

Case No: 76465  
Document No: 743997  
Dec No: 357/15/COL

EFTA SURVEILLANCE  
AUTHORITY

## EFTA SURVEILLANCE AUTHORITY DECISION

of 23 September 2015

to close the formal investigation into state aid in favour of Sandefjord Fotball AS  
(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 and Protocol 26,

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 7(3) of Part II,

Whereas:

### I. FACTS

#### 1 Procedure

- (1) Following the receipt of complaints and market information, the Authority notified the Norwegian authorities of state aid allegations regarding the financing of the new football stadium in Sandefjord on 31 October 2013 (Document No 686574). In the same correspondence, the Authority requested information on the alleged aid measure, which the Norwegian authorities provided on 29 November 2013 (Documents No 691773 and 691774).
- (2) The Authority requested further information from the Norwegian authorities on 16 January 2014 (Document No 694963), which was provided on 14 February 2014 (Document No 699518).
- (3) Based on the information at its disposal, the Authority decided to adopt Decision No 444/14/COL opening the formal investigation procedure into aid in favour of Sandefjord

Fotball AS on 22 October 2014 and invited the Norwegian authorities to provide comments. The decision was published in the Official Journal on 15 January 2015, inviting third parties to provide comments within a month of publication.

- (4) The Norwegian authorities were granted an extension of the deadline for comments until 23 December 2014 and provided comments on that date (Documents No 733899-733901). The Authority did not receive any further comments.

## **2 The beneficiary – Sandefjord Fotball AS**

- (5) Sandefjord Fotball club is an association established in 1998 on the basis of a cooperation agreement between the two largest football clubs in the Sandefjord area, namely Sandefjord Ballklubb and IL Runar. The objective of the cooperation was to create a professional football team in Sandefjord that could reach the Norwegian top division.
- (6) Sandefjord Fotball AS, a limited-liability company, operates the professional (“Elite”) team.<sup>1</sup> The cooperation between Sandefjord Fotball club and Sandefjord Fotball AS is based on the requirements of the Norwegian Football Association. The club further operates an amateur team and a junior football team. It also runs football summer schools and organises regional football competitions for young amateur players

## **3 Description of the measure**

### **3.1 Background**

- (7) Until 2007, Sandefjord Fotball’s Elite team used the municipal-owned stadium in Bugårdsparken for training purposes and matches. However, this stadium did not comply with the requirements of the Norwegian football federation for clubs playing in the highest division. An upgrade of the existing stadium was estimated to cost around NOK 40 million, which the municipality of Sandefjord was unwilling to invest.

### **3.2 The construction of the new stadium**

- (8) In 2005, the municipality of Sandefjord and Sandefjord Fotball AS discussed the possibility of constructing a new stadium. The municipality agreed to provide the necessary land, and Sandefjord Fotball AS to finance and run the stadium.
- (9) The municipality acquired several plots of land in the Pindsle area for a total of around NOK 3.7 million. The land was regulated as farmland at the time. The municipality’s decision of 6 September 2005 authorising the acquisition foresaw the land to be rezoned for business use and to require the construction of a stadium. In the new zoning plan, the land was split into two parts: plot 152/96 was zoned for mixed stadium and business use, and plot 152/97 for business use. By way of an agreement dated 28 November 2006, both plots of land were then transferred to two wholly-owned subsidiaries of Sandefjord Fotball AS: plot 152/96 to Sandefjord Fotball Stadion AS and plot 152/97 to Sandefjord Fotball Næring AS.
- (10) According to the agreement, Sandefjord Fotball AS was responsible for organising the necessary financing to build the stadium. The construction costs were estimated at NOK 110 million for the project. Sandefjord Fotball AS would contribute NOK 70 million from its own funds and from outside investors, the sale of naming rights etc., and take out a loan for the remaining NOK 40 million. The contribution of Sandefjord Fotball AS would

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<sup>1</sup> Further information on the beneficiary can be found in Decision No 444/14/COL.

partly be raised by the sale of the land zoned for business use (plot 152/97) to Pindsle Property AS.

- (11) Besides the construction of the stadium, the agreement contained a number of further obligations. In particular, Sandefjord Fotball AS agreed to carry out road works at the stadium site and to cover costs in relation to the discontinued use of the old stadium, including repairs.
- (12) Shortly after the signing of the agreement, the shares in Sandefjord Fotball Næring AS, which owned plot 152/97, were acquired by Pindsle Property AS for NOK 40 million. No valuation of the company was undertaken prior to the sale.
- (13) The new stadium was completed in July 2007 at a total construction cost of NOK 110 million.<sup>2</sup> In addition to the football pitch and stands, it contains a number of other facilities, including an athletics track, a fitness centre and meeting rooms. These are rented out free of charge to other (mainly amateur sport) organisations.

### **3.3 Subsequent sale of the stadium**

- (14) In 2009, Sandefjord Fotball AS encountered financial difficulties. The club decided to raise funds by selling Sandefjord Fotball Stadion AS (the company owning the stadium and adjacent properties on plot 152/96) to Pindsle Property AS. This time, a third-party company valuation was required under Norwegian law as several individuals held board positions and shareholdings in both the club and Pindsle Property AS.
- (15) The expert report of 6 April 2009 valued Sandefjord Fotball Stadion AS at between NOK 14 million and NOK 16 million. The company was sold at a price of NOK 15 million on 9 June 2009.

## **4 The opening decision**

- (16) On 22 October 2014, the Authority issued its Decision No 444/14/COL opening the formal investigation procedure into aid in favour of Sandefjord Fotball AS.
- (17) In its decision, the Authority came to the preliminary conclusion that the transfer of land to Sandefjord Fotball AS constituted state aid within the meaning of Article 61(1) of the EEA Agreement. In particular, the Authority considered that the transfer took place at below market value both for plot 152/96 (zoned for mixed stadium and business use) and plot 152/97 (zoned for business use).
- (18) As no arguments regarding the compatibility assessment had been put forward by the Norwegian authorities, the Authority had doubts whether the measure could be declared compatible with the functioning of the EEA Agreement.

## **5 Comments from the Norwegian authorities**

- (19) The Norwegian authorities provided comments on the opening decision by way of a letter dated 23 December 2014 (Documents No 733899-733901).

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<sup>2</sup> The Norwegian authorities have confirmed that the initial investment was NOK 110 million. However, the club subsequently invested another NOK 17 million in fixtures and equipment, mostly in the form of work performed by club members (“*dugnadsarbeid*”).

### 5.1 The transaction does not involve state aid

- (20) In their comments, the Norwegian authorities argue that the transfer of land from Sandefjord municipality to Sandefjord Fotball AS did not amount to state aid, as there was no advantage conferred on the alleged beneficiary.
- (21) The Norwegian authorities argue in particular that the market value of the land at issue was negative at the time of the transaction, and have submitted an expert valuation dated 5 February 2014 to that effect. The main reason for the alleged negative value of the land is that Sandefjord Fotball AS was obliged (by the terms of the transfer of land as well as under the zoning rules) to construct a football stadium as part of the transaction, and that the cost of the stadium construction exceeded the value of the land.
- (22) According to the Norwegian authorities, the obligation to construct a stadium could validly be imposed as a ‘special obligation’ in line with point 2.2(c) of Part V of the Authority’s Guidelines on State aid elements in sales of land and buildings by public authorities (“Sale of Land Guidelines”).<sup>3</sup>

### 5.2 Any aid amount would be very limited

- (23) Concerning the amount of the alleged state aid, the Norwegian authorities argue that in the event the Authority were to find that the land at issue had a positive market value, this value would be very limited.
- (24) The Norwegian authorities explain that agricultural land enjoys a special protection in Norway. Its sale and/or a change of use for other purposes are subject to strict controls by regional agricultural boards. In the case of the land at issue, the competent agricultural board only accepted the zoning proposal based on the public interest objective of building a stadium. It would not have been possible for a developer to acquire the land for pure business use. Therefore, the market investor principle cannot be applied to the transfer of land. Instead, the Norwegian authorities consider that any market valuation should be based on the price of agricultural land, which was the only realistic alternative use.
- (25) In the alternative, regarding the value of the land zoned for business use (plot 152/97) the Norwegian authorities argue that Pindsle Property AS, the company that acquired Sandefjord Fotball Næring AS for NOK 40 million, paid more than market price. In support of this argument, they refer to the valuation report (Annex 11 of Document No 699518), which concluded that plot 152/97 had a market value of about NOK 15 million.<sup>4</sup> The valuation is based on the average price of land zoned for business use in the Pindsle area at the time of the transaction.
- (26) Furthermore, the Norwegian authorities argue that in any event, a number of deductions have to be made to calculate the aid amount. These deductions result from certain obligations Sandefjord Fotball AS assumed for the benefit of the municipality under the agreement dated 28 November 2006: (i) NOK 2.6 million for the renovation of the old stadium; (ii) NOK 400 000 for the replacement of flood light in the old stadium; (iii) NOK 1.5 million for the construction of a public walkway; and (iv) NOK 5 million for the

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<sup>3</sup> 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/>.

<sup>4</sup> The valuation report estimates the combined value of plots 152/96 and 152/97 at NOK 31 million. The NOK 15 million results from apportioning this estimate according to the respective size of the two plots.

construction of a roundabout and a pedestrian crossing. In total, the agreement thus foresaw that Sandefjord Fotball AS had to incur costs amounting to NOK 9.5 million (as estimated at the time) in order to provide services for the municipality.<sup>5</sup>

### **5.3 Any potential state aid should be declared compatible**

- (27) The Norwegian authorities argue that in the event the Authority found a state aid element in the transaction at issue, any such aid should be declared compatible with the functioning of the EEA Agreement under its Article 61(3)(c).
- (28) The Norwegian authorities highlight that the promotion of sport, including the construction of sport infrastructure, constitutes an objective of common interest. They further argue that state aid is necessary and an appropriate instrument in the present case.
- (29) In particular, the Norwegian authorities explain that there was a need for a new stadium in Sandefjord. They point to the high usage pressure on the existing municipal stadium, which was used by Sandefjord Fotball and other teams at the time. Furthermore, a more modern stadium was required to meet the licensing requirements of the Norwegian Football Association to allow Sandefjord Fotball's Elite team – which had been operating under a temporary exemption – to remain in the highest Norwegian league.
- (30) Sandefjord municipality examined the option of upgrading the existing stadium, which would, however, not have addressed the lack of capacity. In contrast, building a new stadium would solve both the capacity and the licensing problems, and in addition create a venue for football across the county of Vestfold. As can be seen from the table below, the new stadium is used by a variety of clubs. Furthermore, the old municipal stadium has been renovated (financed by Sandefjord Fotball AS) and is fully utilised today by local sports clubs (athletics and football), schools and the general public. This further shows that there was a need for a new stadium in Sandefjord and that any state support was appropriate. Furthermore, upgrading the existing stadium would have required an investment of around NOK 40 million by the municipality, without any prospect of attracting private funds.
- (31) The Norwegian authorities also argue that any aid would be proportionate. First of all, they point to the fact that most of the investment costs for the new stadium were financed by Sandefjord Fotball AS, which contributed the maximum amount possible to the construction costs from its own resources and bank loans. This own contribution ensured that the aid amount was kept to the minimum.
- (32) The Norwegian authorities also highlight the non-economic social and amateur sport activities that have been made possible by the stadium construction. The existing municipal stadium is now fully available for amateur sports. In addition, a number of amateur sport and social activities, including school events, are performed on a regular basis in the new stadium.
- (33) To illustrate this point, the Norwegian authorities have submitted the following table summarising the estimated annual occupation of the stadium by various users for the period 2007 to 2014:

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<sup>5</sup> The final costs amounted to NOK 12 million, with the extra cost being covered by Pindsle Property AS.

Club	Activities	Hours per year	Payment
Sandefjord Fotball Elite team	20 matches (April-October/November) 100 hrs  Training April-October/November 2hrs x 5 x 16 = 160 hrs <sup>6</sup>	260	Yes
Sandefjord Fotball Junior and Recruit teams	Training and matches May-September	60	Yes
Cooperation clubs	Training and matches May-September	30	No
Cooperation clubs	Premises for courses and conferences, celebrations, coach and manager forum, lectures	30	No
Sandar IL (sports club)	End games age 14-19 in the Sandar-cup including opening ceremony (and use of the locker rooms)	25	No
Vestfold Fotballkrets (County football association)	Gatherings for teams in Sandefjord and the rest of the county age 14-16 including training and matches, courses and education for coaches	30	No
Sandefjord Fotball Bredde (children and youth sports), amateur tournaments	The administration of the club uses the premises for courses and conferences. Football school during summer, fall and Easter break age 6-12 on the football field. Amateur tournaments "Company cups"	90	No

- (34) In addition, nearby schools and several athletic clubs use the athletics track during weekdays. There are also school-organised activity days taking place in the stadium.
- (35) The non-professional use of the stadium thus accounts for more than 50%. The main limitation on a further increase in non-professional use is the resiliency of the natural grass pitch.<sup>7</sup> The professional team is granted preferential access to the stadium by reservation of the football field for home matches and preferential access to the football field for training. The indoor premises (e.g. the locker rooms and the office premises) can be used all year round by any organisation.
- (36) As can be seen from the table above, most non-professional users of the stadium do not pay any rent. In contrast, the Elite team pays an annual rent of NOK 3 million plus 20 % of ticket sales for the use of the stadium. The Norwegian authorities consider this amount to correspond to market rent: comparable teams pay a rent per hour in the range of NOK 2 000 to 5 000, which in sum results in a lower total rent than NOK 3 million annually. The Norwegian authorities therefore consider that Sandefjord Fotball's Elite team does not benefit from any advantage over its competitors from the rent it pays for the stadium use.

<sup>6</sup> During winter, the Elite team trains on an artificial grass field, but uses the lockers and other inside space at the stadium.

<sup>7</sup> There are plans to install an artificial grass pitch to allow for an increased usage.

- (37) Furthermore, the Norwegian authorities highlight that any effect on trade and competition would be very limited due to the local character of the club. Tickets to home matches are in general only sold locally and to supporters of visiting Norwegian teams. Income from kiosk sales during matches varies between NOK 600 000 and NOK 1 million annually. As regards branded merchandise, the market is mostly limited to the supporters in the county of Vestfold. There is no competition between clubs regarding these products. The arena name has been sold to Komplet.no, which is a Sandefjord based web-shop for electronics. Only local firms advertise at the arena.
- (38) Even regarding the market for players, the effect on trade and competition is limited. Sandefjord Fotball AS trades players only to a very limited extent and only with other Norwegian clubs. For instance, during the period 2011 to 2013, trading in players has resulted in an income of merely NOK 1.35 million and costs of NOK 860 000.
- (39) Regarding TV rights, the Norwegian authorities explain that these rights are administered centrally by the Norwegian Football Association. A club's share of proceeds depends on its ranking in two highest Norwegian leagues. As there is no real interest for Norwegian league football outside Norway, these TV rights do not have any real impact on trade and competition.

## II. ASSESSMENT

### 1 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 means 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 is granted by the State or through state resources, confers a selective economic advantage on an undertaking, and is liable to affect trade between Contracting Parties and to distort competition.

#### 1.1 State resources

- (42) In order to constitute state aid, a measure must be granted by the State or through state resources. The concept of the State does not only refer to the central government, but embraces all levels of the state administration (including municipalities) as well as public undertakings.<sup>8</sup>
- (43) The land at issue was acquired by Sandefjord municipality and then transferred to two subsidiaries of Sandefjord Fotball AS. The Authority therefore concludes that the transfer of land involves state resources.

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<sup>8</sup> Article 2 of Commission Directive 2006/111/EC on the transparency of financial relations between Member States and public undertakings (OJ L 318, 17.11.2006, p. 17), incorporated at point 1a of Annex XV to the EEA Agreement.

## 1.2 Undertaking

- (44) It is well-established case law that undertakings are entities engaged in economic activities, regardless of their legal status and the way in which they are financed.<sup>9</sup> Economic activities are activities consisting of offering goods or services on a market.<sup>10</sup>
- (45) Sandefjord Fotball AS is a professional football club organised as a private company. It is active on several markets, including the transfer market for football players as well as the markets for ticket sales, television rights, club memorabilia and sponsorship.
- (46) The Authority therefore concludes that Sandefjord Fotball AS constitutes an undertaking within the meaning of Article 61 of the EEA Agreement.

## 1.3 Economic advantage

- (47) A transfer of land to an undertaking may confer an economic advantage, in particular if it takes place at a price that is below the market price.
- (48) A transaction transferring state resources does not constitute state aid when it is carried out in line with normal market conditions so that it does not confer an advantage on an undertaking.<sup>11</sup> This is known as the market economy operator test.

### 1.3.1 Transfer of plot 152/96

- (49) At the time of the transfer to Sandefjord Fotball AS, plot 152/96 was zoned for the construction of a football stadium and business use. Any construction on the plot of land therefore needs to include a stadium in order to receive planning permission. Given that the construction costs of the stadium exceeded any potential value of the land, the Norwegian authorities argue that the market price of plot 152/96 was zero, if not negative.
- (50) The Authority notes that zoning obligations can influence the market price of land. However, the obligation to build a football stadium cannot reduce the market price to zero, in particular in case of a transaction aimed at assisting a football club in building a new stadium.<sup>12</sup>
- (51) In addition, the Authority refers to Section 2.2(d) of its Sale of Land Guidelines, which states that in principle, “*the market value should not be set below primary<sup>13</sup> 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.*” In the case at hand, the municipality of Sandefjord acquired the land that was later divided into plots 152/96 and 152/97 for NOK 3.7 million. The Authority notes that the transfer of land to Sandefjord Fotball AS took place at a price below the acquisition cost for the municipality.

<sup>9</sup> Judgment in *Höfner and Elser v Macroton*, C-41/90, EU:C:1991:161, paragraphs 21-22; judgment in *Pavlov and Others*, Joined Cases C-180/98 to C-184/98 EU:C:2000:428; and judgment in *Private Barnehagers Landsforbund v EFTA Surveillance Authority*, E-5/07, EFTA Ct. Rep. 2008, p. 61, paragraph 78.

<sup>10</sup> Judgment in *Ministero dell'Economica e delle Finanze v Cassa di Risparmio di Firenze SpA*, C-222/04, EU:C:2006:8, paragraph 108.

<sup>11</sup> Judgment in *SFEI and Others*, C-39/94, EU:C:1996:285, paragraphs 60-61.

<sup>12</sup> In this context, the Authority also refers to Section 2.2(c) of its Sale of Land Guidelines, which states that when carrying out a valuation, “...[o]bligations whose fulfilment would at least partly be in the buyer's own interest should be evaluated with that fact in mind.”

<sup>13</sup> I.e. the acquisition costs incurred by the public authority in question.

- (52) Based on the above, the Authority concludes that the transfer of plot 152/96 conferred an economic advantage on Sandefjord Fotball AS.

### 1.3.2 Transfer of plot 152/97

- (53) Plot 152/97 was zoned for business use at the time of the transfer to Sandefjord Fotball AS. The Norwegian authorities argue that the transfer of plot 152/97 should be assessed in the context of the contract of 28 November 2006, which obliges the football club in particular to build the stadium in exchange for the land. Given that the estimated construction costs of the stadium exceeded the value of the land, the transfer could not result in the granting of an economic advantage.
- (54) The Authority notes that plot 152/97 is zoned for business use. According to the planning rules, there is thus no obligation to build a stadium in relation to this plot of land. Nor was there any binding restriction based on its former zoning as agricultural land in existence at the time of the transfer to Sandefjord Fotball AS. Only the contract of 28 November 2006 obliges Sandefjord Fotball AS to organise and finance the construction of the stadium. It is the only legal instrument foreseeing that plot 152/97 would be sold to finance part of the construction.
- (55) The Authority considers that a market economy operator selling land would not have imposed such conditions in relation to the construction or financing of a stadium. The Authority therefore cannot accept the argument that the contractual link between the transfer of plot 152/97 to Sandefjord Fotball AS and the construction of the stadium should be taken into account in the assessment of whether there is an economic advantage.
- (56) The Authority further notes that shortly after the transfer, Sandefjord Fotball AS sold the shares in Sandefjord Fotball Næring AS, the company owning plot 152/97, to Pindsle Property AS for NOK 40 million. This sale indicates that the land at issue had an economic value.
- (57) Based on the foregoing, the Authority concludes that the transfer of plot 152/97 conferred an economic advantage on Sandefjord Fotball AS.

## 1.4 Selectivity

- (58) The alleged state aid results from a transaction between the municipality of Sandefjord and Sandefjord Fotball AS. It represents a selective measure within the meaning of Article 61 of the EEA Agreement, in the sense that it only concerns one particular undertaking.

## 1.5 Distortion of competition and effect on trade between Contracting Parties

- (59) According to the case law regarding effect on trade and distortion of competition, the Authority “[i]s required, not to establish that such aid has a real effect on trade [...] and that competition is actually being distorted, but only to examine whether that aid is liable to affect such trade and distort competition”.<sup>14</sup>
- (60) 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

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<sup>14</sup> Judgment in *Italy v Commission*, C-372/97, EU:C:2004:234, paragraph 44.

liable to distort competition and to affect trade between the Contracting Parties to the EEA Agreement.<sup>15</sup>

- (61) In 2006, Sandefjord Fotball's Elite team was playing in the highest Norwegian division, 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 rights. Aid to a professional football club thus potentially strengthens its position on each of those markets, most of which may cover several countries in the EEA. As regards the market for the transfer of players, Sandefjord Fotball AS was at the time – and still is today – active on the transfer market, potentially recruiting players from other countries in the EEA.
- (62) The Authority therefore concludes that the measure is liable to distort competition and to affect trade between the Contracting Parties to the EEA Agreement.

### 1.6 Conclusion on the existence of aid

- (63) Based on the above findings, the Authority concludes that the measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.

### 1.7 Aid amount

- (64) Regarding plot 152/96, the Authority recognises that the zoning obligation including the construction of a stadium reduces the market value of the land.<sup>16</sup> However, as explained in paragraph (50) above, a market price of zero cannot be justified in the present case. Based on Section 2.2(d) of the Authority's Sale of Land Guidelines, Sandefjord municipality should have sold the land at least for a price that covered its own acquisition costs. On that basis, the Authority considers the aid amount regarding this plot of land to amount to NOK 1.9 million.<sup>17</sup>
- (65) Regarding plot 152/97, the Authority notes that Sandefjord Fotball AS sold the shares in Sandefjord Fotball Næring AS, the company owning plot 152/97, to Pindsle Property AS for NOK 40 million. Pindsle Property AS is a private company, and was not part of the same group as Sandefjord Fotball AS at the time of the transaction. The sale thus took place between two independent companies.<sup>18</sup> The Authority has not received any convincing evidence that this transaction did not take place at market price. Accordingly, the Authority considers that it represents the best available indication of market value for plot 152/97.
- (66) Based on the above, the Authority concludes that the total market value of the land transferred to Sandefjord Fotball AS amounted to NOK 41.9 million at the time of the

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<sup>15</sup> Judgment in *Philip Morris Holland BV v Commission*, C-730/79, EU:C:1980:209, paragraphs 11-12; judgment in *Fesil ASA and Finnjord Smelteverk AS v EFTA Surveillance Authority*, Joined Cases E-5/04, E-6/04, E-7/04, EFTA Ct. Rep. 2005, p. 117, paragraph 94 and judgment in *Libert and others*, Joined Cases C-197/11 and C-203/11, EU:C:2013:288, paragraphs 76-78.

<sup>16</sup> See also Decision No 225/15/COL of 10 June 2015 raising no objections to aid in the form of a transfer of land to Vålerenga Fotball, paragraph 31.

<sup>17</sup> The municipality of Sandefjord acquired the land that was later divided into plots 152/96 and 152/97 for NOK 3.7 million. The value of NOK 1.9 million results from apportioning this amount according to the respective size of the two plots

<sup>18</sup> This is further shown by the absence of an independent expert valuation, which is required under Norwegian company law for transactions between companies in the same group.

transaction. However, under the agreement dated 28 November 2006, Sandefjord Fotball AS also assumed several obligations to carry out works on behalf of Sandefjord municipality. As set out in paragraph (26) above, the estimated total cost of these obligations was NOK 9.5 million at the time of the agreement. The Norwegian authorities have explained that but for the terms of the agreement, these works would have been carried out by the municipality. Accordingly, the Authority accepts that their total cost – as foreseen at the time of the agreement – should be deducted from the aid amount.

- (67) The Authority therefore concludes that the total aid granted to Sandefjord Fotball AS amounted to NOK 32.4 million.

## 2 Procedural requirements

- (68) 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 the procedure has resulted in a final decision*”.
- (69) The transfer of the land at issue has not been the object of a prior notification to the Authority. The Authority therefore concludes that the Norwegian authorities have not complied with their obligations stemming from Article 1(3) of Part I of Protocol 3.

## 3 Compatibility

- (70) 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.
- (71) The Authority notes that it has not yet issued any guidelines covering state aid for the construction of sports infrastructure. The measure at hand will therefore be assessed directly under Article 61(3)(c) of the EEA Agreement.
- (72) In line with the practice at the time the aid was granted, the Authority’s 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 objective of common interest, i.e. does the proposed aid address the market failure or other objective? In particular:
    - Is state aid an appropriate instrument?
    - Is there an incentive effect, i.e. does the aid change the behaviour of the firms?
    - 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?
- (73) The above questions will be addressed in the following paragraphs.

### 3.1 Objective of common interest

- (74) 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.
- (75) This interpretation is consistent with the approach of the European Commission (“the Commission”). In the European Union, the promotion of sport is specifically mentioned in Article 165 TFEU, which was introduced by the Lisbon Treaty. 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. 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 employability and mobility, notably through actions promoting social inclusion in and through sport, education and training.
- (76) 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. This further demonstrates that the promotion of sport, including the construction of sport infrastructure, represents an objective of common interest.

### 3.2 Appropriate instrument

- (77) In order to assess whether state aid is effective to achieve the identified objective of common interest, the Authority first has to diagnose and define the problem that needs to be addressed. State aid should be targeted towards situations where aid can bring a material improvement that the market alone cannot deliver. In addition, the proposed aid measure must be an appropriate instrument to address the identified objective of common interest.
- (78) There is a recognised market failure in the provision of football stadiums in Norway in the form of a lack of commercial investment in stadiums, which are structurally loss making as their revenues are insufficient to cover the cost of the investment.<sup>19</sup>
- (79) Furthermore, the Norwegian authorities have demonstrated a genuine need for a new football stadium in Sandefjord. This is evidenced by the capacity problems at the existing municipal stadium at the time of the measure and the fact that the old stadium did no longer fulfil the licensing requirements of the Norwegian Football Association. Finally, given the unprofitable nature of stadium infrastructure, state aid was required to trigger the investment.

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<sup>19</sup> See also Decision No 225/15/COL of 10 June 2015 raising no objections to aid in the form of a transfer of land to Vålerenga Fotball, paragraph 65.

- (80) Against this background, the Authority concludes that state aid was an appropriate instrument.

### 3.3 Incentive effect

- (81) The Authority can only declare state aid compatible with the functioning of the EEA Agreement if it has an incentive effect. An incentive effect occurs when the aid induces the beneficiary to change its behaviour to further the identified objective of common interest, a change in behaviour which it would not undertake without the aid.
- (82) The Authority notes first of all that the construction of the stadium had not started before the transfer of land at issue.
- (83) Moreover, the information provided by the Norwegian authorities shows that Sandefjord Fotball AS could not have financed the construction of the stadium without the state aid, as it did not have the financial means nor the ability to borrow sufficient funds to cover the shortfall. Its own financial contribution to the stadium construction was already at the limit of what was possible.<sup>20</sup>
- (84) Based on the above, the Authority concludes that the aid measure had an incentive effect.

### 3.4 Proportionality

- (85) State aid is considered to be proportionate if the aid amount is limited to the minimum needed to achieve the identified objective of common interest. The Authority generally bases its assessment of proportionality on the concepts of eligible costs and maximum aid intensities.
- (86) As stated in paragraph (67) above, the aid amount granted to Sandefjord Fotball AS totals NOK 32.4 million. In order to assess the aid intensity, this figure has to be put in relation to the eligible investment costs. The Authority considers that the expenses incurred by Sandefjord Fotball AS on behalf of Sandefjord municipality, which have been subtracted from the aid amount – see paragraph (66) above – cannot form part of the eligible costs. The total investment costs of NOK 110 million therefore need to be reduced by NOK 9.5 million. The eligible investment costs therefore amount to NOK 100.5 million, and the corresponding aid intensity is 32%. The Authority notes that this aid intensity is rather low, and that the rest of the investment was financed by the beneficiary, Sandefjord Fotball AS.
- (87) However, the aid intensity also has to be assessed in the light of the social benefits arising from the stadium infrastructure. As set out in Section I.5.3 above, the stadium is used for a variety of non-professional uses by a number of users including amateur sports teams and schools. Altogether, these non-economic uses represent more than 50% of the total use of the stadium.
- (88) Furthermore, the Authority notes that the stadium infrastructure is to a certain degree multi-functional, combining a football stadium with an athletics track, a fitness centre and a number of other inside areas. This increases the possibilities to use the stadium for non-economic purposes. Finally, the Authority notes that the Elite team pays market rent for the use of the stadium (see also Section II.3.5 below), whereas the amateur clubs and other

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<sup>20</sup> See in particular the information provided in Document No 699518, page 29.

non-commercial users can access the stadium for free. This further underlines the social contribution the stadium is making to the community.

- (89) Based on the above, the Authority concludes that the aid measure is proportionate.

### **3.5 No undue distortion of competition and trade**

- (90) For aid to be compatible with the functioning of the EEA Agreement, the negative effects of the aid measure in terms of distortions of competition and impact on trade between Contracting Parties must be limited and outweighed by the positive effects in terms of contribution to the objective of common interest.
- (91) At the outset, the Authority notes that the stadium financed by the state aid at issue primarily has a local and regional focus. The infrastructure is not aimed at attracting international events, nor is it intended to be used extensively by any commercial users other than Sandefjord Fotball's Elite team.
- (92) The Elite team is paying rent for its use of the stadium. The current rental terms are based on negotiations with the private owners of the stadium. There is thus a presumption that the rent corresponds to market terms. This is furthermore confirmed by the comparison with typical stadium rent paid by other clubs, which the Norwegian authorities have provided (see paragraph (36) above).
- (93) The Authority also notes that the aid intensity is low, and the corresponding contribution by Sandefjord Fotball AS to the investment costs further reduces the risk of distortions.
- (94) Finally, the economic activities carried out by Sandefjord Fotball AS only have a very limited impact on trade and competition within the EEA due to the local character of the club. Its ticket sales, merchandising, sponsorship and advertising activities are primarily aimed at the local community and the county of Vestfold. Its activities on the market for players is also very limited and centred on Norway. Finally, Sandefjord Fotball AS does not have any direct influence on the commercialisation of TV rights, which are administered centrally by the Norwegian Football Association, and in any event only receives very limited income from them.
- (95) The Authority therefore concludes that any distortions of competition and trade caused by the aid measure are limited.

### **3.6 Balancing and conclusion**

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

## **4 Conclusion**

- (97) Based on the information submitted by the Norwegian authorities, the Authority has concluded that the transfer of land constitutes state aid within the meaning of Article 61(1) of the EEA Agreement. The Authority has concluded that this aid is compatible with the functioning of the EEA Agreement.

HAS ADOPTED THIS DECISION:

*Article 1*

The state aid granted in favour of Sandefjord Fotball AS is compatible with the functioning of the EEA Agreement pursuant to Article 61(3)(c) thereof.

*Article 2*

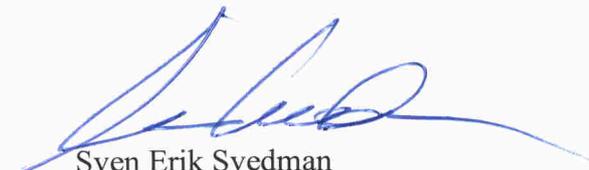
This Decision is addressed to the Kingdom of Norway.

*Article 3*

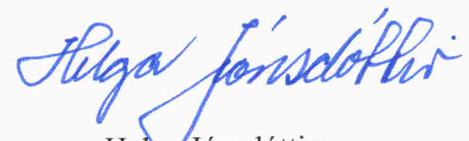
Only the English language version of this decision is authentic.

Decision made in Brussels, on 23 September 2015.

*For the EFTA Surveillance Authority*



Sven Erik Svedman  
President



Helga Jónsdóttir  
College Member