wholly-owned subsidiary Vålerenga Kultur og Idrettspark AS (“VKI”) and used by both VF’s professional football (“Elite”) teams and its amateur sports divisions. Part of the premises would be rented out to the school, a kindergarten and a fitness centre offering free access to members of the club. Furthermore, the stadium would be accessible for amateur sports events and other social activities. Finally, the stadium could also host commercial events such as concerts, but this could only happen rarely and only outside the football season.

2.2 Contribution from the lottery fund

- (9) Besides the transfer of land, VF will also receive a NOK 20 million contribution towards the investment costs from the lottery funds administered by Norsk Tipping AS under an existing aid scheme (see section II.1.5 below).

3 The stadium project

- (10) The stadium is planned to have a spectator capacity of 18 000. The pitch will fulfil UEFA standards and will be covered by artificial grass.
- (11) On average, the stadium’s artificial grass pitch can be used from April to December (eight months) for about 2 400 hours on weekdays and 600 hours on weekends. Of these 3 000 hours, around 600 hours are allocated to the male Elite team and around 400 hours to the female Elite team. The total use by the Elite teams therefore accounts for a third of the total possible usage time.
- (12) The remainder will be allocated to children, youth, social projects, school training sessions, and recreational use. During weekends, the stadium will also be open for free use/individual training outside match times. Under the option agreement, the City of Oslo will also be entitled to use the stadium for 20 days a year for social activities.
- (13) The new stadium could also be used by other clubs as a match venue if necessary, for example for clubs that have club licensing criteria imposed on them by the Norwegian football federation.
- (14) Whilst three sides of the stadium will be outdoor stands with roofs, one side will consist of four floors of indoor areas measuring approximately 16 000 sqm. This indoor space will contain locker room facilities, a physical therapy centre, merchandise stands, underground parking, a kindergarten, a fitness centre, administration offices for VF (including Job Opportunities and Vålerenga against Racism) and the Elite teams (rented out on market terms), media and press areas, as well as VIP areas for events, hospitality, etc. These VIP areas will also be used by the school during daytime and for certain social projects such as Vålerenga against Racism, Job Opportunities, the Inclusion Project and others.

⁹ See Document No 753428, page 18.

¹⁰ See <http://ted.europa.eu/udl?uri=TED:NOTICE:96197-2011:TEXT:EN:HTML&src=0> and <http://ted.europa.eu/udl?uri=TED:NOTICE:285354-2011%20:TEXT:EN:HTML&src=0>.

- (15) Besides, the stadium will also contain space for an upper secondary school with a capacity of around 500 pupils. The school will focus on young people specialising in football as well as students who have dropped out of the mainstream school system. The school area measuring approximately 6 500 sqm will be used exclusively by the school, which will pay market rent for these premises. In addition the school will be entitled to use the stadium pitch and some of the indoor stadium space when not used by VF or the Elite teams.
- (16) The investment costs of the stadium are composed as follows:¹¹

Cost item	NOK
Development costs	22 000 000
Infrastructure costs, municipal area	45 000 000
Infrastructure costs, private area	52 000 000
Construction costs, stadium (excl. school and commercial areas)	218 200 000
Construction costs, commercial areas in stadium	42 000 000
Construction costs, underground car park	10 500 000
Construction costs school areas in stadium	180 000 000
Costs for expanding multifunctional sports hall for the school	4 800 000
Ticketing system	2 500 000
Demolition costs	5 000 000
Price increase (from signing of contract with Hent AS until completion)	46 000 000
Fees, taxes, insurance	2 000 000
Administration and project management	22 000 000
Financial costs	20 000 000
Unforeseen costs/miscellaneous	48 000 000
Total investment costs	720 000 000

- (17) In addition to the state aid measures, VF is expected to finance the investment costs mainly through bank loans totalling about NOK 380 million.¹²
- (18) The Norwegian authorities also presented an estimate of the economic value of the stadium. Based on the expected annual income, the estimated costs and assumed rate of return requirements, the report suggests a value of NOK 498.5 million for the completed stadium.¹³

4 The beneficiary: VF

- (19) VF forms part of Vålerenga Idrettsforening, an alliance of seven sport clubs catering for different disciplines and founded in 1913 in the Oslo neighbourhood of Vålerenga. VF has 84 football teams in all age groups for both boys and girls. VF's professional ("Elite") men's team is one of Norway's major professional football teams, having won the Tippeligaen five times and four times the Norwegian Football Cup. VF's Elite women's team won promotion

¹¹ See Document No 753428, page 3.

¹² *Ibid.*

¹³ See page 12 of the valuation report dated 18 December 2014 prepared by BER Verdivurdering AS, Document No 753419.

to the Toppserien in 2011. Besides its football teams, VF also organises a variety of community activities, including notably projects to promote integration and combat racism, to recruit girls to football and other sports, to help get young people, former addicts and women from minority groups into working life, to help children from poor families by offering them activities and to integrate poor and/or minority families.

- (20) VF has established a wholly-owned subsidiary, VKI, to build and operate the planned stadium. Through VKI, VF will therefore act as the owner and operator of the stadium infrastructure.
- (21) Within VF, the Elite teams are located in a separate entity with separate accounts. All dealings between the Elite teams and the rest of VF have to take place on commercial terms.
- (22) Both VF (for the amateur activities) and the Elite teams will be tenants in the new stadium, based on a lease agreement with VKI. The Elite teams will lease the stadium for match days as well as training sessions, and will pay a benchmarked market price for its use (see section I.5 below).¹⁴

5 Comments by the Norwegian authorities

- (23) The Norwegian authorities do not dispute that the measure contains some elements of state aid in favour of VF given that the stadium infrastructure will be used for economic activities.
- (24) However, the Norwegian authorities argue that the aid measure will not provide an economic advantage to VF's Elite teams, as there is accounting separation between them and VF, and VKI will charge market rent for the Elite teams' use of the stadium.
- (25) The Elite teams will pay a total of around NOK 9.8 million for using the new stadium for matches and training purposes. The Norwegian authorities argue that this corresponds at least to market rent as evidenced by benchmarking, in particular based on the rent the Elite teams currently pay for the use of Ullevaal Stadium¹⁵ during match days and the estimated rental price of the (smaller) Bislett Stadium¹⁶ as well as the estimated cost of using alternative facilities for training.
- (26) The Elite teams currently pay around NOK 4.5-4.8 million per year for renting the pitch at Ullevaal Stadium. However, Ullevaal is significantly larger than the new stadium. If the Elite teams were instead to rent the smaller Bislett Stadium, the estimated rental price would be just over NOK 2 million per year.
- (27) The Norwegian authorities argue that in terms of quality and capacity, VF's new stadium would lie somewhere between Ullevaal and Bislett, and that accordingly an appropriate market rent for the new stadium should be halfway between the prices for Ullevaal and Bislett, at around NOK 3.4 million per year for match days. In addition, the cost of renting an indoor football facility close by Valle Hovin for training purposes would amount to an estimated NOK 3.3-3.4 million per year. The Norwegian authorities thus conclude that the estimated market price of renting the new stadium for matches and training purposes based on benchmarking amounts to around NOK 6.8 million. This is well below the agreed rental price of around NOK 9.8 million the Elite teams will pay for renting the stadium.

¹⁴ See Document No 753428, pages 16-17.

¹⁵ Ullevaal is the Norwegian national football stadium and has a spectator capacity of 28 000.

¹⁶ Bislett is a combined track-and-field and football stadium with a spectator capacity of 15 000.

- (28) Furthermore, the Norwegian authorities have provided information on the rental costs charged to two other Tippeligaen clubs, showing rent levels from NOK 350 000 to NOK 3.2 million per year for considerably smaller stadiums.¹⁷
- (29) In addition, VKI and both of VF's Elite teams will publish their annual accounts, including the accounts relating to the operation and use of the stadium. Thus the City of Oslo and the general public will have full access to information about the rental rate which the Elite teams (and other professional users) pay for using the stadium.
- (30) The Norwegian authorities also argue that neither the buyer of the Commercial Land, NCC, nor the building contractor Hent AS will receive any state aid as they were chosen through competitive tender procedures. In addition, any other undertakings using the stadium (e.g. for events) or renting its other commercial premises will be charged market rent and will therefore also not receive any economic advantage.
- (31) The Norwegian authorities assess the value of the Donated Land at NOK 302.1 million before deductions. This figure corresponds to (i) NOK 300 million, which is the market value of the Commercial Land as evidenced by the sale to NCC pursuant to an open bidding process; and (ii) NOK 2.1 million, which is the value of the Stadium Land in the City of Oslo's internal real estate balance. Regarding this latter part of the Donated Land, the Norwegian authorities also provided a valuation report dated 18 December 2014 prepared by BER Verdivurdering AS showing that the land has no real market value due to the zoning, the obligation to build and operate a stadium and due to other conditions in the option agreement between the City of Oslo and VF.¹⁸
- (32) As part of the agreements with the City of Oslo, VF undertakes to perform certain activities that reduce the value of the Donated Land:¹⁹
- As a condition for the transaction the City Council of Oslo requires VF to finance the construction of the outdoor areas on the property surrounding the stadium, including traffic solutions and other infrastructure. These areas and infrastructure are to be transferred to the City of Oslo free of charge upon completion. VF will also be responsible for the maintenance of these outdoor areas in the future. The construction of these municipal outdoor areas and traffic solutions is estimated to cost NOK 52 million.
 - An outdoor ice rink is currently located next to the plot where the stadium is planned. It is owned by the City of Oslo. The stadium will be built in connection with the ice rink so that they can share some of the infrastructure. VF will rebuild the (worn-down) spectator stands of the ice rink, and the ice rink will share some of the new facilities with the stadium. The value of upgrading the ice rink based on the share of building costs is estimated at NOK 25 million.
 - As a prerequisite for the transfer of land, VF was obligated to incur NOK 22 million for certain development costs, including for necessary zoning and planning, which should be deducted from the aid value. The City of Oslo will sometimes perform zoning and planning of municipal land prior to sale, and sometimes sell municipal land with an obligation for the buyer to perform zoning and planning after the sale

¹⁷ The club Strømsgodset in Drammen pays approximately NOK 3.2 million a year for its stadium with a spectator capacity of 8 000-9 000; the club Stabæk in Bærum pays approximately NOK 350 000 a year for its stadium with a spectator capacity of 7 000.

¹⁸ Document No 753419.

¹⁹ See Document No 753428, page 18.

is conducted. In this case, the City of Oslo decided to donate the municipal land to VF without zoning and planning the land prior to the donation, and with an obligation for VF to incur the necessary development costs itself. It is therefore reasonable that these costs are deducted from the aid value.

- (33) The above obligations result in a total cost of NOK 99 million. The Norwegian authorities argue that this amount should be deducted from the value of the Donated Land, and that the net value of the Donated Land accordingly amounts to NOK 203.1 million.
- (34) In any event, the Norwegian authorities argue that the aid measure in favour of VF – including any aid potentially benefitting the Elite teams – should be declared compatible with the functioning of the EEA Agreement.
- (35) In that respect, the Norwegian authorities first point to a chronic shortage of football pitches in Oslo.²⁰ At the same time, Oslo is one of the fastest-growing cities in Europe and much of this growth is expected to occur in the districts on the east side of the city where VF is based. It is therefore necessary to build more football infrastructure in this part of Oslo, including a new stadium. Using the existing stadiums at Ullevaal and Bislett would not lead to the creation of additional football pitches to remedy the shortage.
- (36) Moreover, there are a number of reasons why the existing stadiums at Ullevaal and Bislett are unsuitable for the intended use by VF. First of all, both stadiums are already used by other clubs and organisations, and it would therefore be difficult for VF to locate all its sporting activities there. Bislett Stadium was recently modernised as an athletics stadium and, consequently, was not designed to meet football licensing requirements. Several adjustments would therefore be needed before it could be suitable for football purposes, and some of these adjustments would then have to be reversed before it could be used again for track and field events. Ullevaal Stadium is Norway's national football arena and is used for international matches, cup matches, etc. Ullevaal Stadium was expanded in 2013 and is now a modern football stadium with a spectator capacity of almost 28 000. By comparison, the average attendance at VF's home games is 11 718. Consequently, the size of Ullevaal is not really appropriate for VF's Elite teams.
- (37) Moreover, both stadiums are located outside VF's catchment area in the east of Oslo and are therefore not suitable to promote VF's community activities.
- (38) The Norwegian authorities further explain that the stadium project would not materialise without state aid. Stadiums are facilities that involve a large and risky investment, and cannot be expected to supply a market return on the invested capital. They notably point to the financial planning of the project as well as the difference between the investment costs and the estimated value of the planned stadium (see section I.3 above).
- (39) Finally, the Norwegian authorities argue that as the aid measures are proportionate and minimise distortions of trade and competition, given the substantial contribution by VF to the investment costs, the limited aid intensity, the high proportion of non-commercial use of the infrastructure as well as the market rent charged to commercial users. Any effect on trade and competition is also limited, as the stadium infrastructure will primarily have a

²⁰ According to the Norwegian authorities, Oslo District Football reported a shortfall of almost 15 000 hours in 2013. This is equivalent to a need for 24 new artificial grass pitches. In the area of Oslo covering VF's home ground, the shortfall was almost 2 000 hours, and for VF alone the shortfall was almost 400 hours.

local and regional focus and will therefore not compete with infrastructure in other parts of the EEA.²¹

²¹ See Document No 753428, page 24.

II. ASSESSMENT

1 The presence of state aid

- (40) Article 61(1) of the EEA Agreement reads as follows: “*Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.*”
- (41) This implies that a measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement if the following conditions are cumulatively fulfilled: the measure: (i) is granted by the State or through state resources; (ii) confers a selective economic advantage on the beneficiary; (iii) is liable to affect trade between Contracting Parties and distort competition.

1.1 Presence of state resources

- (42) The aid measure must be granted by the State or through state resources. In the present case, the proposed measure is carried out by the City of Oslo. In the context of Article 61(1) of the EEA Agreement, both local and regional authorities are considered to be equivalent to the State.²² Hence, the City of Oslo is equivalent to the State for the purposes of the state aid rules under the EEA Agreement.
- (43) The proposed transfer of land from the City of Oslo to VF for NOK 1 will take place below market price (see also section II.1.2 below). As a result, the City of Oslo will forego income it could otherwise realise, and will thus transfer state resources to the recipient of the land, VF.
- (44) For these reasons, the Authority considers that state resources within the meaning of Article 61(1) of the EEA Agreement are involved.

1.2 Favouring certain undertakings or the production of certain goods

- (45) The aid measure must confer on the beneficiaries advantages that relieve them of charges that are normally borne from their budget. In addition, the aid measure must be selective in that it favours “*certain undertakings or the production of certain goods*”.
- (46) First of all, the funding of the construction of an infrastructure for commercial activities may confer an economic advantage on the owner and operator.²³
- (47) The planned stadium will be owned and operated by VF (through its subsidiary VKI) and will be let to various users against remuneration. VF will be able to commercially exploit the stadium without bearing the full investment costs. It is thus saving costs in comparison to a situation which would reflect commercial terms.²⁴ Therefore, VF as the owner and operator of the stadium enjoys an economic advantage. This advantage is furthermore selective as it is conferred only on one undertaking, namely VF.

²² Article 2 of Commission Directive 2006/111/EC on the transparency of financial relations between Member States and public undertakings (OJ L 318/17, 17.11.2006), incorporated at point 1a of Annex XV to the EEA Agreement.

²³ See judgment in *Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH v Commission*, C-288/11, EU:C:2012:821.

²⁴ Judgment in *Freistaat Sachsen and Land Sachsen-Anhalt and Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH v European Commission*, T-443/08 and T-455/08, EU:T:2011:117, paragraph 107.

- (48) The Norwegian authorities argue that the net value of the Donated Land is NOK 203.1 million (see section I.5 above). The Authority has found no reasons to question this figure. In particular, the market value of the Commercial Land has been determined by the sale to NCC, a private undertaking, pursuant to an open bidding process. The value of the Stadium Land corresponds to the value recorded in the City of Oslo's internal real estate balance. In the absence of a higher market value or recent acquisition costs incurred by the public authority, the reference to the internal valuation is appropriate in the present case and in line with the Authority's Sale of Land guidelines.²⁵ Furthermore, the Authority notes the zoning restrictions and the limitation on disposing of the Stadium Land, which also reduce the economic value of the land. Finally, the Authority has also assessed the proposed deductions for the construction of the municipal outdoor areas and the refurbishment of the ice rink (which will both be transferred to the City of Oslo free of charge) as well as the deduction for development costs. The Norwegian authorities have shown that the relevant costs would otherwise have been incurred by the City of Oslo. The Authority therefore accepts the proposed deductions from the value of the land. However, the eligible investment costs must be reduced accordingly (see section II.3.4 below).
- (49) The renting of the stadium infrastructure may furthermore constitute aid for the users, if the users are undertakings and if the rent they pay is below market level.
- (50) Many of the intended uses of the stadium concern non-professional users that do not qualify as undertakings within the meaning of Article 61 of the EEA Agreement. Offering them access to the stadium infrastructure free of charge or at rent below market rates does therefore not confer an advantage on undertakings.
- (51) The main professional users of the stadium are VF's Elite teams. The Authority notes that the Norwegian authorities have used benchmarking against the two existing stadiums in Oslo as well as a comparison with the rental prices paid by two other clubs from the same division (as described in section I.5 above) to argue that the rental conditions agreed between VF and its Elite teams reflect market price. However, the Authority considers that the proposed methodology is not sufficiently precise to guarantee that the Elite teams will always pay market price. In particular, the Authority notes that Bislett stadium is owned by the City of Oslo and that the comparison with other clubs in the Tippeligaen only encompasses two teams with very different profiles and stadium sizes. Against this background, and in the light of the close proximity between VF and its Elite teams, the Authority cannot exclude that part of the economic advantage benefitting VF (as the operator) may be transferred to VF's Elite teams through the setting of rental prices which are below those for the use of comparable infrastructure under normal market conditions.
- (52) The Authority finally notes that other undertakings will also rent premises in the stadium or otherwise use the stadium infrastructure. The Norwegian authorities have committed that these users will be charged market rent. The Authority further notes that VF has an incentive not to charge artificially low prices for other users as it needs to maximise revenues to service the debt it incurs to finance the stadium construction. The Authority therefore concludes that the economic advantage benefitting VF as the operator will not be transferred to these other users of the stadium.

²⁵ Authority guidelines on state aid elements in sales of land and buildings by public authorities, adopted on 17 November 1999. Available at: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>. See in particular section 2.2(d), which states that in principle, "the market value should not be set below primary costs during a period of at least three years after acquisition unless the independent valuer specifically identifies a general decline in market prices for land and buildings in the relevant market."

1.3 Distortion of competition and effect on trade between Contracting Parties

- (53) The aid measure must be liable to distort competition and affect trade between the Contracting Parties to the EEA Agreement.²⁶ The Authority recalls that the mere fact that aid strengthens an undertaking's position compared to that of other undertakings competing in intra-EEA trade is enough to conclude that the measure is liable to distort competition and to affect trade between the Contracting Parties to the EEA Agreement.²⁷
- (54) The Authority notes that the envisaged commercial exploitation of the stadium has a local and regional focus and is not intended to attract international events (besides eventual UEFA matches). However, the market for organising sport and other types of public events is open to competition between venue providers and event organisers, some of which operate across the EEA or belong to international groups. Therefore, the measure at issue has at least a potential effect on trade and competition in the EEA.
- (55) Regarding the user level, the Authority notes that VF's Elite teams (male and female) are both playing in the highest Norwegian divisions with the possibility of qualifying for European championships. Moreover, professional football clubs deploy economic activities in several markets other than participating in football competitions, such as the transfer market for professional players, publicity, sponsorship, merchandising or media coverage. Aid to a professional football club strengthens its position on each of those markets, most of which cover several countries in the EEA. As regards the market for the transfer of players, VF's Elite teams are active on the international transfer market, regularly recruiting players notably from other countries in the EEA.

1.4 Conclusion on the notified measure

- (56) Based on the above, the Authority considers that the proposed measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement in favour of VF as the owner and operator of the stadium, as well as in favour of VF's Elite teams insofar as the rent under the lease agreement will be below market price.

1.5 Contribution from the lottery funds

- (57) The Authority notes that VF will also receive NOK 20 million from the lottery funds administrated by Norsk Tipping AS. The lottery funds constitute an existing aid scheme²⁸ and their contributions therefore do not require notification. The Authority will, however, take into account the contribution from the lottery funds in its proportionality assessment under the cumulation rules.

2 Procedural requirements

- (58) Pursuant to Article 1(3) of Part I of Protocol 3: *“the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. The State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision”*.

²⁶ Judgment in *Italy v Commission*, C-372/97, EU:C:2004:234, paragraph 44.

²⁷ Judgment in *Libert*, C-197/11 and C-203/11, EU:C:2013:288, paragraphs 76-78 and Joined Cases E-5/04, E-6/04, E-7/04 *Fesil ASA and Finnjord Smelteverk AS v EFTA Surveillance Authority* [2005] EFTA Ct. Rep. 117, paragraph 94.

²⁸ The funds stemming from Norsk Tipping AS are gaming funds collected, administered and distributed on the basis of the Gaming Act 1992 that entered into force on 1 January 1993, before the entry into force of the EEA Agreement. See also the Authority's Decision No 537/09/COL to initiate the formal investigation procedure with regard to the financing of the fitness centre at the Kippermoen Leisure Centre, pages 5-6. Decision No 537/09/COL is available at: <http://www.eftasurv.int/media/decisions/537-09-COL.pdf>.

- (59) By submitting the notification of 8 April 2015 and suspending the proposed transfer of land pending the outcome of the Authority's investigation, the Norwegian authorities complied with their obligations pursuant to Article 1(3) of Part I of Protocol 3.

3 Compatibility of the aid

- (60) Pursuant to Article 61(3)(c) of the EEA Agreement, aid to facilitate the development of certain economic activities or of certain economic areas may be considered compatible with the functioning of the EEA Agreement where such aid does not adversely affect trading conditions to an extent contrary to the common interest. The assessment is based on the following steps:
- Is the aid measure aimed at a well-defined objective of common interest?
 - Is the aid well designed to deliver the objectives of common interest, i.e. does the proposed aid address the market failure or other objective? In particular:
 - o Is state aid an appropriate instrument?
 - o Is there an incentive effect, i.e. does the aid change the behaviour of the firms?
 - o Is the aid measure proportionate, i.e. could the same change in behaviour be obtained with less aid?
 - Are the distortions of competition and effect on trade limited, so that the overall balance is positive?
- (61) The above questions will be addressed in the following paragraphs.

3.1 Objective of common interest

- (62) The Authority notes first of all that the promotion of sport is not directly mentioned in the EEA Agreement as a common objective. However, promoting sport can be considered as part of the promotion of education, training and youth as well as social policy. Closer cooperation in these fields is considered an aim of the EEA, as set out notably in Articles 1 and 78 of the EEA Agreement. The modalities of this closer cooperation are further defined in Protocol 31 to the EEA Agreement on cooperation in specific fields outside the four freedoms. Article 4 of this Protocol is headed "Education, training, youth and sport" and foresees for example the participation of the Contracting Parties in the European Year of Education through Sport 2004. This illustrates the close link between the promotion of sport and the aims set out in the EEA Agreement.
- (63) This interpretation is consistent with the approach of the European Commission ("Commission"). In the European Union, the promotion of sport is specifically mentioned in Article 165 TFEU, which was introduced by the Lisbon Treaty.²⁹ However, also prior to the Lisbon Treaty the Commission recognised the specificity of the role sport plays in European society, based on volunteer-driven structures, in terms of health, education, social integration, and culture.³⁰ Since the Lisbon Treaty, the promotion of sport has also been recognised as contributing to the overall goals of the Europe 2020 Strategy by improving

²⁹ See Article 165(1) TFEU: "...The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function."

³⁰ See e.g. Commission, White Paper on Sport, COM(2007), 391 final, pages 3-4.

employability and mobility, notably through actions promoting social inclusion in and through sport, education and training.³¹

- (64) Given the above, the Authority concludes that the promotion of education, training and youth development through sport constitutes an objective of common interest. The Authority further notes that the financing of sport infrastructure can also benefit from the General Block Exemption Regulation if certain conditions are fulfilled.³² This further demonstrates that the promotion of sport, including the construction of sport infrastructure, represents an objective of common interest.

3.2 Appropriate instrument

- (65) The Norwegian authorities claim that there is a market failure in the provision of football stadiums in Norway. According to them, Norwegian stadiums are structurally loss making as their revenues are insufficient to cover the cost of the investment. This is evidenced by the financial planning and the independent valuation report submitted by the Norwegian authorities. The financial planning also demonstrates a financing gap that the proposed state aid is intended to cover.
- (66) Furthermore, the Norwegian authorities have demonstrated a genuine need for a new football stadium in the east of Oslo. They have identified a shortage of football pitches as well as the need for a new football stadium in the east of Oslo (see section I.5 above). The Authority notes that the City of Oslo already has two stadiums suitable for football, Bislett Stadium and Ullevaal Stadium. However, as demonstrated by the Norwegian authorities (see also section I.5 above), there are a number of reasons why they are not a suitable alternative to the planned new stadium, in particular with regard to VF's amateur sport and community activities.
- (67) Against this background, there appears to be no alternative, less distortive policy instrument suitable to promote the construction of the planned stadium. The Authority therefore concludes that the proposed aid measure is an appropriate instrument.

3.3 Incentive effect

- (68) The Authority notes first of all that the construction of the stadium has not yet started. Moreover, the financial planning of the project shows that VF will have to finance about NOK 380 million through bank loans. The Norwegian authorities have explained that VF will not be able to receive more funds from the banks, given its risk profile and the revenue generation capacity of the stadium. There is thus a gap in the financing. As a result, the stadium project would not materialise without the aid. This financing gap is also evidenced by the difference between the total investment costs of NOK 720 million and the estimated value based on rental income of only NOK 498.5 million.³³
- (69) Based on the above, the Authority concludes that the proposed aid measure has an incentive effect.

³¹ See e.g. Commission, Developing the European Dimension in Sport, COM(2011) 12 final, page 3.

³² Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1), as referred to in Annex XV to the EEA Agreement.

³³ The valuation the Norwegian authorities submitted contains a certain adjustment for the risk of obtaining permissions for the project. The Authority understands that since the date of the evaluation report, most of these permissions have actually been granted (including with the present decision).

3.4 Proportionality

- (70) As stated above in section II.1, the net value of the Donated Land is NOK 203.1 million, Together with the NOK 20 million contribution from the lottery funds, the total aid amount for the stadium construction is NOK 223.1 million.
- (71) In order to assess the aid intensity, this figure has to be put in relation to the eligible investment costs. As set out in section I.3 above, the total investment costs stand at NOK 720 million. However, as explained above in sections I.5 and II.1.2, NOK 99 million were deducted from the value of the Donated Land to compensate for costs incurred on behalf of the City of Oslo. These costs are therefore already taken into account in the assessment and have to be deducted from the investment costs. The total eligible investment costs therefore amount to NOK 621 million.
- (72) The total aid amount of NOK 223.1 million thus represents an aid intensity of about 36% of the eligible investment costs. The remainder will be financed by VF. The Authority notes that this aid intensity is rather low.³⁴ However, the aid intensity also has to be assessed in the light of the social benefits arising from the proposed stadium.
- (73) As explained in section I.3 above, the football pitch inside the stadium will be used for both the training and match day activities of the Elite teams as well as VF's amateur teams, the school, community activities etc. The Elite teams' usage will only represent about a third of the capacity. Furthermore, the City of Oslo can use the stadium at cost price for a minimum of 20 days a year for social activities. The stadium will also be made accessible for other clubs as a match venue if necessary.
- (74) The Authority notes that the planned stadium infrastructure is to a certain degree multi-functional, combining a football stadium with school premises, a kindergarten, a fitness centre and a number of areas that can be used by various community projects and associations. This further maximises the social use of the planned stadium infrastructure.
- (75) Finally, although falling short of always guaranteeing the payment of market rent, the benchmarking used by the Norwegian authorities does ensure that the aid remains limited and that VF's Elite teams will pay rent for their use of the stadium at a relatively high level, thus contributing to the financing of the stadium. The Authority also notes that there is accounting separation between VF and its Elite teams. All accounts relating to the operation and use of the stadium will be made public, thus ensuring transparency as to the rental conditions of the Elite teams and other professional users. This enables the Norwegian authorities (and the public) to verify the pricing arrangements and thus further reduces the risk of distortions.
- (76) Based on the above, the Authority concludes that the proposed aid measure is proportionate.

3.5 No undue distortion of competition and trade

- (77) The planned stadium will primarily have a local and regional focus. The infrastructure is not aimed at attracting international events.
- (78) The Authority further notes that there are safeguards to further limit any potential distortions. First of all, the aid intensity is low, and the corresponding contribution by VF to the investment costs reduces the risk of distortions. The Elite teams will be charged a rent level based on benchmarking that will not confer on them any undue advantage, and other

³⁴ For instance, the Commission has accepted aid intensities as high as 70% (case SA.31722) to 100% (case SA.33618) for the construction or renovation of football stadiums.

commercial users will be charged market rent. The Authority notes in this regard that VF will also grant access to the stadium to other football clubs that require a suitable stadium for match days. As explained in section II.3.4 above, the aid measure further ensures that the social benefit of the new stadium will be maximised.

- (79) The Authority therefore concludes that any distortions of competition and trade caused by the proposed aid measure will be limited.

3.6 Balancing and conclusion

- (80) Based on the assessment set out above, the Authority has balanced the positive and negative effects of the proposed aid measure. The Authority concludes that the distortions resulting from the proposed aid measure do not adversely affect trading conditions to an extent contrary to the common interest.

4 Conclusion

- (81) On the basis of the foregoing assessment, the Authority considers that the proposed measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement in favour of VF as the owner and operator of the stadium, as well as in favour of VF's Elite teams insofar as the rent under the lease agreement will be below market price. This aid is compatible with the functioning of the EEA Agreement in the meaning of its Article 61(3)(c).

HAS ADOPTED THIS DECISION:

Article 1

The transfer of land to Vålerenga Fotball and the lease agreement with Vålerenga Fotball's Elite teams constitute state aid compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(c).

Article 2

The implementation of the measure is authorised accordingly.

Article 3

This Decision is addressed to the Kingdom of Norway.

Article 4

Only the English language version of this decision is authentic.

Done in Brussels, on 10 June 2015.

For the EFTA Surveillance Authority

Oda Helen Sletnes
President

Frank Büchel
College Member

