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State aid complaint: Zero-rated VAT on newspapers - Letter according to Article 17(2) in Part II of Protocol 3 to the Surveillance and Court Agreement

Reference is made to the EFTA Surveillance Authority's letter of 17 July 2007 concerning the Competition and State Aid Directorate's (CSA) preliminary view on the zero-rating for VAT on newspapers. Reference is also made to the Authority's letter of 10 August 2007 where the deadline for the Norwegian authorities to submit their comments on the assessment is extended until 18 September 2007.

The Ministry of Finance takes the view that the zero-rating for VAT of newspapers is in compliance with the provisions of the EEA Agreement. The Ministry hereby submits its comments on CSA's preliminary assessment.

We have divided our answer into three parts. In part one we would like to redraw the attention of the Authority to the purpose of the zero-rating for VAT of newspapers as provided for in section 16 No. 7 of the Norwegian VAT Act. In part two we elaborate on the application of reduced VAT rates, including the application of zero-rates, within the European Community. As the Ministry already has accounted for, current EU rules authorise Member States to maintain a zero VAT rate on newspapers. In the eyes of the Ministry these circumstances are highly relevant when assessing whether the zero-rating for VAT of newspapers is compatible with Article 61(1) EEA. In part three the Ministry provides its comments to the CSA's assessment of compatibility of the zero-rating for VAT in relation to Article 61 (1) EEA.

1. The purpose of the zero-rating for VAT of newspapers as provided for in section 16 No. 7 of the Norwegian VAT Act

As we accounted for in our letter to the Authority of 29 January 2007 the Norwegian system for VAT on newspapers has been an integrated and substantial part of

Norwegian media policy since it was established in 1970. One of the purposes of the zero-rating is to promote the expression of public opinion, cf. the preparatory works to section 16 No 7 of the Norwegian VAT Act, Ot.prp. nr. 17 (1968-69) Om lov om alminnelig omsetningsavgift og særskilt avgift på visse varer og tjenester (merverdiavgiftsloven) and Ot.prp. nr. 31 (1969-70).

The main objective of the Government's media policy is also to "*safeguard freedom of expression, legal protection and a vital democracy*". In St.prp. nr 1 (2006-2007) Kirke- og kulturdepartementet (see enclosure) the Government has presented a more detailed list of policy goals, and emphasizes *inter alia* the need for media pluralism.

Incidentally, media pluralism is clearly not a Norwegian concern only. Reference is made, first, to Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which implies that public authorities in member states have a duty to ensure diversity of opinion and media pluralism. In the Council of Europe report "Media diversity in Europe", the advisory panel on media pluralism declares that:

"Article 10 of the European Convention on Human Rights is the basic framework for media pluralism on the European scale. Under its effect, States are under a "duty to protect" and, when necessary, to take positive measures to ensure diversity of opinion in the media. The European Court of Human Rights has stated that without plurality of voices and opinions in the media, the media cannot fulfil their contributory role in democracy.

Thus, European States are under the obligation of safeguarding and promoting pluralism in the media.

...

Given the significant differences in culture, in the size and characteristics of media markets, and in legal and administrative traditions within Europe, no common or single regulatory model will be suitable for all European countries."

Media pluralism is also a current key issue for the European Union. Reference is made to the ongoing discussion between Sweden and the Directorate General for Competition (DG Comp) regarding the Swedish press subsidies. The Swedish Government argues that the press subsidies system is an important tool for promoting pluralism on the media market, which was also stated in the European Commission's communication on media pluralism in January this year, see the enclosed press release of 16 January 2007 "Media pluralism: Commission stresses need for transparency, freedom and diversity in Europe's media landscape".

On this background, the Ministry believes that the objective of media pluralism must form the basis of the analysis of the zero-rate VAT and the compatibility with Article 61(1) EEA

2. Application of reduced VAT rates, including a zero-rate, within the EU

As the CSA is well aware of, the EU Member States have the discretion to apply a multitude of different VAT rates within the framework of the VAT Directive 2006/112/EC of 28 November 2006. The application of reduced rates, including zero-rates, constitutes an integral part of the EU VAT legislation. As far as the Ministry knows, this discretion, leading to different rates *within* Member States and *between* Member States, has not been challenged by the Commission on the basis of the state aid provisions of the EC Treaty.

Before elaborating on the relevant EU legislation, the Ministry must, as a preliminary point, emphasize that Norway as a party to the EEA Agreement cannot be imposed further obligations than the EU Members as regard VAT harmonisation. The secondary VAT legislation is not a part of the EEA Agreement. Thus, Norway is not obliged by these provisions intended to gradually harmonise the VAT systems of the Member States. The EU VAT legislation must, however, respect the EC Treaty provisions, including the provision on state aid in Article 87 EC. As long as different VAT rates, including a zero-rate, is acknowledged by the Member State and by the EU legislator, it must be assumed that these characteristics of the VAT legislation is compatible with the EC Treaty.¹ In the opinion of the Ministry, it would be contrary to the fundamental principles of the EEA Agreement if the deliberate choice of excluding harmonising VAT secondary legislation from the ambit of the EEA Agreement would - through the state aid provisions - actually lead to further harmonising obligations within the EEA than within the EU.

Turning to the current EU rules reference is made to the VAT Directive 2006/112/EC where the legal framework for the application of VAT rates in Member States is provided for in Articles 93 to 130 and Annex II and IV. The basic rules are quite simple:

- Supplies of goods and services subject to VAT are normally subject to a standard rate of at least 15%, cf. Article 97.
- Member states may apply one or two reduced rates of not less than 5% to goods and services enumerated in a restricted list, cf. Article 98 and 99.
- They may also, under certain conditions, apply a reduced rate to certain labour intensive services (annex IV), cf. Articles 106 to 108.

These simple rules are supplemented by a multitude of derogations granted to certain Member States, in some instance a majority of Member States. The exceptions derogate either from the level of the rate fixed by the rules (zero rate, super reduced rates of less than 5%), or they concern supplies which should be taxed by the standard rate (as the intermediary rates, the so-called parking rate set at a minimum of 12 %), or they derogate from both. Whereas the derogations granted during the last enlargement of the EU have precise deadlines, the earlier ones are maintained until the entry into force of the “definite system” for intra-Community transactions. Thus, these transitional

¹ This is emphasized by the Norwegian Supreme Court in a case concerning VAT group registration and the application of the four freedoms, see judgment of 5 February 2007, Rt. 2007 s. 140, paragraph 45.

arrangements will stay in force until a new unanimous decision of the Council to that end. In the case of the Member States which joined the EU after the 1st January 1995 the derogations resulting from the accession negotiations however apply for a limited period of time.

The right for Member States to grant exemptions with deductibility of the VAT paid at the preceding stage (zero rate) is explicitly provided for in the VAT Directive. Reference is made to Article 110 first paragraph where it is stated that Member States, which on January 1 1991 were granting exemptions with deductibility of the VAT paid at the preceding stage (or applying reduced rates lower than the minimum laid down in Article 99) may continue to do so. According to the second paragraph of article 110 the exemptions (and reduced rates) must however be in accordance with Community law.

Reference is also made to Article 111 of the VAT Directive which explicitly gives Finland and Sweden the right to grant exemptions with deductibility of the VAT paid at the preceding stage in respect of the supply of newspapers. According to character a) and b) of Article 111 Finland and Sweden are, subject to the conditions laid down in the second paragraph of Article 110, authorized to grant such exemptions. The derogations in Article 111 were granted during the negotiations preceding Finland and Sweden's accession to the EU. In Finland newspapers and periodicals are zero rated provided that they are sold on subscription for a period of at least one month. In Sweden the VAT rate on supply of newspapers is 6%.

This secondary legislation acknowledges that each Member State has a wide discretion in choosing what goods and service to make subject to VAT and at what rate. This is clearly illustrated by the report from the European Commission "VAT Rates Applied in the Member States of the European Community – Situation at 1st May 2007", doc/2137/2007 (enclosed) . This report provides an overview of the VAT rates in all Member States including the application of the zero-rate. As the overview shows, some Member States apply zero rates to a large number of goods. United Kingdom, for instance, has zero rated the supply of food products for human or animal consumption, whilst the supply of pre-cooked dishes and certain highly processed products such as ice-cream and chocolates is not. The report also shows that newspapers are in a particular position as regard VAT rates. None of the so called "old" Member States apply their standard rate to newspapers; supply of newspaper is either subject to reduced rate or a zero rate. Among the "new" Member States, only Hungary and Slovakia seem to apply their normal rate to this sector. As we accounted for in our letter of 29 January 2007 the supply of newspapers is zero rated in Belgium, Denmark, Finland and United Kingdom.

The Commission has recently launched a debate on the use of reduced VAT rates. The Commission called on 5 July 2007 for a "simplification and rationalisation" of European VAT rules after an independent economic study showed that using a single uniform VAT rate would improve consumer welfare, cut costs for business and reduce distortions of competition in the internal market. Reference is made to press release IP/07/1017 and MEMO/07/277 (enclosed). As MEMO/07/277 shows the Commission considers that one of the possible ways forward would be to allow for a very low rate for

goods and services of first necessity, such as food. A second, but higher, reduced rate could then be applied to goods and services deserving preferential treatment for example for cultural, educational or employment reasons. In order to ensure a measured debate without undue time pressure, the Commission proposes to extend until the end of 2010 those derogations that are coming to an end soon.

The signification of the consultation document has been commented by the head of the EC in the United Kingdom, Mr. Reijo Kemppinen. Reference is made to the enclosed article "EU backing for UK's VAT "zero rates" of 7 June 2007. According to the article, Mr. Kemppinen expressed that the core idea of the consultation document "is to give more flexibility to member states, especially in applying reduced VAT rates, such as the zero rate the UK applies to children clothes and food." Mr. Kemppinen also stated that "there was never a threat to the reduced rates, quite the contrary – the aim is to recognise that most member states want to apply lower rates, including zero rates, particularly for social purposes".

To sum up so far; The EU secondary legislation acknowledges that each Member State has a wide discretion in choosing what goods and service to make subject to VAT and at what rate. This is regarded as an integrated - and positive - part of the VAT systems within the EU. Moreover, newspapers are treated as a particular good in that nearly all Member States apply the reduced VAT rate or the zero rate provided for in the VAT Directive. This must, *inter alia*, be due to the positive effects of reduced rates and zero rate to the objective of media pluralism.

Additionally, the two ongoing debates on reduced VAT rates and media pluralism show that these topics are delicate matters. This calls for a cautious application of the state aid provisions. As further demonstrated below, the approach indicated by CSA would *de facto* question the legality of large parts of the EU VAT legislation.

3. The Ministry's comments to the assessment of CSA

3.1 The qualification of a measure as an "advantage" in relation to Article 61(1) EEA

To constitute aid, a measure must confer upon the recipients an economic advantage. As pointed out by CSA it is however a fact that those who benefit from the zero-rating for VAT of newspapers are first and foremost the consumers who pay a lower price for the newspaper. This is in accordance with the primary objective of the VAT system; as accounted for earlier VAT is an indirect tax on the consumption of goods and services.

The complainant nevertheless alleges the existence of an indirect competitive advantage to the extent that, assuming identical costs, the newspaper undertakings benefiting from the zero-rated VAT on their sales are in position to charge less for their products than their competitors. The question to be answered is therefore whether an indirect advantage, should one be found to exist, suffices for the purpose of Article 61 (1) EEA.

Concerning this issue, the Ministry would first like to draw the attention to the Authority's letter of 15 January 2001. In this letter the Authority stated that the application of a zero VAT rate on the sale of newspapers does not seem to relieve the newspaper undertakings from costs they would normally have to bear. The Authority further stated that since VAT is a tax on consumers rather than on undertakings, the application of a zero rate does not seem to constitute a direct benefit to newspaper undertakings. As CSA knows, in this case the file was closed without any further action. According to CSA this was partly due to the fact that the complainant had not provided any information which would enable the Authority to determine and quantify the financial benefit to newspaper undertakings (which they would not have obtained without the application of a zero rate).

In the letter of 17 July 2007 the CSA presents its doubts as to whether an indirect advantage would suffice for the purpose of Article 61 (1) EEA, but indicates that this may probably be the case. The Ministry shares the CSA's doubts as to the extent to which an indirect competitive advantage would suffice. In particular, the Ministry finds that VAT regulations should be assessed according to the traditional view that only direct advantages would suffice. As presented above, different VAT rates, including the zero-rate, is an integral part of the Norwegian VAT scheme as well as of the VAT schemes of the EU Member States. This fact must be duly appreciated when assessing the state aid conditions provided for in Article 61(1) EEA. Otherwise, important parts of the VAT regulation of the EU and EEA, both on the national level and the Community level, would be in danger. With a traditional assessment of the "advantage"-criterion this problem would be overcome. For further comments on reduced VAT rates as an integral part of the VAT schemes, see the next section on the nature and logic of the VAT system.

3.2 Selectivity – the nature and logic of the VAT system

To constitute state aid within the meaning of Article 61 (1) EEA the aid measure must be selective in that it favours "certain undertakings or the production of certain goods". In its preliminary assessment CSA has stated that the Norwegian VAT legislation would appear to fulfil this condition to the extent that the favourable rate only applies to certain publications. CSA has however not assessed whether the measure in question can be justified by the internal logic of the VAT system. The Ministry submits that a system of reduced rates and zero-rates is within the nature and logic of the Norwegian VAT system as well the VAT systems of the EU Member States. Different VAT rates on different goods and services cannot therefore constitute state aid according to Article 61(1) EEA.

VAT is an indirect tax on the consumption of goods and services. As a rule, VAT is calculated at all stages of the supply chain and on the import of goods and services from abroad. The ultimate consumer pays VAT as a part of the purchase price without the right to deduct the tax.

Although all sales of goods and services may in principle be liable to VAT, some transactions may be exempt (and as a consequence without a credit for input tax) which means that such supplies are not taxable. Furthermore, some supplies may be exempted with credit for input tax (the supply is zero-rated). As accounted for in the Ministry's letter of 29 January 2007 a zero-rated supply falls within the scope of the VAT Act, but no output VAT is charged since the rate is zero. The zero-rated goods and services are indicated in sections 16 and 17 of the Norwegian VAT Act. Reference is further made to the second part of this letter where the EU legislation concerning reduced rates and zero rates is outlined.

When assessing the nature and logic of the VAT scheme one must appreciate several integrated aspects of the scheme. A primary objective – or perhaps rather the primary rule – is to tax certain supplies of goods and services. If the logic of the system would be based on this objective – or rule – alone, however, none of the other objectives or aspects of the VAT system would be within its logic. That, the Ministry submits, cannot be correct. On the contrary, the different objectives must be regarded as a whole. In particular, a system of reduced rates and zero-rates is within the nature and logic of the Norwegian VAT system as well the VAT systems of the EU Member States.

Another approach would, as the Ministry sees it, question the legality of large parts of the EU VAT legislation. As outlined above, the Member States have, with the Commission's approval, adopted numerous modifications from the standard VAT rates. Several of these situations do clearly imply that products that directly or indirectly are competing on the same market are treated differently as regard VAT. As an example, reference is made to the United Kingdom where the supply of food products as such is zero-rated, whilst the supply of pre-cooked dishes are not. The Ministry finds that such a different approach is within the logic of the system. If that would not be the case, this and numerous other examples would very easily constitute incompatible state aid. Thus, a wide assessment of the nature and logic of the system is necessary in order to avoid that the state aid provisions set aside the comprehensive EU VAT legislation.

As presented in section two above, a system with reduced VAT rates, including zero rates, is an integral part of the Norwegian VAT Act as well as of the VAT systems of the EU Member States.

As long as the system of zero-rates is within the logic of the system, the same must apply to its adoption to newspapers. It is recalled that media sector and newspapers in particular are treated differently from most other products as regards VAT both in Norway, in the VAT Directive and in nearly all EU Member States. Thus, such a different treatment must be within the internal logic of the VAT system.

3.3 Distortion of competition

To constitute aid a measure must also distort competition and affect trade between the contracting parties. In its preliminary assessment CSA has stated that it cannot be excluded that the competition between newspapers and magazines (at least the single

copy newspapers and the weekly press publications) is distorted. As we will show below, the basis for this assessment is questionable.

As mentioned above, the main goal of government media policy, and of the zero-rated VAT on newspapers, is to promote the democratic function of the media. In order to participate actively in the democratic society, citizens need broad access to news and information on a wide range of public matters, e.g. politics, economy, social questions, sports and cultural affairs. In this context it is interesting to note that the UNESCO defines a newspaper precisely as a publication which “*provides its readers with a primary source of general information*”.²

The Ministry believes that in this respect there are differences between newspapers and weekly press publications. The main difference is that, as opposed to newspapers, weekly press publications do not, and cannot, function as primary sources of general information.

As a preliminary point, a further analysis of possible competition between newspapers and weekly press publications can only be relevant as regard a small minority of newspaper. Most newspapers do clearly not have any competitive link with weeklies. This applies, in particular, to regional and local newspapers, but also to most national newspapers. This will be further commented upon below.

The Norwegian Competition Authority has on two occasions – in 1997 and 1998 – argued that weekly magazines and some single copy sale newspapers may compete on the same market. However, these statements have been criticized due to, *inter alia*, lack of thorough analysis and documentation. Moreover, the conclusion is contradicted by the relevant research on this field.

Below, the Ministry will substantiate its view by highlighting, in particular, differences in content, public usage and expectations towards newspapers and weeklies.

a) Are there differences in the content of newspapers and the weekly press publications?

The Ministry believes that there are differences in the content of newspapers and the weekly press. Reference is first made to the survey of Retriever Norge AS (performed on the commission of Mediebedriftenes Landsforening) regarding the medias coverage of the 2007 municipal and county council election. (See enclosure “Dekning av 2007-valget i aviser og ukeblader, Mediebedriftenes Landsforening, 11 September 2007”.)

The survey shows that the coverage of the newspapers and the weeklies is different. During the period 27 August 2007 - 9 September 2007 the newspapers provided 2 410 articles about the election, whilst the weeklies provided 33 articles. The newspapers provided 62 times more space for text about the election than the newspapers. The newspapers had also more than 10 times more text about the election in every issue

² In UNESCO’s Questionnaire on Newspaper Statistics of December 2005 (enclosed) it is stated: “A *daily newspaper* is a newspaper mainly reporting events that have occurred in a 24-hour period before going to press and which is published at least four times a week. A *non-daily newspaper* is any other type of newspaper, usually one which gives news covering a longer period but which, either owing to their local nature or for other reasons, provides its readers with a primary source of general information. ...”

than the weeklies. The survey consequently proves that as far as concerns the coverage of the election the newspapers and weeklies are not substitutes to the readers.

Reference is also made to the reports "*Tjuvar på same marknad*" (February 1998) and "*Fleire tjuvar på same marknaden*" (April 1998) by Møreforskning Volda/Høgskolen i Volda. These reports analyse the contents of various Norwegian newspapers and weekly press publications. One of the conclusions in the reports is that within the categories of politics, social questions and cultural affairs the newspapers have a higher coverage than the weekly press publications. Another conclusion is that the weekly press publications are much more focused on persons, as opposed to issues of a more general nature, than the newspapers. The Ministry would especially like to highlight the following conclusions from the rapport "*Tjuvar på same marknaden*":

- The newspapers "VG" and "Dagbladet" have approximately 54% news and reportages. The weekly press publication "Se og Hør" has 43% and "Hjemmet" (also a weekly press publication) has 30%.
- The newspapers and the weekly press publications place emphasis on quite different issues. "VG" and "Dagbladet" focus mostly on politics, social questions, sports and cultural affairs. The weekly press publications focus mostly on issues related to home, health, hobbies, family, celebrities and royalties.
- 65% of the content in "Se og Hør" is related to celebrities and royalties. In the newspapers and in "Hjemmet" the content is 24%.

It is important to note that the comparison is not made between newspapers as such and weekly press publications as such. On the contrary, only the two national tabloid newspapers VG and Dagbladet, are assessed, compared to the weeklies "Se og Hør" and "Hjemmet". These two non-subscription newspapers are probably the ones with the fewest differences from the weeklies. Similarly, the two weeklies mentioned are among the weeklies with most news and reportages. Thus, most newspapers, be it national, regional, local or international newspapers, would be more different from the weeklies than the two tabloids.

b) Are newspapers and weekly press publications regarded as substitutes to the general public?

The question of substitution is the core element in order to establish the relevant product market. The Ministry believes that newspapers and weekly press publications have different characteristics making them *alternatives* rather than *substitutes*. As the European Court of Justice, the Commission and the Authority have constantly held, two products do not compete on the same market if they are "only to a limited extent interchangeable".³ More particular, the Ministry cannot see that it can be realistic that customers would switch from newspapers to weekly press publications as their general

³ See, e.g., Case 6/72, *Continental Can*, [1973] ECR p. 215, at paragraph 14, and Case 27/76, *United Brands*, [1978] ECR p. 2007, at paragraph 22.

source of information as a responds to a small but significant increase in price in the range of 5 to 10 % (the SSNIP-test).⁴

As far as the relevant research is concerned, reference is made to *Medienes samfunnsansvar*” which is a survey conducted in 2006 by TNS Gallup on commission of MBL and NRK (the Norwegian Broadcasting Company), see enclosure. The survey is based on the answers from users of different kinds of media, such as newspapers, magazines and television. The survey shows that the newspapers receive a higher score than the weekly press publications as far as the following aspects are concerned:

- the communication of credible news,
- the promotion of debate and concern about the Norwegian community, and
- the supervision of the power brokers.

The survey also proves that in the eyes of the readers there is a difference between the single-copy newspapers and the weekly press publications. According to the survey the readers believe that dissimilarity between the single-copy newspapers and the weekly press publications is most evident as far as the following aspects are concerned:

- the communication of credible news,
- the promotion of debate and concern about the Norwegian community , and
- the launching of important social and cultural issues.

Reference is also made to the survey “*Kanalvalgsundersøkelsen*” conducted by TNS Gallup in 2001. The survey charts the different characteristics of different media by examining the users’ expectations and motives for using the different media. The government white paper on media policy from 2001 (St.meld. nr. 57 (2000-2001) “I ytringsfrihetens tjeneste”, see enclosure) gives an account of the survey:

”Norsk Gallups kanalvalgsundersøkelse søker å kartlegge mediens ulike egenskaper for brukerne, gjennom å forklare forventninger til og motiver for bruken av de ulike mediene.

Undersøkelsen utføres ved at intervjuobjektene får et spørreskjema som er en matrise med 15 utsagn om mediens funksjoner. Intervjuobjektene markerer hvilke utsagn som passer på hvilke medier. Utsagnene er gruppert i seks funksjoner; «målrettet nyheter», «generell nyheter», «målrettet informasjon», «generell informasjon», «målrettet underholdning» og «generell underholdning». Basert på resultatet for enkeltmedier på de ulike utsagnene, blir mediene gruppert i grupper av medier som fyller mer eller mindre tilsvarende funksjoner for brukerne (jf. tabellvedlegg 3.6).

Departementet legger til grunn at det først og fremst er mediens funksjon som kilde til «generelle nyheter» – dvs. en bred og allmenn oversikt over nyhetsbildet – som er viktig i et ytringsfrihets- og demokratiperspektiv. Dette vil si at de skårer høyt på følgende utsagn i undersøkelsen: «Orienterer om det som skjer», «Er raskt ute med nyhetene» og «Gir nyhetene på en lettfattelig måte». Kanalvalgsundersøkelsen for

⁴ Cf. , *inter alia*, the Authority’s Notice on the definition of the relevant market.

2001 viser at det er «avisar og økonomiske blader» som skårer høyst på denne funksjonen, foran «regionavisar, «allmenn kringkasting» og «løssalgsavisar» . «Nyheter på nett» skårer også høyt på denne funksjonen.

Når det gjelder funksjonen «målrettet nyheter» – dvs. særleg som kilde til informasjon om konkrete forhold eller hendelser man interesserer seg for – ser man mykje det same bildet, bortsett frå at gruppen «dagsavisar og yrkesblader» også skårer høyt her. Dette er medier som skårer særleg høyt på følgjande utsagn: «Bringer informasjon eller stoff du har tillit til», «Gir bakgrunn for nyhetene» og «Bringer stoff som danner grunnlag for diskusjon».

Endringer i folks forventningar til og bruk av mediene ser man først hos de yngre aldersgruppene. Det er derfor interessant å se på forskjeller i mediebruk blant ulike aldersgrupper. Når det gjelder funksjonen «generelle nyheter» ser man f.eks. at «nyheter på nett» skårer vesentlig høgere blant yngre (13–24 år) enn hos eldre (60+). Videre tillegger de yngre «dagsavisar og yrkesblader» større betydning enn «regionavisar» som skårer klart høyst blant eldre.

Dette viser at avisene fremdeles er den klart viktigste kilden til allmenne nyheter for folk flest. Samtidig ser vi at Internett er i ferd med å få reell betydning i den allmenne nyhetsformidlingen, særleg for barn og unge. Hovedsakelig er det imidlertid tale om avisenes nettutgaver.”

The survey showed i.a. showed that “newspapers and economy magazines” (“avisar og økonomiske blader”) achieved the highest scores as sources of general information. In comparison “weeklies” (“ukeblader”) achieved the lowest scores in this category.

The lack of substitution between newspapers and weeklies are even more evident as regards regional and local newspapers. These newspapers are to a great extent operating on separate regional and local markets.

c) Do newspapers and weekly press publications compete on the advertising market?
In connection with the Commission’s evaluation of the Swedish system of press subsidies, Swedish authorities commissioned a report from Karl Erik Gustafsson, professor of media economy at the Jönköping International Business School. The report, which was finalised in February 2007, includes an analysis of the market effects of the Swedish system of press subsidies in a European perspective. (See enclosure “Det svenska presstödet marknadskonsekvenser”, Karl Erik Gustafsson 13 February 2007.) Referring to the different media’s shares of the advertising market in different European countries, the report concludes that there is no indication that press subsidies have distorted competition for the benefit of newspapers, cf. page 53 and 54 of the report.

3.4 Zero-rated VAT is in any event compatible with the EEA Agreement

Should the Authority find that the zero-rated VAT on newspaper constitutes state aid under Article 61(1) EEA, the Ministry submits that the aid is compatible with the EEA Agreement. The zero-rated VAT is legitimated by several objectives related to culture,

the freedom of expression and a vital democracy. The term *media pluralism* covers important parts of these objectives. Moreover, the zero-rated VAT does not distort competition or trading conditions contrary to the common interests.

As the Ministry sees it, the zero-rated VAT could most appropriately be assessed under Article 61(3) (c) EEA stating that aid to facilitate the development of certain economic activities or areas may be compatible with the EEA Agreement as long as it does not adversely affect trading conditions to an extent contrary to the common interests. In the following, the arguments substantiating the Ministry's view are therefore based on the criteria under Article 61(1) (c). However, the issue may also be assessed under Article 59(2) EEA concerning services of general interest, and the arguments are relevant for the criteria found in this provision as well.⁵

As mentioned above, the Commission has, as far as the Ministry knows, not challenged the system of reduced VAT rates under the state aid provisions in the EC Treaty. Should a system as the Norwegian be regarded as state aid under Article 87(1) EC, the compatibility of the aid would have to be assessed under d) of Article 87(3) EC as regards the cultural objectives, and under litra c) as regards the other legitimate objectives. As the Authority has held, Article 61(3)(c) must be interpreted in the same manner even though there is no provision directly corresponding to Article 87(3)(d) EC.⁶

It is well established practice from the Commission that the media sector is covered by both litra c) and d) of Article 87(3) EC. As a recent example the Ministry refers to state aid case No N 664/06 concerning aid in favour of the newspaper "Új Szó" in Slovakia (decided 11 December 2006, C (2006) 6700). The Commission concludes that parts of the content of the newspaper is compatible with the EC Treaty under the culture provision in litra d), whereas the political and socio-economic issues of the newspaper are accepted under the general provision in litra c). As regards the relationship between the two provisions the Commission states:

"14. Új Szó is partly designed to support the information on cultural topics (in particular with regard to the Hungarian minority in southern Slovakia). It is therefore noted that the measure has some elements exemptible under Article 87 (3)(d) EC, inasmuch as they may contribute to the awareness of cultural issues and cultural diversity. The aid amount is very small and trading conditions and competition in the Community are not affected to an extent that is contrary to the common interest.

15. Insofar the newspaper reports about political and socio-economic issues, no other specific compatibility clause seems to be applicable to the notified aid apart from the always possible general application of Article 87(3)(c) EC. The latter provides that, "aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, may be considered to be compatible with the common market". "

⁵ Cf. the Authority's State aid guidelines, in particular on the application of the State aid rules to Public Service Broadcasting, sections 5 and 6.

⁶ The application of the State aid rules to Public Service Broadcasting, sections 3(2) and 5(2).

The aid was thus accepted by the Commission on the basis of both litra c) and d) of Article 87(3) EC. In the EEA context, all parts of the aid would have been assessed under Article 61(3)(c). Cultural, political and socio-economic issues are thus relevant under this provision, as well as other objectives related to freedom of expression and a vital democracy substantiating the zero-rated VAT on newspapers in Norway.

These legitimate objectives, all related to media pluralism, are fundamental objectives within the EEA and EU. Reference is made to section 2 above showing that media pluralism is a current key issue both for the Council of Europe and for the European Union, cf. the ongoing debate on media pluralism initiated by the Commission. The impact of media pluralism, and the freedom for the Member States to regulate the protection of media pluralism, is also highlighted by the Commission in the Green Paper and White Paper on services of general interest.⁷ Additionally, reference is made to statements from the European Parliament from 2004 emphasizing that "*... services aimed at guaranteeing that pluralistic information and cultural diversity are maintained and promoted*" should not be assessed under the competition rules, and thus not by the state aid provisions. The Parliament refers to "*strengthening of democracy, political and intellectual pluralism and freedom of opinion and expression.*"⁸

On this background, the Ministry submits that the zero-rating of VAT on newspapers is based on fundamental objectives within the EEA, facilitating the development of certain economic activities or areas within the meaning of Article 61(3)(c).

According to this provision, the aid must not adversely affect trading conditions to an extent contrary to the common interests. The Ministry is of the opinion that this condition is fulfilled.

First, the Ministry refers to section 3.3 above where it is demonstrated that newspapers and weekly press publications operate on different markets. Even if the Authority should find sufficient competitive elements to fulfill this condition under Article 61(1), it must be evident that competition will be minor. Only a very few newspapers and a few weeklies can be regarded as competing, and only so to a limited extent.

Secondly, trade between states is not affected to any appreciable extent. As held by the Authority in the letter of 15 January 2001 the newspaper markets are largely national markets. Even today this must be a correct observation. In any event, the Norwegian provisions are designed to treat national and foreign products in the same manner as regards VAT. Thus, foreign newspapers and periodicals fulfilling the criteria for zero-

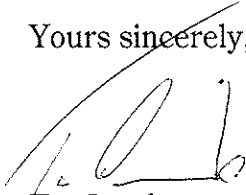
⁷ Green Paper on services of general interest, COM(2003) 270 final, and White Paper on services of general interest, COM(2004) 374 final, particularly pages 19 and 25.

⁸ Cf. Parliament resolution 13 January 2004 on the Green Paper on services of general interest, OJ 2004/C 76 E/01 (25 March 2004), and Report 5 April 2004 from the Parliament on the risks of violation, in the EU and especially in Italy, of freedom of expression and information, Doc A5-0230/2004.

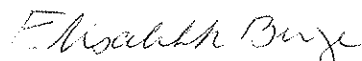
rated VAT according to § 16 of the VAT Act are zero-rated. Similarly, Norwegian and foreign weeklies are subject to the same VAT provisions.

These features of the newspaper market justify the conclusion that the VAT regulation does not affect cross border trade on contrary to the common interests of the EEA cooperation.

Yours sincerely,



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