Case No: 63911
Event No: 519608
Dec. No: 343/09/COL

EFTA SURVEILLANCE AUTHORITY

EFTA SURVEILLANCE AUTHORITY DECISION
of 23 July 2009
on the property transactions engaged in by the Municipality of Time concerning property numbers 1/152, 1/301, 1/630, 4/165, 2/70, 2/32.

(Norway)

THE EFTA SURVEILLANCE AUTHORITY[1],

Having regard to the Agreement on the European Economic Area[2], in particular to Articles 61 to 63 and Protocol 26 thereof,

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice[3], in particular to Article 24 thereof,

Having regard to Article 1(3) of Part I and Articles 4(4) and 7(2) of Part II of Protocol 3 to the Surveillance and Court Agreement[4],

Having regard to the Authority's Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement[5], and in particular the Chapter relating to State Aid Elements in Sales of Land and Buildings by Public Authorities,

Having regard to the Authority's Decision of 14 July 2004 on the implementing provisions referred to under Article 27 of Part II of Protocol 3[6],

Having called on interested parties to submit their comments pursuant to those provisions[7], and having regard to their comments,

Whereas:

[1] Hereinafter referred to as the Authority.
[2] Hereinafter referred to as the EEA Agreement.
[3] Hereinafter referred to as the Surveillance and Court Agreement.
[4] Hereinafter referred to as Protocol 3.
[5] Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the Authority on 19 January 1994, published in the Official Journal of the European Union (hereinafter referred to as OJ) L 231 of 03.09.1994 p. 1 and EEA Supplement No 32 of 03.09.1994 p. 1. The Guidelines were last amended on 10 June 2009. Hereinafter referred to as the State Aid Guidelines. The updated version of the State Aid Guidelines is published on the Authority's website: http://www.eftasurv.int/fieldsofwork/fieldstateaid/guidelines/
[6] Decision No 195/04/COL of 14 July 2004 published in OJ C 139 of 25.05.2006 p. 57 and EEA Supplement No 26 of 25.05.2006 p. 1 as amended by Decision 319/05/COL of 14 December 2005 published in OJ C 286 of 23.11.2006 p. 9 and EEA Supplement No 57 of 23.11.2006 p. 31. the consolidated version of Decision No 195/04/COL can be found on the Authority's website: http://www.eftasurv.int/fieldsofwork/fieldstateaid/legaltexts/
[7] Published in OJ C 138, 5 June 2008 p. 30 and EEA Supplement No 31 of 5 June 2008 p.1.

I. FACTS

1. Procedure

On 3 March 2007, the Authority received a complaint from an association named Aksjonsgruppa "Ta vare på trivelige Bryne", concerning the sales of property numbers 1/152, 1/301, 1/630, 4/165 in Time municipality by the municipal authorities to two different private entities, as well as the sale of title number 2/70 (Bryne stadium which also includes title no 2/32) by Bryne fotballklubb, previously given to the club by the municipality, to a private investor (Event No: 414270). By letter dated 9 May 2007, the private investor Mr Gunnar Oma sent a complaint to the Authority concerning the sale by Time municipality of one of the abovementioned properties, i.e. number 4/165.

After an exchange of correspondence and information with the Norwegian authorities[8], on 19 December 2007the Authority decided to open the formal investigation procedure on the sale of the land plots mentioned above. The Authority's Decision No 717/07/COL to initiate the procedure was published in the Official Journal of the European Union and in the EEA Supplement hereto[9].

The Norwegian authorities had commented on the opening decision by letter dated 21 February 2008 (Event No 466024). The Authority called on interested parties to submit their comments. The Authority received comments from two interested parties.[10] By letter dated 24 July 2008, (Event No 485974), the Authority forwarded these to the Norwegian authorities. By letter dated 13 August 2008 (Event No 488289), the Norwegian authorities notified the Authority that they had no further comments.

2. Description of the transactions under scrutiny

2.1. The sale of title numbers 1/152, 1/301 and 1/630 to Grunnsteinen AS

By a sales agreement dated 25 August 2007[11], Time municipality sold property title numbers 1/152 (1312 square metres), 1/301 (741 square metres) and 1/630 (1167 square metres) in the centre of Bryne, the municipal centre of Time municipality, to the private property developer Grunnsteinen AS. According to the explanations provided, the initiative to enter into the agreement appears to have been taken by the buyers, and no public bidding round was organised prior to the sale.[12] Grunnsteinen did not pay anything for the property but engaged to build a total of 65 parking spaces as replacement for ordinary payment for the property[13]. Clause 7 of the Grunnsteinen agreement) provided that the titles to the property should only be transferred upon completion of the parking spaces, at the latest by the end of 2008. Furthermore, Clause 1 stipulated that the underground car park would be registered as a separate title in the land register when re-transferred to Time Municipality.

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[8] See for further details on the exchange of correspondence the Authority's Decision No 717/07/COL published on the Authority's website: http://www.eftasurv.int/fieldsofwork/fieldstateaid/stateaidregistry/sadecnor07/717_07_col.pdf.
[9] Published in Official Journal C138, p. 30, 05.06.2008 and EEA Supplement No 31 05.06.2008 p. 1.
[10] Event Nos 484855 (Comments by the Norwegian Football Association, dated 4 July 2008), 485026 (Comments by law firm Arntzen de Besche on behalf of Bryne fotballklubb, dated 8 July 2008) and 485461 (Comments by law firm Selmer on behalf of Vålerenga football, dated 8 July 2008).
[11] Hereinafter referred to as "the Grunnsteinen Agreement".
[12] Norway's reply to the Authority's first request for information (Event No 427879), reply to question 1(e).
[13] Norway's reply to the Authority's first request for information (Event No 427879), Question 1(e).

Clause 1 of the contract[14] states that the properties, at the time of entering into the contract, were zoned for residential and public road/parking purposes.

Under Clause 1 of the contract, Grunnsteinen AS undertook to build *underground* parking spaces on title number 1/152, of which 65 were to be transferred to Time municipality upon completion (clauses 1 and 5 of the agreement). According to the municipal authorities, the payment for title no 1/152 consisted of the 44 parking spaces on the property being compensated for in the underground car park. As for title numbers 1/301 and 1/630, the municipality had commissioned a value assessment of one of the properties, title no 1/630, which the municipality claims were assessed by Eiendomsmegler 1. The assessment of title no 1/630, which concluded that the market value was NOK 600 per square metre, was presented to the Authority prior to the opening of the formal investigation procedure[15]. In reply to the Authority's requests, the Norwegian authorities initially presented calculations made by the construction firm Skanska Norge AS, showing that the price for a parking space in an underground car park would be approximately NOK 150 000,- excluding VAT and costs of buying/renting the land.[16] On the basis of these estimates, the Norwegian authorities claimed that the market price for title numbers 1/301 and 1/630, based on the value assessment, would be NOK 2,516,400[17], whereas the value of the additional 21 parking spaces which Grunnsteinen had undertaken to build for the municipality was estimated to 2,625,000[18]. Thus, the value of these two properties would be fully compensated by Grunnsteinen through the construction of 21 additional parking spaces.

In reply to the Authority's information injunction in the decision to open the formal investigation procedure, new value assessments of the property, as well as estimates of the price of the car park, have been submitted.[19] The new value assessments were carried out by the asset valuation firm OPAK. Based on the land cost method[20], OPAK arrived at a market value of NOK 3.2 million for the properties sold *en bloc.* According to OPAK, the house on title no. 1/301 is condemned and will have to be demolished, thus representing an encumbrance on the property. The demolition costs are estimated to NOK 150 000. The OPAK assessment also includes cost estimates for the parking spaces. Based on a minimum of 25 square metres per parking space (as required by government regulations) and building costs of NOK 5200 per square metre (based on experience), OPAK arrives at a price of NOK 130 000 per parking space, or NOK 8 450 000 for 65 parking spaces.

2.2. The sale of title number 4/165 to Bryne Industripark AS

On 31 August 2005, Time Municipality and the private property developer Bryne Industripark AS signed a sales agreement concerning title no 4/165 at Håland in Time.[21] The title comprised 56 365 square metres of industrial land, and the sales price was set at

[14] Norway's reply to the Authority's first request for information (Event No 427879, Annex 1).
[15] Norway's reply to the Authority's first request for information (Event No 427879, Annex 2). In Norway's reply, it is claimed that the value assessment concerned title numbers 1/301 *and* 1/630. However, this is not reflected in the actual assessment, neither does the number of square metres stated therein indicate that both properties have been taken into account.
[16] Norway's reply to the Authority's first request for information (Event No 427879, Annex 5).
[17] This appears to be based on a value of NOK 600 per square metre plus the value of a building on title no 1/301. The Authority has not been presented with a valuation of the building.
[18] This is based on the Municipality's original cost estimate of NOK 125 000,-, set out in the background papers for the deliberations in the municipal council (Event No 413558, pp 16 – 17). The estimate by Skanska appears to have been obtained at a later stage.
[19] Norway's comments to the Authority's opening decision, Event No 466024, annex 3.
[20] In Norwegian: "*Tomtebelastningsmetoden*".
[21] Event No 413558, p 19 *et sec.*

4.7 MNOK (or approximately NOK 83 per square metre). At the time of the signing of the agreement, the area was zoned for industrial purposes but the detailed zoning plan was not adopted due to objections from the Public Road Administration. The contract contains a claw-back clause (Clause 7) for Time municipality in the event that the property has not been built on or put to use 5 years after the date of taking possession.

At the time of entering into the agreement, the property consisted of undeveloped land. In the memorandum for the municipal council which approved the agreement, the municipal administration states that the conclusion of a development agreement should be a condition for selling the land. According to the municipal authorities, the new detailed zoning regulations were adopted on 30 August 2007, under which the property was zoned for sports purposes[22]. The sales agreement stipulated that a development agreement must be concluded on the basis of the zoning regulation. The Norwegian authorities, at the time of commenting the opening decision, submitted an estimate of the development costs commissioned from the consultancy firm Asplan Viak and an offer for the ground works submitted by a local builder.[23]

The municipality confirms that no public bidding round was organised prior to the sale, which came about following an initiative from the buyer, but claims that the land was advertised on its web page in 2003 – 2004. It follows from the administrative memorandum made prior to the sale that the price charged was based on the price at which Time municipality bought the property in 1999, to which capital costs, regulatory work and administrative costs were added. The price was, thus, established in accordance with the municipality's general principle for the sale of industrial properties, *i.e.* selling at cost.[24]

The complainant has alleged that the price for this type of property should be in the range of NOK 400 per square metre, based on a valuation purportedly carried out by an independent asset valuer in January 2007.[25] However, no documentation has been submitted to this effect. The municipal authorities have been claiming that the market price would be in the range between NOK 80 and 115 per square metre in the area, based on sales of similar properties between private parties in the region.[26] In reply to the Authority's information injunction in the decision to open the formal investigation procedure, the Norwegian authorities have submitted a value assessment carried out by OPAK. OPAK's assessment concerns the land as zoned at the time of the contract, i.e. for industrial purposes and not for sports purposes, in accordance with the later zoning regulations. The assessment is not based on the exploitation method, but on the sales value, defined as "the price that several independent interested parties are thought to be willing to pay at the valuation date". In the case at hand, this price has been established with reference to sales prices obtained for "comparable properties in the area". The assessment concludes that the market price cannot be established with certainty, but that it would likely be in the range of 80 to 100 NOK/square metre.

2.3. The sale of title numbers 2/70 and 2/32 to Bryne fotballklubb

2.3.1. The sales agreement

[22] Norway's comments to the Authority's opening decision, Event No 466024, footnote 9.
[23] Norway's comments to the Authority's opening decision, Event No 466024, Annexes 8 and 9.
[24] Event No 413558, pp 16 – 17.
[25] See Event No 413558 (original complaint), repeated in Aksjonsgruppa's comments to Norway's reply, Event No 477440.
[26] Norway's reply to the Authority's first request for information (Event No 427879, Annexes 13 – 17).

By agreement dated 8 August 2003[27], Time municipality transferred the title to Bryne stadium, title numbers 2/32 and 2/70, an area of approximately 53 000 square metres, to Bryne fotballklubb (Bryne FK).[28] The buildings on the land (including the football stand) already belonged to the football club and ground lease agreements were in place.[29] One building not belonging to Bryne fotballklubb appears to remain on the land, and it was foreseen that the club would take over the municipality's rights under the lease agreement with the owner of the building.[30]

Under Clause 2 of the Bryne agreement, title numbers 2/32 and 2/70 are transferred to Bryne FK without remuneration. Furthermore, the municipality covered all costs connected to the transfer of the property, such as parcelling, measuring etc. The titles comprise approximately 53 000 square metres, and the agreement expressly provided that it should, primarily, be used for sports purposes.

It follows from Clause 1 of the agreement that the football club had requested the titles to the land to be transferred. The purpose was to increase the club's assets, in order to allow it to upgrade the football pitch in compliance with applicable requirements for pitches to be used in Tippeligaen (the Norwegian Premier League). The memos drawn up by the municipality indicate that it was essential to the club to be able to pledge the property as collateral for debts, although its value was likely to be reduced through the contract provision that it may only be used for sports purposes.

In reply to the Authority's information injunction in the decision to open the formal investigation procedure, the Norwegian authorities have provided a value assessment of the stadium land as it stood at the time of transfer. The assessment was carried out by OPAK. OPAK arrives at a sales value of NOK 2 650 000, based on an assessment of the land as land to be used for sports facilities.

The complainant has claimed that Bryne FK, in 2007, planned to sell the stadium to Forum Jæren for NOK 50 million. A new stadium was to be built at Håland, on land bought from Bryne Industripark AS (as referred to above). In reply to the Authority's request for information, the Norwegian authorities confirmed that a letter of intent had been signed between Bryne FK and Forum Jæren concerning title no 2/70, but were unable to produce a copy thereof. However, in 2008, these transactions seem to have been reversed as the construction costs for the planned stadium at Håland turned out to be significantly higher than expected.[31]

2.3.2. Bryne FK

The recipient of the land, Bryne FK, is a local football club, currently playing in the so-called "Adecco League" (1st division). Bryne FK is registered in the company register as a non-profit organisation[32], but the football club has also set up a limited company, Bryne Fotball AS.

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[27] Hereinafter referred to as "the Bryne agreement".
[28] Event No 413558 p 29 and Norway's reply to the Authority's first request for information (Event No 427879, Annex 29). From the background papers from the sale, it appears that the municipality had, in turn, bought the land from the football club for NOK 1 million in 1996. The Authority has no further information on this sale.
[29] The ground lease agreements provided by Norway, annexes 18 and 19 to Norway's reply to the Authority's first request for information (Event No 427879).
[30] See Annex 24 to Norway's reply to the Authority's first request for information (Event No 427879)
[31] Bryne FK's comments to open the formal investigation procedure (Event No 485026).
[32] Norway's reply to the Authority's first request for information (Event No 427879, Annex 21).

According to the information provided by the Norwegian authorities[33], in 2001 the club and the limited company entered into a co-operation agreement based on a standard agreement elaborated by the Norwegian Football Association for co-operation between the commercial and non-commercial divisions of a team. Under the terms of the agreement[34], the limited company, named Bryne Fotball ASA at the time, was in charge of the following economic activities: sponsorship agreements, the sale of media and television rights and advertising space, the sale and licensing of supporter paraphernalia, the use of coaches and players for advertising purposes, commercial exploitation of the club's name and logo, ticket sales for the club's home matches, and contracts concerning bingo operations. Bryne FK, on the other hand, was responsible for all sports related matters such as training and the selection of teams, the calendar of matches and the matches as such, travel arrangements for players, rights and obligations vis-à-vis players, members, other organisations and government agencies, as conferred on the club by the regulations and by laws of the sports associations, membership fees and minor commercial activities such as raffles organised during matches, and the operation of the stadium.

Under the co-operation agreement Bryne Fotball ASA was financially responsible for the players[35]. Furthermore, Bryne Fotball ASA paid the purchase price for players, or, alternatively, a price to Bryne FK when a player was promoted to the elite team from one of the club's junior teams. The limited liability company would also keep the net profits when these expenses were paid. Finally, the limited liability company paid a fee of NOK 150 000 to Bryne FK per year for renting the stadium, as well as NOK 10 000 per official football match, and a price for media rights, sponsorship rights, etc.

However, in order to comply with NFF's general rules, the players' employment contracts were formally entered into by Bryne FK, and the club was also, formally, the party to contracts concerning the sale, purchase and hiring of players. In addition, the club was responsible for the management of a purely sporting nature (such as training, selection, etc.).

In spring 2004, the club and the company re-organised. All activities in Bryne ASA were transferred to Bryne FK, and Bryne Fotball ASA changed company status and became Bryne Fotball AS, whose only purpose was paying off debts. The debts seemed to have been paid in 2006.[36] Thus, currently, all activities, economic or not, are carried out within Bryne FK.

3. Comments by the Norwegian authorities

The Norwegian Government has submitted comments to the decision to open the formal investigation procedure.

[33] Norway's comments to the decision to open the formal investigation procedure, letter dated 21 February 2008 (Event No 466024).
[34] Annex 13 to Norway's comments to the decision to open the formal investigation procedure, letter dated 21 February 2008 (Event No 466024).
[35] The limited liability company was paying the players' salaries, as well as salaries for physiotherapists, coaches and other supporting personnel; the employer's social security contribution; purchase and maintenance of the equipment necessary for training and matches; training sessions; and, finally, travel costs for the teams in connection with away matches.
[36] Norway's reply to the Authority's first request for information (Event No 427879, Annex 22).

3.1. Comments to the sale of title numbers 1/152, 1/301 and 1/630 to Grunnsteinen AS

With their comments, the Norwegian authorities also submitted a value assessment of the property, including a valuation of the price of the underground parking spaces.

The Norwegian authorities take the view that the property was not given away without remuneration; the municipality was remunerated through the construction of the underground car park. Thus, there would be no state aid if the cost of the construction of the parking spaces corresponds to at least the value of the properties transferred to Grunnsteinen AS.

In that respect, the Norwegian authorities point to the value assessment carried out by OPAK, arriving at a value in the range of 4 510 000 to 5 636 000 NOK for the properties transferred to Grunnsteinen, taken as a whole. Furthermore, OPAK estimates the cost of construction of the parking spaces in the underground car park to around 8 450 000 NOK, based on experience from similar projects, which is normal industry practice. The Norwegian authorities also point out that the construction company Skanska, on the same basis, estimated the construction costs of one parking space to NOK 150 000, or 9 750 000 NOK for 65 parking spaces.

Based on these figures, the Norwegian authorities submit that the cost of the car park more than offsets the value of the property, and, thus, that no state aid is involved.

3.2. Comments to the sale of title no. 4/165 to Bryne Industripark AS

As regards the sale of title no. 4/165 to Bryne Industripark AS, a value assessment carried out by OPAK has, again, been submitted. The Norwegian authorities have pointed out that OPAK has assessed the land in accordance with applicable regulations at the time, i.e. undeveloped land reserved for industrial purposes in the general municipal plan, but not subject to a detailed zoning plan. The Norwegian authorities submit that it is immaterial that a proposal for a detailed zoning plan had been submitted and later withdrawn, and that the area was later rezoned for sports purposes, as long as there was no applicable zoning plan at the time of the transaction.

Against this background, the Norwegian authorities underline that the price actually paid by Bryne Industripark, 4 700 000 NOK (corresponding to NOK 83 per square metre), falls within the acceptable price range according to OPAK's value assessment, i.e. 4 510 000 – 5 636 000 NOK (or NOK 80 to 100 per square metre). Acknowledging that the price paid is in the lower range of the acceptable price interval arrived at by OPAK, the Norwegian authorities nevertheless submit that no aid can be involved as long as the price paid does not significantly deviate from the estimated values, as the value of undeveloped land which is not subject to a zoning plan is, in any event, uncertain.

3.3. Comments to the sale of title nos. 2/70 and 2/32 to Bryne FK

With respect to the sale of title nos. 2/70 and 2/32, the Norwegian authorities have argued that the first question to be assessed is whether an economic advantage was granted to Bryne FK through the transaction. In the enclosed value assessment, OPAK has estimated the value of the property on which the stadium is built to being in the range of 2 385 000 to 2 915 000 NOK. As no remuneration was paid for the property, the Norwegian authorities acknowledge that Bryne FK has received an economic advantage corresponding to the value of the property, as established by OPAK.

Notwithstanding the advantage granted to Bryne FK, the Norwegian authorities submit that the transaction did not involve aid within the meaning of Article 61(1) of the EEA Agreement. In their opinion, Bryne FK, at the time of the transaction, was not an undertaking within the meaning of the EEA state aid rules. This point of view is based on the club's organisational structure at the time of the transaction: At that time, Bryne FK was only engaged in non-commercial and non-professional activities, whilst the commercial activity and the economic risks and benefits related to the club's professional football team took place within Bryne Fotball ASA.

As for any possible state aid to Bryne Fotball ASA, Norway claims that this was excluded through the terms of the co-operation agreement. According to the agreement, Bryne Fotball ASA was required to pay an annual fee of NOK 150 000 to Bryne FK for the use of the stadium, plus 10 000 NOK per official match. Thus, the agreement would ensure that the economic advantage resulting from the transfer of the land would benefit Bryne FK exclusively.

With regard to the merger of Bryne Fotball ASA and Bryne FK, which took place around half a year after the transfer of the property, the Norwegian authorities submit that it cannot be assumed that, as a result of the merger, the advantage granted by the municipality will automatically accrue proportionately to the commercial activities of the club. Instead, the current economic activities must be analysed in detail in order to establish a distribution key between the economic and non-economic activities.

4. Comments by third parties

4.1. Comments by Bryne FK

Bryne FK has provided comments concerning the transfer of the property and the club's organisational structure and activities.

The club explains, in line with what has been set out above, that its organisational structure changed when Bryne FK and Bryne Fotball ASA merged in 2004. Currently, all activities take place within Bryn FK. However, the club has entered into a back-to-back agreement with the company Klubbinvest AS, which bears the financial risk for the contracts with the professional footballers.

Furthermore, the club points out that it had negative results in 2005, 2006 and 2007, and that the main part of its activities is non-commercial, primarily related to young football players. Of a total number of 2047 hours of activity in the club[37], the economic activity only accounts for around 230 hours, or 11 per cent of the total. All non-economic activities take place on the facilities located on the land transferred to the club through the agreement dated 2003.

As regards the transfer of the title to the stadium premises, the club underlines that only the land was transferred in 2003, as the club already owned the buildings and facilities. Moreover, the club refers to a lease agreement entered into by Time municipality, in its capacity as the former owner of the property, whereby a certain area on the transferred land is reserved for parking for a period of 99 years. The club takes the view that the long term lease agreement significantly reduces the value of the property, and that this was not taken into account by OPAK.

[37] Based on a table provided by Bryne FK (incorporated in Event No 485026), showing the number of hours of activity broken down by age group, month and type of activity (training, match, etc.).

In the view of the club, Bryne FK was not an undertaking at the time of transfer of the land, due to the organisational structure at that time and the co-operation agreement, described above. As the question of aid should be assessed at the time of transfer, no state aid is involved. As for the value of the property, the club notes that, due to the negative value of the lease contract reserving parts of the land for parking, the real value of the transferred land is significantly lower than what OPAK concludes. Therefore, should the Authority conclude that the transfer does entail aid, any aid element may, therefore, be *de minimis.*

4.2. Comments by the Football Association of Norway

The Norwegian football association (NFF) has submitted comments pertaining to the organisation of Norwegian football in general, while refraining from specifically commenting the case at issue.

The association explains that it is one of Norway's largest non-profit organisations, counting more than 500 000 members, including 400 000 active football players. Recruitment and development of players at all levels is the core activity of the association.

NFF, therefore, endeavours to ensure that adequate facilities exist throughout the country.

NFF points out that, in principle, it is a public responsibility to offer and organise sports activities for children and young people in their local environment. Thus, the construction of new facilities requires the contribution of the sporting community as well as of the public authorities. In reality, NFF believes that the clubs' contribution to the public task is quite substantial, although it has never been quantified. An additional benefit of its efforts towards children an youth is the creation of a channel for mobility between grassroots football and professional football. Solidarity with local clubs is always an important objective, even when revenues are generated through the sale of media rights at the national or European level.

4.3. Comments by Vålerenga Fotball

Vålerenga Fotball, through its legal representative Selmer Law firm, has submitted general comments on the question of transfer of land to football clubs for the purpose of building football facilities. According to Vålerenga, this issue is of practical importance and is likely to re-appear in the future.

Against this background, the club points to 6 issues which may be of importance when dealing with such cases. Firstly, it points to the importance of keeping separate accounts between the commercial and the non-commercial part of the club. Secondly, Vålerenga claims that a club owning a stadium which is rented out, may still fall outside the definition of an undertaking provided that it only operates as a "passive owner". Thirdly, Vålerenga takes the view that there is presumption that the construction and operation of football stadiums does not affect trade. Fourthly, it is submitted that football stadiums can be viewed as social infrastructure. Fifth, the market rent for a football stadium should be established on the basis of what buyers are willing to pay, not on the basis of whether the investment will be amortised. Sixth, the obligation to build and operate a football stadium attached to the transferred land has a negative value, which means that there is no economic advantage for the club.

II. ASSESSMENT

1. The presence of state aid

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."

It follows from this provision that, for state aid within the meaning of the EEA to be present, the following conditions must be met:

- The aid must be granted through *state resources;*
- The aid must favour certain undertakings or the production of certain goods, i.e. the measure must confer an *economic advantage* upon an *undertaking;*
- The measure must be *selective* within the meaning of the EEA Agreement;
- The aid must be capable of *distorting competition* and *affecting trade* between contracting parties.

Whether these conditions are met must be assessed individually with respect to each of the transactions described above.

2. The sale of title numbers 1/152, 1/301 and 1/630 to Grunnsteinen AS

In the decision opening the formal investigation procedure, the Authority expressed doubts as to whether the transaction took place on market terms. The Authority recognised that, as a matter of principle, a transaction whereby the price paid for the property consists of an obligation to construct an underground property for the municipality, may take place on market terms. However, for the Authority to verify that this was the case, a value assessment of the property would have to be carried out and the market price of the construction of parking spaces would have to be established in a reliable manner.

Furthermore, in the opening decision, the Authority pointed out that the value assessment submitted by the Norwegian authorities at that point, which was carried out by Eiendomsmegler 1, only covered one of the titles in question. The Authority also questioned the reliability of the value assessment of title no. 1/630, as the assessment did not set out the method applied or mention the characteristics of the property which were decisive for the conclusion.

The Authority also found that the transaction affected trade and competition in the EEA.

Following the Authority's opening decision, the Norwegian authorities have submitted a new value assessment of the properties, as well as a valuation of the construction costs of the parking spaces, carried out by OPAK. The Authority observes that Grunnsteinen cannot be held to have received any advantage if it can be demonstrated that the value of the property was equal to or lower than the negative value of the obligation to construct the underground car park. In order to examine whether that was the case, it is necessary to

assess the reliability of the OPAK report with reference to the method set out in its Guidelines on State Aid Elements in the Sale of Land and Buildings by Public Authorities.

2.1. Assessment of the OPAK report

According to the guidelines on State Aid Elements in the Sale of Land and Buildings by Public Authorities, the market value of the property should be established on the basis of generally accepted market indicators and valuation standards by an asset valuer of good repute, who should be independent in carrying out his tasks. Finally, the economic disadvantage of special obligations should be evaluated separately and may be set off against the purchase price. [38]

- Asset valuer of good repute

The valuation report was carried out by OPAK, a company active in construction management, services to home-owners' societies and asset valuation. The report in question was elaborated by Mr. Jacob Aarsheim.

The State Aid Guidelines provide that an "asset valuer" is a person of good repute who has obtained an appropriate degree at a recognised centre of learning or an equivalent academic qualification and has suitable experience and is competent in valuing land and buildings in the location and of the category of the asset.

The Norwegian authorities have explained that OPAK, and Mr Aarsheim in particular, have considerable experience in the valuation of properties of this category in the Jæren area. Their assertions are substantiated by the curriculum vitae of Mr. Aarsheim, which has been enclosed to the Norwegian authorities' comments to the Authority.[39] In addition to extensive experience, Mr. Aarsheim is educated in construction technology. Thus, there is no reason to believe that OPAK and Mr. Aarsheim do not meet the criteria laid down in the guidelines and are of good repute.

- Independence of the asset valuer

The State Aid Guidelines state that: "*The valuer should be independent in carry out his tasks, i.e. public authorities should not be entitled to issue orders as regards the result of the valuation*".

The report refers to the purpose of the assessment, the presence of Mr. Aarsheim and one other person from OPAK at the time of visiting the property. A detailed explanation on the method applied is also attached. Against this background, the Authority sees no reason to doubt that the asset valuer carried out his assignment in full independence within the meaning of the guidelines.

- Evaluation of the market value on the basis of generally accepted indicators and valuation standards

The guidelines define "market value" as the "*price at which land and buildings could be sold under private contract between a willing seller and an arm's length buyer on the date of valuation, it being assumed that the property is publicly exposed to the market, that*

[38] Guidelines on State Aid Elements in the Sale of Land and Buildings by Public Authorities, Sections 2.2. (a) to (c).
[39] Norway's comments to the Authority's opening decision, Event No 466024, p. 8 and Annex 5 (CV).

market conditions permit orderly disposal and that a normal period, having regard to the nature of the property, is available for the negotiation of the sale".

The OPAK report sets out, *inter alia*, the following bases and assumptions:

- the owner is positive to the sale;
- that the property can be freely marketed for sale, over a normal period of time;
- that buyers who are willing to pay abnormally high prices due to "special interests" are not taken into account;

[…]

- the evaluation is carried out in accordance with OPAK's routines for value assessments and value assessment courses provided by the UiS.

As the building on the property is condemned and must be demolished, OPAK has assessed the value of the titles as land not built on. The methodology applied, referred to as the "land cost method", is explained as follows:

"The valuation of property depends on their expected use and development potential, including expected profits. A direct parameter for this is land costs, i.e. the difference between the market value of the fully developed property and total construction including profit margin, but excluding the land cost; divided by the number of square metres of indoor floor area, excluding basements."[40] Furthermore, it is explained that land cost will depend on the demand for buildings in the area, construction costs, and applicable zoning regulations. In making this assessment, experience from sales of comparable land in the area will also be considered.

In application of this method, the OPAK report arrives at a price of NOK 3.2 million as a reasonable estimate of the sales price.

The Authority has previously found, in its decision pertaining to the sale of the University Library building in Oslo, that the land cost method is an acceptable method for plots of land without existing buildings.[41] The Norwegian Association of Valuers (NTF), on their web pages,[42] primarily refer to other methods, such as net capitalisation method, the cash flow method and the technical worth method. However, these methods presuppose that there is an existing building on the land. The building on the property in question being condemned, the Authority finds that the land cost method is an acceptable valuation method for the three titles in question.

- The economic disadvantage of special obligations

According to the guidelines, "[s]pecial obligations that relate to the land and buildings and not to the purchaser or his economic activities may be attached to the sale in the public interest provided that every potential buyer is required, and in principle is able, to fulfil them, irrespective of whether or not he runs a business or of the nature of his business. The economic disadvantage of such obligations should be evaluated separately by independent valuers and may be set off against the purchase price."

[40] OPAK's assessment of title nos 1/152, 1/301 and 1/630 (Annex 3 to Event No 466024).
[41] Decision No. 170/05/COL Of 29 June 2005 on Sales of Publicly Owned Properties - University Library Building and Part of Adjacent Property in Oslo.
[42] http://www.ntf.no/naring.aspx

The Authority considers that the obligation to construct an underground car park is such a special obligation, which does not relate to the purchaser. Also, the demolition costs of the condemned building may be valuated and set off following the same principles.

As for the obligation to construct the underground parking spaces, the cost estimate is based on the guidelines issued by public authorities and an independent engineering institute[43] requiring 25 square metres per parking space and experience of construction costs for underground car parks. OPAK states that this cost calculation method is normal industry practice. On this basis, OPAK arrives at a price of NOK 130 000 per parking space, or NOK 8 450 000 for 65 parking spaces, excl. VAT and land costs.

The demolition costs, including fees for waste collection and sorting, have been established on the basis of experience from similar demolition works. OPAK estimates that these costs may amount to NOK 150 000.

The Authority recalls that even though it is bound to assess the content of expert opinions submitted by external parties, it is not bound to engage its own external consultants.[44] Having examined the cost calculations, carried out by an independent expert with sufficient technical knowledge within the framework of a value assessment of the property as such, and on the basis of inspection of the premises, the Authority takes the view that these calculations comply with the state aid guidelines. The costs as estimated may, thus, be offset against the purchase price.

2.2. Conclusion on the state aid element in the sale of title numbers 1/152, 1/301 and 1/630 to Grunnsteinen AS

Based on the above assessment of the OPAK report, the Authority concludes that since the economic disadvantages of the obligation to construct the underground parking spaces and the cost of demolishing the condemned building are estimated to amount to NOK 8.6 million in total, and the value of the property is estimated to NOK 3.2 million, the transaction does not confer any economic advantage on Grunnsteinen AS. As the negative value of the economic disadvantages significantly exceeds the positive value of the property, this conclusion is not influenced by any reasonable error margin or the fact that OPAK states that the valuation of such properties is indeed uncertain.

The Authority observes, however, that the difference in value between the obligation that Grunnsteinen takes on and the value of the property is so significant that it might indicate that the market value arrived at by OPAK could be uncertain. However, given the significant discrepancy, even a sizable readjustment of the values found by OPAK would not lead the conclusion that Grunnsteinen has received an advantage.

Against this background, the Authority concludes that the transfer of title numbers 1/152, 1/301 and 1/360 to Grunnsteinen did not involve state aid within the meaning of Article 61(1) EEA.

3. The sale of title number 4/165 to Bryne Industripark AS

In the decision to open the formal investigation, the Authority expressed doubts that the price of NOK 4.7 million for the 56 000 square metres property corresponded to the market price. The Authority's doubts were based, *inter alia*, on the fact that the

[43] Norges byggforskningsinstitutt and Statens vegvesen.
[44] Case T-274/01 *Valmont* v *Commission* [2004] ECR II-3145 at paragraph 72.

municipality stated that the property had been sold at cost, a policy later departed from as it was believed to lead to land being sold off too cheaply. Furthermore, as no value assessment had been carried out, the Authority was not convinced by the comparison made to sales of other properties in the region.

In reply to the Authority's information injunction in the opening decision, the Norwegian authorities have submitted a value assessment of the property carried out by OPAK. Thus, it falls to be considered whether the assessment submitted meets the standards laid down in the Authority's guidelines

3.1. Assessment of the OPAK report

According to the Authority's state aid guidelines, the market value of the property should be established on the basis of generally accepted market indicators and valuation standards by an asset valuer of good repute, who shall be independent in carrying out his tasks.

- Asset valuer of good repute

The qualifications and reputation of OPAK, and of Mr Aarsheim in particular, have been assessed above. In light of that assessment, the Authority finds that the report pertaining to title no. 4/165 was also carried out by an asset valuer of good repute.

- Independence of the asset valuer

The Authority has not seen any indications that the asset valuer was not independent. Mr Aarsheim belongs to a well-known asset valuation company having no formal links with the municipality. The report also sets out the purpose of the assessment, and confirms that Mr Aarsheim has visited the property and describes the method applied in detail. On that basis, the Authority has no reason to doubt that the assessment was carried out in full independence of any orders from the municipality with respect to the result of the valuation.

- Evaluation of the market value on the basis of generally accepted indicators and valuation standards

As described above, OPAK sets out a number of assumptions for its valuations, including the assumption that the seller is willing to sell and that the property may be marketed over a normal period of time.

OPAK has assessed the value of the property on the basis that it was not subject to a zoning plan, only to a general reservation for industrial purposes. The reason for this is that the proposed zoning plan as industrial land was withdrawn before the contract was signed, due to objections from the National Public Roads Adminstration.[45] The zoning plan later adopted was, according to OPAK, very different from the plan which had been withdrawn, as the area was zoned for sports purposes, not for industrial purposes.

The report defines "the sales value is the price that several independent potential buyers interested in the property are willing to pay at the date of the evaluation." In contrast to the assessment of the properties transferred to Grunnsteinen, OPAK does not, in the case of Hålandsmarka, apply the land cost method or any of methods preferred by NTF with

[45] Clause 1 section 3 of the sales agreement, Event No 428860.

respect to buildings. Instead, the price is established through benchmarking with comparable plots of land sold in the area (comparative sales values).

OPAK states that comparable prices in the area range from NOK 80 per square metre (sale between a private party and the municipality) to NOK 115 per square metre (sale between two private parties). OPAK also refers to a reappraisal decision in Stavanger, which established a price of NOK 140 per square metre for plots reserved for home constructions in a very central location. According to OPAK, this would correspond to a price of around NOK 90 per square metre for the industrial area in question. OPAK recognises that market conditions are uncertain and, therefore, suggests that the market price would be between 80 and 100 NOK per square metre, or between 4 510 000 and 5 636 000 for the whole area. Against that background, OPAK's estimate for the sales value is in the middle of that range, 5 100 000 NOK.

In its opening decision, the Authority was sceptical of relying on the municipality's comparison with prices obtained for other properties in the area, *inter alia*, because it seemed that, despite the objections from the Public Roads Administration, the zoning plan for the area had already been adopted, and, therefore, that it would seem incorrect to compare the land to areas where no zoning plan existed. However, the Norwegian authorities have pointed out, in their comments to the opening decision, that the objections from the Public Roads Administration were known at the time of the sale and that, consequently, there was no zoning plan. Also, a zoning plan for the area was only adopted in August 2007, i.e. two years after the sales, and the area was then zoned for sports purposes. Although the subsequent chain of events was unknown to the parties at the time of the transaction, these facts support the conclusion that the withdrawal of the original zoning plan was genuine and that significant changes to it could be expected.

Therefore, the Authority finds the assumptions on which the OPAK report is based, i.e. that no zoning plan applied at the time of the sale, to be acceptable.

As for the evaluation method applied by OPAK, the Authority points out that comparative sales values would appear as less accurate than other methods described by NTF, as the characteristics and expected use of the property are to a lesser extent taken into account. However, the Authority understands from OPAK's assessments that the land cost method, being closely linked to the maximum permitted exploitation of the land, cannot easily be used when no zoning plan exists. In this regard, it should be mentioned that NTF also mentions comparative sales values as one of the acceptable methods for the valuation of industrial land.[46]

Against that background, the Authority finds that the OPAK report must be held to be based on generally accepted indicators and valuation standards.

3.2. Conclusion on the state aid element in the sale of title no. 4/165 to Bryne Industripark

The sales price to Bryne Industripark was 4 700 000 NOK. This is in the lower range of the price range established by OPAK (4 510 000 to 5 636 000 NOK), and somewhat lower than the estimated sales value of 5.1 million NOK.

It follows from the case law of the Court of First Instance that the Authority, in examining value assessments provided to it in the course of a state aid procedure concerning the sale

[46] http://www.ntf.no/naring.aspx

of land and buildings by public authorities, must "determine whether [the sales price] deviates *sufficiently* to justify a finding that there is a benefit"[47] (emphasis added). Furthermore, the transaction at issue concerns undeveloped land not subject to a zoning plan, the value of which, according to OPAK, cannot be established with certainty. Thus, the real market value of the property could also be in the lower end of the price range established by OPAK, which would correspond to the price actually paid by Bryne Industripark. Against that background, the Authority concludes that it cannot be established that the sale of the property conferred a benefit on Bryne Industripark within the meaning of the state aid rules.

Thus, the transaction does not involve the granting of state aid, within the meaning of Article 61(1) EEA, to Bryne Industripark.

4. The sale of title nos. 2/70 and 2/32 (Bryne stadion) to Bryne FK

In the decision opening the formal investigation procedure, the Authority expressed doubts that the transfer to Bryne FK for NOK 0 took place at market terms. Furthermore, the Authority considered that Bryne FK, on the basis of the information available to it at the time, was likely to fall within the definition of an undertaking for the purpose of the state aid rules, carrying out economic activities capable of affecting intra-EEA trade. On that basis, the Authority took the preliminary view that the transaction could have involved state resources, conferred an advantage on an undertaking, and was capable of affecting intra-EEA trade.

New information has become available to the Authority through the formal investigation procedure.

In comments to the decision to open the formal investigation procedure and in reply to the Authority's information injunction, the Norwegian authorities have provided, firstly, a value assessment of the titles transferred, and, secondly, more information on the organisational structure of the football club at the time of the transaction. As regards the organisational structure, it has been pointed out that the club consisted of two entities, namely Bryne ASA and Bryne FK.

4.1. State resources

Article 61(1) of the EEA Agreement requires that a measure must be granted by the State or through state resources for it to be considered state aid.

The Authority recalls that, according to settled case-law, the definition of aid is more general than that of subsidy, because it includes not only positive benefits, such as subsidies themselves, but also state measures which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which thus, without being subsidies in the strict sense of the word, are similar in character and have the same effect.[48] The loss of income by the State in a sale under market value also falls within the notion of state resources.

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[47] Case T-274/01 *Valmont*, cited above, at paragraph 45 and Joined Cases T-127/99, T-129/99 and T-148/99 *Diputación Foral de Alava* [2002] ECR II-01275, at paragraph 85

[48] See, in particular, Case C-143/99 *Adria-Wien Pipeline and Wietersdorfer & Peggauer Zementwerke* [2001] ECR I-8365, paragraph 38; Case C-501/00 *Spain* v *Commission* [2004] ECR I-6717, paragraph 90, and Case C-66/02 *Italy* v *Commission* [2005] ECR I-0000, paragraph 77.

Therefore, in order to determine whether state resources have been involved in the sale of title nos 2/70 and 2/32 to Bryne FK, their market value must be determined. In case the municipality had sold them for a price below the market value, state resources in the form of income foregone would have been consumed.

The Norwegian authorities have submitted a value assessment of the land on which the stadium was built, carried out by OPAK. As above, the value assessment must be examined with regard to the Authority's guidelines.

- Independent asset valuer of good repute

In assessing the report, the Authority notes that the same asset valuer, OPAK/Mr Aarsheim, has carried out this assessment. The Authority has already concluded that OPAK and Mr Aarsheim fulfil the requirement in the guidelines that the asset valuer should be of good repute. Furthermore, the Authority has no reason to believe that Mr Aarsheim was not independent in carrying out the assessment.

- Evaluation of the market value on the basis of generally accepted indicators and valuation standards

In light of the special nature of the property in question, it is necessary to examine the method applied in some detail in order to determine whether the assessment has been made on the basis of generally accepted indicators and valuation standards.

The assessment contains, first, a description of the current use of the land, that is, a football pitch, a running track, training fields, a stand and training halls. The area is zoned for sports purposes in the applicable zoning plan, dated 28 October 1997. OPAK states that, as a starting point, the value of the land should be based on the permissible exploitation of the land. However, OPAK finds that since sports facilities are already built on the land, and, hence, there is no permissible exploitation, a different methodology must be applied. As the stadium has received gaming funds[49], OPAK refers to the conditions governing these funds, which provide that the facilities must be kept open and in use for 40 years, or else the funds must be reimbursed. Furthermore, in order to be able to assess the value of the land under an alternative zoning plan, the terms of such a plan would need to be known. Against this background, OPAK concludes that the stadium can only be assessed as property for development for sports facilities. The assessment is, therefore, based on a comparison with industrial land sold in the area, and a deduction is made on the basis that there are no revenue producing commercial areas in the current zoning plan. OPAK concludes that the market price would be in the range of NOK 2 385 000 to 2 915 000, and estimates NOK 2 650 000 as the sales value.

The Authority notes, as a starting point, that the assessment is not based on any of the preferred methods set out by the Norwegian Asset Valuers' Association. Neither is it based on a direct comparison with similar properties.

However, the Authority recognises that a football stadium is a unique type of property and, as such, a direct comparison with other types of properties is difficult to make. Furthermore, the Authority considers that, given the absence of an alternative zoning plan

[49] Gaming funds are the proceeds of the state-owned gaming company Norsk Tipping. According to the rules laid down by the Ministry of Culture and Church Affairs, such facilities must be kept open for 40 years from the date of completion. See the brochure "Om tilskudd til anlegg for idrett og fysisk aktivitet – 2008", Chapter 4.9, http://www.regjeringen.no/upload/KKD/Idrett/V-0732B_web.pdf

and the economic disadvantage resulting from the reimbursement obligation in case of a rezoning, a value assessment based on the current zoning plan would seem to best reflect the value of the land actually transferred. Finally, the Authority recognises the difficulty related to value assessments of properties zoned for sports purposes, which, under the current zoning rules, cannot be used as revenue producing commercial area. In these circumstances, the Authority finds the method applied by OPAK/Mr. Aarsheim acceptable for estimating the market price, although any such price is, inevitably, tinged with uncertainty. For example, the Authority finds that the market value may well be further reduced by the fact that the club already had a lease agreement for the land, which, consequently, would constitute an encumbrance on the property for any other buyer. With these reservations, the Authority finds the report sufficiently detailed and substantiated to be taken to indicate, with a sufficient degree of certainty, what that value likely would be.

Since Time Municipality transferred the property to Bryne FK for the price of NOK 0 while it had an estimated value of approximately NOK 2 650 000, the Authority concludes that state resources were involved in this transaction.

4.2. Economic advantage to an undertaking

a) The presence of an economic advantage

As the property was transferred to Bryne FK for NOK 0, there is a clear difference between the price paid and the likely market value of the property. The Authority thus concludes that the transaction confer an economic advantage on Bryne FK since the club did not have to pay for the land the value it had on market terms.

b) Bryne FK as an undertaking for the purpose of the state aid rules

Next, it must be assessed whether Bryne FK should be considered as an undertaking for the purpose of the state aid rules. For that purpose, it should be recalled that the concept of an undertaking encompasses every entity engaged in economic activity, regardless of the legal status of the entity and the way in which it is financed, and that any activity consisting in offering goods and services on a given market is an economic activity.[50]

Bryne FK has a professional or semi-professional team currently playing in the division below the premier league, and, at the time of the transaction, in the premier league. In the opening decision, the Authority's preliminary qualification of Bryne FK as an undertaking was based on the fact that some of its activities, notably the selling and buying of professional players, the provision of entertainment in the form of football matches, and the provision of advertising space, seemed to be offered on a market, and, therefore, were economic in nature. The Authority cannot see that new arguments capable of altering its conclusion have been advanced during the formal investigation procedure. Therefore, it must be concluded that as far as these activities are concerned, Bryne FK is an undertaking for the purpose of the state aid rules.

However, the Authority notes that 89 per cent of the total activities of Bryne FK, measured by the number of hours of activity, relates to non-professional football activities, notably the organisation of such activities for children and young people.[51]

[50] See the judgment of the EFTA Court in case E-5/07, *Private Barnehagers Landsforbund* v *EFTA Surveillance Authority*, paragraph 78, and Case C-218/00 *Cisal* [2002] ECR I-691, paragraph 23,
[51] Event No 485026 (third party comments from Bryne FK.)

According to the case law of the European Court of Justice, the practice of sports is subject to EEA law only in so far as it constitutes an economic activity in the meaning of the EEA Agreement. This would apply to activities of professional or semi-professional football players offered in the market.[52] As mentioned above, these activities were concentrated within the company Bryne ASA. On the other hand, the activities offered by Bryne FK to 600 young football players in the club are mainly run on a non-profit basis and to a great extent on the basis of voluntary work by parents and others.[53]

Next, it should be noted that, in the practice of the European Commission, it has been established that the provision of such sports activities for the benefit of children and young people, does not constitute economic activities for the purpose of the state aid rules. In a case concerning public support to sports activities organised by professional sports clubs for young people in France, the Commission found that the support to the civic, academic and sports related education of young people could be considered as a general tasks incumbent on the State in the field of education. To the extent that this education took over from what was formerly known as "sports studies", while preserving the general characteristics and organisation, the support in question would benefit activities in the field of education and, thus, outside the field of competition. Moreover, some of the supported activities were aimed at reducing violence amongst supporters and on neighbourhood activities. The Commission found that such activities could be defined as contributing the civic education in the broad sense. Thus, it concluded that the measures in question were comparable to educational activities which would be the responsibility of the national education system, one of the general tasks of the State.[54]

In that regard, it should be noted that the Norwegian Football Association (NFF) has pointed out that, in principle, it is a public responsibility to offer and organise sporting activities for children/youth in their local environment. The clubs, in co-operation with local authorities and the Association, take on a significant responsibility for the development of facilities and organisation of activities on all levels. Moreover, NFF has pointed out that the Norwegian authorities have repeatedly stressed the positive impact of football as a mechanism of social inclusion.[55]

As the clubs, as pointed out by NFF, organise football activities for children and young people thus providing an educational complement in the field of sports and a channel for social inclusion and mobility, the Authority considers that the recreational football activities organised by Bryne FK can be considered as a task carried out in the general interest, similar to education activities. Thus, such activities do not constitute economic activities in the meaning of the state aid provisions of the EEA Agreement.

In light of the above, the Authority concludes that, with respect to its non-professional activities, Bryne FK cannot be considered an undertaking for the purpose of the state aid rules.

c) No benefit to the economic activities of the club

The European Commission has found that, where a sports club carries out both economic and non-economic activities, no state aid will be present if the club, by means of separate accounting, ensures that the economic activities do not receive any advantage.[56] The next

[52] Case 13-76, *Donà* v *Mantero*, at paragraph 12, [1976] ECR 1333.
[53] Event No 485026 (third party comments from Bryne fotballklubb).
[54] Case N 118/00 Subventions publiques aux clubs sportifs professionnels (France).
[55] Event No 484855, Third party comments from the Norwegian Football Asssociation dated 3 July 2008.
[56] See the Commission's decision in case Case N 118/00, cited above.

step of the assessment must therefore be whether the advantage consisting in the transfer of a property for a price below the estimated market price, effectively benefited the economic activities of the club.

As a starting point, it should be noted that the club, at the time of the transaction, consisted of two legal entities, namely Bryne FK and Bryne Fotball ASA. The division of tasks and economic relations between the two entities were laid down in a co-operation agreement entered into by the club and the company in 2000.

Under the co-operation agreement between the two entities, Bryne Fotball ASA was responsible for carrying out economic activities such as sponsorship agreements, the sale of TV and media rights, the provision of advertising space in the stadium, the sale and licensing of supporter paraphernalia and commercial exploitation of the players and the club's name and logo, ticket sales for the club's home matches and agreements concerning bingo operations (Clause 2.1).

Bryne FK, on the other hand, was responsible for all sporting activities, including trainings and matches, all official duties under the sporting regulations of NFF, miscellaneous activities related to fundraising for the non-professional part of the club, and the operation of the stadium, with the exception of advertising.

Although Bryne FK was formally the employer of professional players and supporting staff, and the formal contract party to agreements pertaining to the sale, purchase and renting of players, all financial obligations related thereto[57] were carried by Bryne Fotball ASA. Moreover, any net profits after coverage of any financial expenses would remain within Bryne Fotball ASA (Clause 4.2). Finally, administrative staff would be hired and paid by Bryne Fotball ASA (Clause 5.1).

Under the agreement, the stadium as such was the responsibility of Bryne FK. Bryne Fotball ASA should pay 150 000 NOK per year for the use of the stadium in general and 10 000 NOK per official match to Bryne FK (4.2). Bryne Fotball ASA was also to pay Bryne FK an annual fee for the right to exploit the club's name and logo, and the commercial exploitation of the players (Clause 4.3). Also, where the professional team used assets owned by Bryne FK, such as the stadium and the club's name and logo, the club was to be remunerated. Bryne FK asserts in its submission to the Authority that this was a market based premium although it has not provided any documentation with respect to the calculation of this premium.

By virtue of the co-operation agreement, Bryne FK could be said to carry out some additional fundraising activities, in particular renting out the stadium and its name and logo to Bryne Fotball ASA. These activities are of such a nature that, as a matter of principle, they may take place in a market in competition with other operators, thereby falling within the definition of an economic activity. However, in the case at hand, the effect of the payment from the limited liability company for its use of the stadium and the club's name and logo was to effectively ensure that no funding intended to benefit the recreational football activities accrued to the professional football activities. Thus, revenues which Bryne FK obtained through this arrangement appear to have been channelled back to the non-professional football activities taking place within Bryne FK.

[57] These obligations concern in particular the payment of the purchase price for, and salaries and other emoluments to, players, coaches and supporting staff. The company was also to pay the social security tax for the employees, and cover the purchase and maintenance cost for equipment; training weekends; traveling costs incurred in connection with away matches and training, and the renting of pitches and venues.

As shown above, all costs pertaining to the professional team were paid by Bryne Fotball ASA, and that, where the professional team uses assets belonging to Bryne FK, the club is to be remunerated. It should also be noted that all commercial activities (such as advertising etc.) related to the professional football take place within Bryne Fotball ASA[58]. As noted above, under the agreement with Time municipality, the stadium land was given to Bryne FK, not to Bryne Fotball ASA. In these circumstances, the Authority takes the view that the co-operation agreement ensures that any aid granted to Bryne FK did not benefit the professional football activities or any commercial activities related to it, as the accounts of these activities were kept separately from those of Bryne FK.

Furthermore, the Authority notes that Bryne FK has stated that all its own activities take place on the stadium property, of which the non-professional activities account for as much as 89 per cent. This would mean that the property is primarily used for the club's own core activities, i.e. offering recreational football activities in the local community, primarily to children and young people.

In these circumstances, the Authority finds that the revenue producing activities of Bryne FK clearly have an instrumental and ancillary character to the club's main objective.[59]

In addition, with respect to the letting of the football stadium in particular, the Authority notes that the stadium in question has limited seating capacity and is not located in a major urban centre. Thus, it may seem that the use of the stadium would not be of significant interest to other parties than Bryne Fotball ASA, would produce modest revenues and, consequently, be of limited interest for profit-seeking private investors. Importantly, as the OPAK report specifically mentions that there are no commercial areas attached to it, the stadium area does not compete with shopping malls or office buildings in the region.

In spring 2004, i.e. about half a year after the transaction, Bryne Fotball ASA ceased its activities and the professional activities were transferred to Bryne FK. Moreover, Bryne FK has confirmed that the club does not keep separate accounts for the different types of activities within the club.

Since the transfer of a property is a one-off transaction, the above assessment is based on the structure of the club at the time of the transaction. An assessment of the possible spill-over to the economic activities of the club following the merger would be warranted should there be any sign that the course of events was in fact aimed at circumventing the state aid rules by channelling the economic advantage via a non-economic entity. In the case at hand, the Authority has no indications that the subsequent merger of Bryne FK and Bryne Fotball ASA was planned at the time of the transfer, in any way linked to the club's acquisition of the land or otherwise designed to circumvent the EEA state aid rules.

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[58] The co-operation agreement applicable at the time implied that Bryne Fotball ASA, not Bryne FK, was responsible for sponsorship agreements, the sale of TV and media rights, the provision of advertising space in the stadium, the sale and licensing of supporter paraphernalia and commercial exploitation of the players and the club's name and logo. Also, Bryne Fotball ASA was responsible for ticket sales for the club's home matches. As for selling and buying professional players, although being listed among Bryne FK's tasks and responsibilities in clause 2.5 of the agreement, it was Bryne Fotball ASA that was responsible for the payment of the purchase price and the salaries to the players. Thus, it would seem that the activities qualified by the Authority as economic in nature and capable of affecting trade and competition within the EEA, took place within Bryne Fotball ASA at the time of the transaction.

[59] Commission case N 558/2005 – Support to Establishments of Professional Activity (Poland). Furthermore, case no N 234/2007 Promotion of R&D&I (Spain), paragraph 38, also indicates that research organisations that do not primarily carry out economic activities may, nevertheless, carry out research on behalf of undertakings against remuneration without thereby being qualified as undertakings for the purpose of the state aid rules.

The Authority therefore concludes that the support granted to Bryne FK through the transfer of the land on which the stadium was built did not benefit the economic activities of the club.

4.3. Conclusion on the transfer of title nos. 2/70 and 2/32 to Bryne FK

In light of the above, the Authority concludes that the transfer of the property to Bryne KF did not involve state aid within the meaning of Article 61(1) EEA.

5. Conclusion

On the basis of the foregoing assessment, the Authority concludes that it can not be shown that any of the three transactions which are the object of this Decision involved state aid within the meaning of Article 61(1) of the EEA Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority considers that the sale by the Municipality of Time of the properties registered under title numbers 1/151, 1/301, 1/630 (to Grunnsteinen); title number 4/165 (to Bryne Industripark AS) and title numbers 2/72 and 2/32 to Bryne FK did not constitute state aid within the meaning of Article 61 of the EEA Agreement.

Article 2

This Decision is addressed to the Kingdom of Norway.

Article 3

Only the English version is authentic.

Done at Brussels, 23 July 2009

For the EFTA Surveillance Authority,

Per Sanderud
President

Kristján A. Stefánsson
College Member