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Fact Sheet: Commitments offered in the NSL Interconnector case

Background

In July 2022, the EFTA Surveillance Authority ('ESA') received a complaint against the Kingdom of Norway ('Norway') alleging an infringement of the EEA competition rules. The complaint concerned the exclusive right granted by the Norwegian Energy Regulatory Authority ('RME') to the Nord Pool Group, the former incumbent, to organise the day-ahead electricity auction including the North Sea Link ('NSL') Interconnector's capacity. The NSL is a submarine power cable connecting the electricity markets of the United Kingdom and South-Western Norway.

On 20 March 2024, ESA sent a Letter of Preliminary Objections ('LPO') to Norway, setting out its preliminary findings. ESA reached the preliminary conclusion that this exclusive right created an inequality of opportunities for economic operators in the Norwegian market for electricity trading facilitation services. ESA was concerned that the exclusivity maintained or strengthened Nord Pool's already dominant position in that market to the detriment of new entrants. Based on the information available, ESA preliminarily concluded that this exclusive right produced anti-competitive effects and that Norway may have therefore infringed Article 59(1), read in conjunction with Article 54 of the EEA Agreement.

Norway does not agree with ESA's preliminary assessment as set out in the LPO. Nevertheless, on 14 November 2025, Norway offered a set of commitments to address ESA's preliminary concerns.

Short summary of the commitments offered

The commitments offered by Norway can be summarised as follows:

By Decision of 6 March 2024, RME obliged Statnett, the Norwegian Transmission System Operator and co-owner of the NSL Interconnector (together with National Grid plc of the UK), to implement a new trading solution based on the principle of allowing for competition among power exchanges on the Norwegian side of the NSL Interconnector ('New Trading Solution'). The New Trading Solution should be completed by May 2026 ('the Go-Live Date'). Norway commits to report to ESA at regular intervals on the various implementation milestones for the New Trading Solution by the Go-Live Date.

1. Norway commits to submit to ESA a written report in English ('the First Report') at the latest 30 days following the date upon which Norway receives formal notification of ESA's commitments decision, and thereafter every three months

during the period until the Go-Live Date of the New Trading Solution ('the Subsequent Reports').

2. The First Report and the Subsequent Reports shall contain any information needed to allow ESA to assess Norway's compliance with the remaining implementation milestones and to ensure the timely progress of the implementation of the New Trading Solution for the NSL Interconnector by the Go-Live Date.
3. Norway commits, as soon as it becomes aware, to promptly notify ESA in writing of potential non-compliance with the implementation milestones, setting out the reasons for the delay, remedies to address the delay, the duration of the expected delay and the implications on the other implementation milestones.
4. Norway commits to provide additional reports, either orally or in writing, at the request of ESA, on any matters falling within the scope of the commitments.
5. Norway commits to alert ESA in writing of the Go-Live of the New Trading Solution.
6. Norway further commits to submit to ESA a written report in English within 6 months of the Go-Live of the New Trading Solution. This report shall contain a full description of the final result of the implementation of the New Trading Solution.

The full text of the commitments offered by Norway can be accessed on the website of ESA at:

<https://www.eftasurv.int/cms/sites/default/files/documents/Commitments%20offered%20by%20Norway.pdf>

Commitments procedure

Article 59(3) of the EEA Agreement provides that the EU Commission as well as the EFTA Surveillance Authority shall ensure within their respective competence the application of the provisions of Article 59 EEA and shall, where necessary, address appropriate measures to the States falling within their respective territory. In the case of ESA, States falling within its respective territory are Norway, Iceland and Liechtenstein ('the EFTA States').

EFTA States subject to proceedings under Article 59 EEA may voluntarily offer commitments intended to address the competition concerns identified by ESA in its LPO. If ESA accepts the proposed commitments, it may adopt a decision pursuant to Article 59(3) EEA addressing those commitments as appropriate measures to the EFTA State concerned.

The main difference between an infringement decision and a commitment decision is that the former contains a finding of an infringement, while the latter addresses the commitments as appropriate measures to the State concerned without concluding whether there was, or still is, an infringement, simply stating that there is no longer ground for action in the case.

The submission of commitments does not imply that the EFTA State concerned agrees with ESA's findings in the LPO.

Next steps

Following the commitments offered by Norway, ESA now market tests the offered commitments. A market-test notice is published on ESA's website. In the market-test notice, ESA summarises the case and the main content of the commitments and invites third parties to submit their observations on the offered commitments. Interested parties may submit their observations within three weeks following the publication. Comments can be submitted to ESA by email to registry@eftasurv.int.

If ESA, based on the results of the market test, is satisfied that the commitments sufficiently address the competition concerns identified, ESA may adopt a decision pursuant to Article 59(3) EEA addressing those commitments as appropriate measures to the EFTA State concerned.

However, if ESA, based on the results of the market test, is of the view that the competition concerns have not been addressed or that changes in the text of the commitments are necessary to make them effective, this will be brought to the attention of the State having offered the commitments. If the State concerned is willing to address the problems, it should submit an amended version of the commitments. If the State is unwilling to submit an amended version, ESA can revert to an infringement proceeding.

Article 59 of the EEA Agreement

Article 59 of the EEA Agreement corresponds to Article 106 of the Treaty of the Functioning of the European Union (TFEU). Article 59 EEA prohibits EEA States from enacting or maintaining in force measures contrary to, in particular, the EEA competition rules when granting special or exclusive rights to undertakings. Article 59 EEA can be infringed in conjunction with other provisions of the EEA Agreement, most often with Article 54 EEA that prohibits the abuse of a dominant position.

Article 59(3) EEA provides that ESA or the European Commission shall ensure within their respective competence the application of the provisions of this Article and shall, where necessary, address appropriate measures to the States falling within their respective territory.

The EFTA Surveillance Authority (ESA)

ESA monitors compliance with the EEA Agreement in Iceland, Liechtenstein and Norway, enabling those States to participate in the internal market of the European Union.

ESA is independent of the States and safeguards the rights of individuals and undertakings under the EEA Agreement, ensuring free movement, fair competition and control of State aid.

ESA's work helps remove barriers to trade and opens up new opportunities to over 450 million Europeans, creating jobs and growth and adding to the international competitiveness of the States.

Further information about the EEA competition rules and the role of ESA can be found on our website: www.eftasurv.int/competition