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**NORWAY PRICE FOR ELECTRICITY – ADDITIONAL COMMENTS FROM THE
COMPLAINANTS**

CMS Kluge Advokatfirma Oslo
Bryggegate 6
Postboks 1548 Vika
NO-0117 Oslo
T +47 23 11 00 00
F +47 23 11 00 01
cms.law

1. INTRODUCTION

- (1) Reference is made to our complaint regarding Norway Price for electricity (**Norway Price**), the Ministry of Energy's (**the Ministry**) submission dated 15 December 2025 (**the submission**), the presentation prepared by the Ministry for the meeting with ESA on 16 January 2026, and our meeting with ESA on 27 February 2026. In the latter meeting, we agreed to provide additional comments, focusing on selected issues in the Norwegian authorities' submission, including in particular Norway Price's effect on electricity consumption, electricity prices and revenues by electricity producers, as well as outline in more detail our legal analysis.
- (2) In line with the foregoing, we will comment on selected factual matters in section 2 of the present submission. We will do so mainly by reference to submissions made to ESA regarding the parallel internal market complaint.
- (3) In section 3, we will provide a more detailed legal analysis, responding in particular to some of the legal arguments raised by Norway.
- (4) We also take note of the request for information (**RFI**) ESA has sent to the Norwegian authorities by letter dated 20 March 2026. The present submission includes the complainants' perspective on some pertinent issues addressed in ESA's RFI.
- (5) Lastly, in light of the ongoing energy crisis, we expect national governments in the EEA to intervene in support of their citizens, to soften the impact the current crisis will have on their livelihoods.
- (6) The EU's response to the unfolding crisis that is being outlined focuses on temporary relief for vulnerable customers, not a permanent blanket erosion of market dynamics, providing relief for those most vulnerable:

“The measures should be targeted to vulnerable groups, timely – they have to be fast, not in a year but immediately – and temporary – so for a short amount of time you can apply them, but if they are cast in law, you have to make sure that you get out of the measures in a timely manner”¹
- (7) In this context, it has become in our view even more important for the Authority to signal clearly that Norway Price must not be a blueprint for other EEA Member States. At present, the EEA has no need for permanent schemes that incentivise increased energy consumption, and reduce incentives for energy saving. Again, Norway Price is the exact opposite of what the EU considers to be appropriate:

“And the third element is how can we reduce the demand. Because the least expensive energy is of course the energy we do not use. We should reduce demand, while fully respecting the free choice of consumers”²
- (8) The present case is thus also an opportunity for ESA to demonstrate its ability to rigorously and effectively enforce EEA law, that the rigour of enforcement is equivalent in both pillars of the EEA, and that it is capable of responding adequately to contemporary challenges.
- (9) The both legally correct and politically appropriate signal to send is therefore to swiftly open a formal investigation. We consider that it has become clear by now that Norway Price entails both

¹ Statement by Commission President Ursula von der Leyen, https://ec.europa.eu/commission/presscorner/detail/en/statement_26_800

² Statement by Commission President Ursula von der Leyen, https://ec.europa.eu/commission/presscorner/detail/en/statement_26_800

the granting of direct aid to undertakings, as well as indirect aid. In our view, it has at the very least become clear that the Authority cannot conclude on the absence of aid without serious doubt. Furthermore, a formal investigation would allow market participants to provide valuable input on a range of complex matters, which the Ministry will not be able to do in an unbiased manner, as showcased by their submission. Accordingly, the Authority is requested to open a formal investigation as soon as possible.

2. NORWAY PRICE AND ITS EFFECTS

2.1 Overview

- (10) The Ministry's characterization of Norway Price as a price predictability scheme fundamentally misrepresents the economic reality of the scheme. The price is set at a level that is significantly below market prices, and in fact significantly below (most) electricity production costs³.
- (11) The introduction of the Norway Price and electricity support scheme means that Norway currently lacks a well-functioning market for fixed-price electricity contracts, unlike its Nordic neighbouring countries. As a result, the arguably most relevant basis for comparison are fixed-price contracts available to businesses, which are priced at a significantly higher level than Norway Price. For example, on 20 November 2025, a business customer in the NO1 price area could enter into a three-year fixed-price contract with Lyse at 67.78 øre per kWh⁴. Fixed-price contracts for households with a duration of one year, would be priced significantly higher, if they were still available.
- (12) Accordingly, Norway Price constitutes a subsidy for electricity consumption, distorting the relative competitiveness of alternative energy sources.
- (13) The subsidy nature of the scheme can easily be deduced from the budgetary consequences of Norway Price: It is expected to cost more than NOK 10 billion in the period up until the end of 2026.
- (14) Demand-side subsidies almost always affect consumption levels, market prices and producers' revenues. As the following shows, this is no different for Norway Price than for other consumption subsidies.

2.2 Impact on consumption

- (15) The pivotal factual issue in this case is the extent to which household electricity consumption in Norway exhibits price elasticity. The Ministry's starting point in the submission is that price elasticity is so low that that Norway Price, or other price-reducing measures have no significant impact on consumption.
- (16) The Ministry's assessments are in stark contrast to the established consensus among technical authorities and academic experts.
- (17) For example, many major stakeholders warned during the public consultation that the introduction of Norway Price would increase electricity consumption by insulating households from market price signals. The Norwegian Competition Authority highlighted that the scheme would raise household consumption and weaken incentives to save electricity or shift demand away from peak

³ <https://www.nettavisen.no/okonomi/norgespris-som-all-god-narkotika-er-det-svart-vanedannende/s/5-95-2852705>

⁴ <https://www.europower.no/kraftmarked/kraftprodusentenes-drommemarked-blekner/2-1-1908601>

hours. Statistics Norway (SSB) noted that decoupling retail prices from market prices could lead to unnecessarily high consumption and, in extreme cases, increase the risk of rationing during periods of scarcity. The Norwegian Water Resources and Energy Directorate (NVE) and RME similarly warned that reduced price exposure would limit demand response in tight supply situations, potentially exacerbating price spikes and increasing the likelihood of rationing. Nordic system operators also cautioned that more inflexible demand in Norway could raise prices across the Nordic power market and challenge system stability.

- (18) Even the Ministry itself acknowledges in its consultation paper that the Norway Price scheme will weaken the economic incentives for energy saving and load shifting compared to the current support model. By insulating households from hourly market prices, the Ministry recognises that the scheme removes key price signals that normally reflect energy scarcity. As a result, the Ministry anticipates that reduced exposure to volatile market prices will lead to higher overall consumption, particularly during periods when the power system is under strain and demand reductions would otherwise be expected.
- (19) The Ministry's recognition of the scheme's capacity to increase consumption is also evidenced through the inclusion of a "safeguard provision". After all, the Act on Norway Price contains a provision allowing suspension of the scheme "*in consideration of the power situation*", and thus recognizes that the Norway Price will likely increase consumption.
- (20) Following the introduction of the scheme, many stakeholders have echoed the view that the Norway Price will lead to higher electricity consumption. By means of example, the Advisory Board for Fiscal Policy Analysis (Nv: Finanspolitikkutvalget) has made it clear that the Norway Price will lead to an increase in consumption⁵ (and higher prices).
- (21) In the meantime, *empirical* evidence demonstrates that households' electricity demand is price-elastic, and that Norway Price has in fact increased electricity consumption. Please refer to the enclosed Annex I, on changes to electricity consumption. The document compares the electricity consumption of those households with, and those without Norway Price. There is a significantly higher consumption for those that have subscribed to Norway Price, which points to significant price elasticity.
- (22) Please see in this regard furthermore Annex II on the flexibility of Norwegian household consumers.
- (23) Another noteworthy aspect is that holiday homes were not previously eligible for any kind of electricity support scheme. Their electricity consumption has risen even more markedly – the difference in changes in consumption is 7.3%, when comparing holiday homes with and without the Norway Price.⁶
- (24) In summary, we consider that it can no longer be disputed that Norway Price has significantly increased electricity consumption among its subscribers, and as a result, the electricity consumption of Norwegian households.
- (25) In the short term, the increase is likely in the area estimated by THEMA, i.e. approximately 1 TWh during the scheme's first year in operation. The most significant effects are likely to emerge in the long term. Foregone energy-efficiency investments resulting from the Norway Price can have persistent effects, locking in higher levels of electricity consumption for many years to come.

⁵ <https://www.regjeringen.no/contentassets/780c856a11be4b79b8d933e7c5c2fb40/radgivende-utvalg-for-finanspolitiske-analyser-uttalelse-2026.pdf>

⁶ https://energiwatch.no/nyheter/nett_teknologi/article19186284.ece

- (26) Finally, there are clear indications that electricity consumption has moved increasingly to periods with peak demand⁷ and particularly high prices.
- (27) The combination of demonstrably higher consumption, and consumption at times of high demand, inevitably drives up market prices. We will expand on this point in the following.

2.3 Impact on prices and electricity producers' revenues

- (28) Given the contrasting point of departure as regards the Norway Prices' impact on consumption, it is not surprising that the Ministry considers that the scheme will not affect market prices for electricity either.
- (29) However, this claim also appears highly implausible.
- (30) First, the claim that the Norway Price currently affects only 16% of Norwegian electricity consumption masks material differences across bidding zones and time periods. Indeed, on a cold winter day in eastern Norway, household consumption covered by Norway Price might currently be as high as 40%, which accordingly increases the potential of this consumption's impact on market prices in the corresponding bidding zone (NO1). Please refer to Annex III on Norway Price customer's share of total electricity consumption for additional details.
- (31) Second, while electricity prices are clearly affected by a range of factors, it is difficult to conceive that additional demand of approximately 1 TWh in the first year after the scheme's introduction, including increased consumption at peak demand periods, would not affect market prices.
- (32) Third, it therefore does not appear coincidental that the first months of 2026 saw record electricity consumption in Norway, record-high electricity prices, and record revenues for electricity producers⁸.
- (33) We will briefly touch upon this point in the following.
- (34) According to calculations by THEMA, based on its 2030 power market model, a net shift of 1.5 TWh to district heating in the NO1 price area would reduce average annual electricity prices by 1.5–2.7%. During peak winter weeks, the estimated price reduction is even more pronounced, reaching up to 7%. This shows that marginal changes in the power balance have a direct and measurable effect on market prices. When a 1.5 TWh *reduction* in demand lowers prices by up to 7%, a corresponding increase in demand resulting from Norway Price will necessarily have the opposite effect on electricity prices, and of a similar magnitude. We consider Norway Price to be conceptually comparable to district heating—though with an inverse effect—as its impact is most pronounced during winter, when prices and system stress peak.
- (35) Furthermore, analyses by THEMA, commissioned by Renewables Norway, demonstrate that existing wind power reduces electricity prices in Southern Norway by more than 30 øre/kWh compared to a scenario without wind production. This underscores the market's sensitivity to supply-demand fluctuations⁹.
- (36) As evidenced in Annex I, households that have opted for Norway Price increased their electricity consumption by approximately 5% more in January and February 2026 than households with the

⁷ https://energiwatch.no/nyheter/nett_teknologi/article19016570.ece

⁸ <https://www.europower.no/okonomi/rekordhoy-inntekt-i-forste-kvartal-nar-20-milliarder-ekstra/2-1-1967593>

⁹ <https://www.fornybarnorge.no/nyheter/2025/vindkraft-senker-stromprisen/>

standard electricity support scheme in NO1. This increase among the Norway Price households resulted in approximately 2 percent rise in total consumption.

- (37) If we conservatively assume that this increase in consumption leads to an increase of electricity prices of 1 øre per kWh, it will generate additional revenue for power producers of NOK 84 million in these two months alone. If we instead assume a price increase of 2 øre per kWh, the additional revenue will amount to NOK 168 million.
- (38) Given that the scheme is intended to last for 51 months, that its impact on consumption is likely to increase over time and extend beyond this period, and that consumption has risen and will continue to rise in the NO2 and NO5 bidding zones, it is clear that power producers will earn billions from Norway Price.

2.4 Substitution effects

- (39) In the consultation paper for the public consultation, the Ministry explicitly acknowledges that Norway Price will reduce the use of alternative heating sources, such as firewood, pellets, and bioenergy, as a direct consequence of the fixed-price structure. The paper also notes that Norway Price will make electricity relatively more attractive compared to other energy carriers, thereby weakening the incentives for households to use or invest in non-electric heating solutions.
- (40) Furthermore, the Ministry acknowledges that Norway Price will undermine the profitability of energy efficiency measures. According to the paper, technologies and measures that are currently considered “marginally profitable” may become unprofitable following the introduction of the scheme.
- (41) In view of the foregoing, it is surprising that the Ministry now claims that there will not be any significant effects of this kind.
- (42) In any event, the Ministry’s assertion that Norway Price will not produce significant substitution effects is fundamentally flawed. In reality, the scheme functions as an asymmetric market intervention that explicitly favors grid-delivered electricity over competing energy sources and efficiency technologies.
- (43) First, substitution effects are present even when a scheme such as Norway Price constrains substitution. In the absence of such a scheme higher electricity prices would have prompted more Norwegian households to substitute electricity with wood and to invest in heat pumps and other energy efficiency measures in dwellings.
- (44) The mere fact that sales of these goods are still taking place does not by any means entail that there are no substitution effects, because more substitution would have occurred in the absence of the scheme’s introduction.
- (45) Annex IV on alternatives to heating with electricity provides clear evidence of these effects.
- (46) Further, note that for example the Climate Council’s (Nv. Klimaråd) report for 2026 (enclosed as Annex V, in Norwegian) points out that the Norway Price has been one of the main reasons for the dramatic fall in solar panel installation in private homes, and that in the absence of the scheme, there would be much less reason to provide subsidies specifically for solar panel installations and other energy efficiency measures¹⁰.

¹⁰ See page 95.

- (47) Finally, a considerable number of insolvencies have occurred in sectors adversely affected by Norway Price.
- (48) The market for smart energy management comprises relatively few actors, and two of the largest, Futurehome and Hark Technologies, filed for bankruptcy shortly thereafter the announcement of Norway Price at a press conference on 31 January 2025.
- (49) At the time the Norway Price support scheme was introduced on 31 January 2025, the market for residential solar installations was already in significant decline; two leading companies in the sector — Solcellespesialisten and HVACS — have identified the scheme’s introduction as the decisive cause of their bankruptcies.
- (50) Many other companies in industries negatively affected by Norway Price have also implemented layoffs and temporary furloughs. However, these measures have largely taken place in small businesses and have therefore attracted little media attention. One notable exception is Jøtul, a producer of wood-burning stoves, which furloughed 60 employees in February 2026.
- (51) While the market price of electricity, including grid charges and all taxes, fell by 26 percent from 2023 to 2024, it increased by 7 percent from 2024 to 2025. It is reasonable to assume that prices for households would also have shown a modest increase from 2024 to 2025 even when the ordinary electricity support scheme is taken into account.
- (52) As shown in Annex IV, there is a strong correlation between electricity prices and sales of air-to-air heat pumps. The same relationship applies to wood stoves, where historical data indicate that periods of higher electricity prices are associated with increased demand. It is therefore reasonable to assume that neither of these product categories would have experienced a decline in sales in 2025 in the absence of the introduction of Norway Price on 31 January 2025.
- (53) Assuming that, in the absence of Norway Price, sales of air-to-air heat pumps in 2025 would have remained at the same level as in 2024, suppliers of air-to-air heat pumps are estimated to have lost sales corresponding to 12,562 units. This equates to a revenue loss of approximately NOK 276 million, based on an assumed average customer price excluding VAT of NOK 22,000 per unit.
- (54) Assuming that, in the absence of Norway Price, sales of wood stoves in 2025 would have remained at the same level as in 2024, suppliers of wood stoves are estimated to have lost sales corresponding to 4,797 units. This implies a revenue loss of approximately NOK 120 million, based on an assumed average customer price excluding VAT of NOK 25,000 per unit.
- (55) The introduction of Norway Price is expected to significantly reduce the economic incentive to use firewood, potentially leading to a 20% decline in demand. According to THEMA’s analysis¹¹, a reduction in firewood consumption of 0.7 TWh could result in an estimated loss of NOK 700 million in annual turnover for producers and distributors. This estimate assumes current price levels and corresponds to approximately 400,000 large (1,500-liter) firewood bags that would no longer be sold as households shift toward subsidized electric heating.
- (56) By limiting the analysis to suppliers of air-to-air heat pumps, wood stoves, and firewood, it is possible to identify losses in the order of billions for industries negatively affected by Norway Price. However, these suppliers represent only a subset of the broader range of sectors experiencing reduced turnover as a result of the scheme, meaning the total economic impact is significantly higher.

¹¹ Mulige virkninger av Norgespris for vedfyring og markedet for ved og vedovner, THEMA 2025

- (57) In short, it can be documented that Norway Price has had and continues to have significant substitution effects.
- (58) With specific reference to ESA's RFI, we consider that the affected actors would best be able to supplement the forthcoming answer the Ministry will provide on these effects.
- (59) In our view, it would therefore be appropriate for ESA to send information requests to actors in the affected markets and invite them to provide information on the Norway Price's impact on demand from households.
- (60) Alternatively, or in addition, a formal investigation would provide an appropriate mechanism for gathering views from the relevant market(s) on the effects of the scheme.

2.5 Norway Price benefits undertakings also directly

- (61) As previously noted in our email correspondence and discussed in our meeting, there is growing evidence that the Norway Price directly benefits undertakings. For instance, there were reports in the media about RME finding that approximately 10% of Norway Price and electricity support funds in the period January to November 2025 were provided to electricity customers that are not households, in total approximately NOK 450 million.¹²
- (62) We note that ESA's RFI touches upon this issue, and it remains to be seen what answer the Ministry will provide. At the outset, it would seem that outsourcing the control for the correct distribution of an electricity subsidy to DSOs without clear guidance from the competent national authorities on how to deal with consumers that are both households and non-households, and relying on correct (but unsanctioned) reporting from housing associations, entails a grave risk of systematic breaches with the regulation.
- (63) In addition, we are concerned that even RME's report may not encompass all the Norway Price subsidised energy consumption by non-households.
- (64) As indicated, based on indications from large electricity suppliers we estimate that tens of thousands of non-households may benefit from Norway Price. Electricity suppliers can, based on our understanding, identify non-households even if the registered consumption code for the electricity meter, which determines eligibility for the scheme, suggests that the consumer is a household (consumption code 35).
- (65) The consumption code can however be wrong, outdated or pertain to the previous owner – as far as we understand, DSOs, or at least not all of them, control and enforce the correct registration of consumption codes.
- (66) There would thus appear to be significant potential for the use of the Norway Price by undertakings, beyond what is provided for in the Norway Price regulation. That said, it is the State's responsibility to design a consumer subsidy that does not inadvertently benefit undertakings, and to demonstrate that this is the case.
- (67) As with substitution effects, we consider that it would be necessary for ESA to request information and data on this issue from DSOs and large electricity suppliers directly.

¹² https://energiwatch.no/nyheter/politikk_marked/article19143816.ece .

3. COMMENTS REGARDING THE LEGAL ANALYSIS OF THE SCHEME

3.1 Introduction

- (68) In section 4 of its submission, the Ministry argues that Norway Price does not entail the granting of state aid, because a) only households are eligible for the subsidy inherent in the scheme, and there are hence no undertakings directly benefitting from the scheme; and b) the scheme does not benefit undertakings indirectly, in particular because Norway Price can be distinguished from other “indirect aid” cases.
- (69) As for the former claim, as shown above in section 2.6, Norway Price does entail that undertakings benefit from the scheme directly. This may not have been intended, but there are design features in the scheme, and administrative practice, that would seem to make it inevitable that also undertakings benefit directly.
- (70) For these undertakings that are direct recipients of Norway Price, it would seem highly likely that they are granted state aid in the meaning of Article 61(1) of the EEA Agreement.
- (71) As indicated above, the beneficiaries may entail large retail chains, fitness centres (chains), haircutter chains, EV charging companies etc., clearly constituting undertakings. Any advantage to such companies would be liable to distort competition and affect trade between EEA Member States. Any advantages would likewise be funded by state resources, and selective, as the (unintended) conveying of economic benefits directly to undertaking is clearly not a measure of general application, but rather the result of discretion as regards the scheme’s administration, including through different practices by numerous DSOs, or even coincidence. Industrial production cannot plausibly benefit from Norway Price to any relevant degree, whereas sectors that are commonly present in residential buildings and areas can. There is therefore, in our view, *de facto* selectivity.¹³
- (72) More detailed legal analysis as regards Norway Price’s direct beneficiaries of state aid seems unnecessary at this stage. In our view, ESA should supplement the RFI on these issues to the Norwegian authorities, with information requests to selected large DSOs and electricity suppliers. The aforementioned undertakings would in our view be in possession of sufficiently granular information that would allow mapping the number, nature and consumption data of Norway Price beneficiaries that are not to be considered as households.
- (73) While Norway Price clearly entails direct state aid to undertakings, the principal issue concerns the indirect aid conferred by the scheme. Even if its precise effects across different actors are difficult to quantify, it is in our view legally untenable to assert that a consumption subsidy of NOK 10 billion cannot confer a selective indirect advantage for electricity producers. Such an advantage constitutes state aid within the meaning of Article 61(1) for those benefiting from increased consumption of the subsidised good, namely electricity.
- (74) The remainder of this section will therefore focus on the Ministry’s attempts to argue that the scheme does not convey the granting of indirect state aid.

3.2 Measures benefitting consumers constitute state aid if they in effect confer advantages to undertakings (or a sector)

- (75) It ought to be recalled that the EEA Agreement in its Article 61 recognises the possibility that state aid can be granted to undertakings which are not the direct recipients of public support, and

¹³ NoA, section 52, paragraph 120 et seq.

that the notion of state aid encompasses economic advantages regardless of their form, which accrue to the “production of certain goods”:

“[...] any aid granted by [...] in any form whatsoever [...] by favouring [...] the production of certain goods [...].”

“The following shall be compatible with the functioning of this Agreement: (a) aid having a social character, granted to individual consumers” (emphasis added)

(76) By mere reference to this provision, it would thus appear that a scheme such as Norway Price, which clearly constitutes (i) “aid granted to individual consumers” and “favors the production of certain goods”, amounts to state aid in the meaning of Article 61 of the EEA Agreement. Aid to consumers is a category of state aid recognized by the EEA Agreement and entails the granting of advantages. These advantages become state aid when it favors the production of certain goods, because it then also is selective.

(77) Indirect state aid to a sector of the economy is not therefore, as the Norwegian authorities seem to imply, a rare and remote possibility, but a common type of public support that consciously was subjected to state aid control.

(78) Furthermore, when assessing the presence of an advantage, the objectives and intentions of a measure are irrelevant. As NoA recalls,

“[o]nly the effect of the measure on the undertaking is relevant, and not the cause or the objective of the State intervention. Whenever the financial situation of an undertaking is improved as a result of State intervention on terms differing from normal market conditions, an advantage is present. To assess this, the financial situation of the undertaking following the measure should be compared with its financial situation if the measure had not been taken. Since only the effect of the measure on the undertaking matters, it is irrelevant whether the advantage is compulsory for the undertaking in that it could not avoid or refuse it.” (emphasis added)

(79) This fundamental principle of state aid law needs to be considered in understanding what is meant by “the design of a measure” in NoA guidance on indirect advantages, to which we will revert in the following.

(80) However, the foregoing also supports at least a *prima facie* finding of state aid being granted as a result of Norway Price, because the scheme inevitably improves the financial situation of (identifiable) undertakings benefitting from increased electricity consumption and lower electricity prices, compared with a situation absent Norway Price.

(81) Considering the foregoing, there is in our view at least a strong presumption that consumer subsidies specific to one type of good, or one type of energy, such as Norway Price, entail the granting of aid to the supported sector, or producers of that type of energy.

(82) We will in the foregoing show that case law and practice corroborate this presumption, and in our view make impossible, at least in the context of a preliminary investigation, to exclude without serious doubt the existence of state aid granted through Norway Price.

3.3 The notion of indirect advantage

(83) The main argument raised by the Ministry is centred around the NoA’s brief guidance on the notion of indirect advantage, in particular the phrase that only measures *designed* to channel an

advantage to others than the direct beneficiaries comprise indirect advantages in the meaning of Article 61(1).

- (84) In this regard, as already set out in our complaint, it is clear that the real test is whether the design of the measure allows to *foresee* that economic advantages will probably accrue to indirect beneficiaries, prior to the measure's implementation. Indeed, in most "indirect aid" cases, providing indirect advantages was not the intention or objective, but a foreseeable effect (digital decoders, VAT-reduction for EVs, etc.).
- (85) For the Norway Price, positive economic effects for electricity producers and producers and sellers of electric heating appliances, and negative economic effects for wood producers, and sellers/producers of alternatives to electric heating appliances (heat pumps, wood stoves etc). were foreseeable – at least to the same degree as was the case for the producers and importers of electric vehicles when ESA assessed the zero VAT rate for this type of good, for example, or digital decoders.
- (86) Regarding the latter, consider for example the following brief assessment from the Commission:
- “As already pointed out in the decision to initiate the procedure, the indirect advantage for decoder producers is the **possibility of selling a larger amount of decoders than they would have done without the measure**. The **effect of the subsidy is basically to make the decoders targeted by the measure cheaper for consumers**. This allows the producers either to increase their sales without lowering the price of the product or to raise the price without losing customers.”¹⁴ (emphasis added)*
- (87) As the quoted example illustrates, it suffices for the presence of an indirect advantage to identify an effect resulting in additional sales (or the mere possibility to sell more) by making a consumer good cheaper for the private buyer. Below we will show that the selectivity criterion allows to differentiate state aid cases from no state aid cases among situations with these indeed relatively common effects.
- (88) Further, while we strongly disagree with the Ministry's claims as to Norway Price's effects on electricity consumption, electricity prices and ensuing revenue effects for producers, as well as substitution effect in the heating market, even the Ministry does not appear to deny entirely that the scheme has some limited effects on these markets. The foreseeable effects required for the existence of an indirect advantage exist, but are, in the Ministry's view difficult to quantify.
- (89) However, the scale of the indirect advantage, and its quantification, are not decisive for concluding on the presence of an indirect advantage. Indeed, in none of the indirect aid cases quoted by the Norwegian authorities has the advantage been quantified or assessed in terms of its significance.
- (90) Thus, the combination of the alleged characteristics invoked by the Norwegian authorities – limited and difficult to quantify effects – is in our view not decisive. Accordingly, the high probability existing prior to the scheme's introduction that the Norway Price would increase electricity consumption, and thus prices and revenues for electricity producers, as well as that it would lead to less replacement of electric heating by alternative heating sources, was sufficient to conclude on the presence of an advantage.

¹⁴ Final decision in case C 52/2005, paragraph 99.

- (91) Nor is the alleged difference to other indirect aid cases, consisting in the Ministry's view in the absence of an objective to incentivise a change in consumer behaviour, decisive, or even relevant.
- (92) It cannot matter, from a legal point of view, if the effect of a measure is a result of (intended) demand stimulation, or a result of unchanged demand, if in the absence of the measure demand would have decreased. In other words, whether a consumption subsidy is meant to make consumers buy more of product A, or leads consumers to keep buying product A, when they in the absence of the measure would have bought more of product B instead of A, both types of measure equally confer advantages on producers of product A.
- (93) Thus, the foreseeable effects of Norway Price on electricity consumption and the heating market were in our view always sufficient to conclude on the presence of an indirect advantage.
- (94) In the meantime, however, the foreseeable effects have manifested themselves. Electricity consumption and prices have increased; sales of heat pumps, wood stoves and solar cells have decreased or plummeted.
- (95) In that respect, it ought to be noted that it is not required, for the finding of an indirect advantage, that there is a complete substitution effect. Despite Norway Price, heat pumps will continue to be sold in Norway, undoubtedly. However, fewer are sold than had the scheme not been introduced, as evidenced above in section 2.
- (96) In our view, that is sufficient to conclude on the presence of an indirect advantage. In any event, the presence of an indirect advantage cannot be excluded without serious doubts.
- (97) In the opening decision concerning support measures relating to the Norwegian wood industry, the Authority could not rule out indirect advantages for the wood industry following a preliminary examination, even though "*the secondary effects appear to be marginal*",¹⁵ and invited the Norwegian authorities "*to elaborate on why the additional aid does not channel its effects towards identifiable groups of undertakings*"¹⁶.
- (98) Note that the measure at stake in this case has a budget of ca. MNOK 50 million annually. It is by no means capable of completely excluding any other materials than wood from potential and even publicly support construction projects. Yet the Authority was unable to rule out the presence of an indirect advantage in the course of the preliminary investigation.
- (99) In our view, this must therefore be considered as inconceivable in the present case, where the consumption subsidy is at least 200 times larger and directly influences the heating and energy choices of a large share of Norwegian households.

3.4 Selectivity in indirect aid schemes

- (100) The Norwegian authorities argue, in essence, that to the extent anybody but Norway Price subscribers benefit from the scheme, the benefits would merely be "secondary economic effects", and not "indirect advantages".
- (101) This conclusion is, respectfully, legally flawed.
- (102) In our view, the selectivity criterion draws the line between indirect advantages (and hence state aid), and secondary economic effects. It was for that reason that we argued, in the complaint, that these two constitutive criteria of the notion of aid ought to be assessed jointly.

¹⁵ 037/24/COL, paragraph 83.

¹⁶ *Ibid.*

- (103) In their review of pertinent case law and practice on indirect advantages/state aid, *Flynn* and *Kerle* show that many indirect aid cases are based on an increase in sales/turnover/demand of the beneficiaries' supplier(s).¹⁷ Indeed, such effects are inherent in almost any subsidy or state aid – (except, if the Norwegian authorities' were to be believed here, consumption subsidies for electricity in Norway).
- (104) Distinguishing these “normal” effects from indirect aid cases essentially requires an analysis of competitive distortions at the supplier level. Indeed, if the subsidised beneficiary can be supplied by all potential suppliers, there cannot be an indirect (and selective) advantage to a supplier. If the measure however distinguishes between different (and competing) suppliers, there such an indirect (and selective) advantage, and hence, as a rule, state aid.
- (105) Based on this analysis, *Flynn* and *Kerle* submit that “*selectivity at the level of the potential beneficiary*” is a distinctive feature of indirect aid¹⁸, and allows a distinction between secondary economic effects and indirect advantage/aid.
- (106) Measures that subsidise consumption of for example certain insulating materials, certain TV-decoders, certain types of cars (EVs) will benefit, selectively, a certain group of undertakings, or a sector.
- (107) In our view, the subsidising of a certain form of (heating) energy, but not competing ones, and the resulting subsidisation of certain heating devices, at the expense of others, falls within the types of measures that according to case law and practice have been considered as indirect aid. There is selectivity at the level of the indirect beneficiaries, because the measures in effect distinguish between suppliers, and lead to competitive distortions.
- (108) For the above reason and based on the analytical approach that the Commission and ESA have used to assess (potential) cases of non-fiscal state aid, the Norway Price is therefore, in our view, selective, and hence constitutes state aid.
- (109) Recall, in that regard, that the CJEU held that “*neither the large number of eligible undertakings nor the diversity and size of the sectors to which those undertakings belong provide any grounds for concluding that a State initiative constitutes a general measure of economic policy*”.¹⁹
- (110) It would thus be legally incorrect, in our view, to consider Norway Price as general measure of economic policy, and not state aid, which is the conclusion the Ministry promotes by means of relying on the three-step selectivity test.
- (111) In fact, it is misguided to apply the three-step test here. *In eventu*, the test is wrongly applied.
- (112) As ESA indicates in section 5.2.3 of the NoA, the three-step test is to be applied for “*measures mitigating the normal charges of undertakings*”. Norway Price is no such measure. It is an electricity consumption subsidy. Selectivity should thus be assessed in line with established case law and practice for such schemes, not based on a test that was designed for fiscal measures. Note in this context that the case law that the Norwegian authorities rely on relates to fiscal measures only.

¹⁷ EU Competition Law – Volume IV – State aid (2016), editors Pesaresi/Van de Castele, Flynn, Siaterli, chapter 11, advantage, point 2.499.

¹⁸ EU Competition Law – Volume IV – State aid (2016), editors Pesaresi/Van de Castele, Flynn, Siaterli, chapter 11, advantage, point 2.501.

¹⁹ Case C-143/99, paragraph 48.

- (113) As indicated in our complaint and above, the presence of an indirect advantage in reality presupposes selectivity, and (separate) selectivity assessments have thus been extremely succinct in practice.
- (114) Compare for example the Commission’s decision on digital decoders, which the CJEU upheld:
*“The advantage that the measure provides to terrestrial broadcasters and cable pay-TV operators is selective. **Not all broadcasters can profit indirectly from the measure.** There are broadcasters that are present only on the satellite platform, which will not be able to take advantage of the increased number of digital TV viewers brought about by the subsidy. There will also be a selective advantage for the **decoder manufacturing sector.**”²⁰*
- (115) Similarly, in ESA’s opening decision on support measures relating to the Norwegian wood industry, the reasoning at this stage was limited to the following:
*“In relation to the alleged indirect beneficiaries of the additional aid, the selectivity of the measure remains unclear. However, in the event that there are clearly definable indirect beneficiaries under Section 3(1)(c) of the Agricultural Investment Regulation, the measure appears to grant an advantage to certain economic sectors”.*²¹
- (116) ESA rightly did not apply the three-step-test in this case. It would indeed seem unnecessary to construct an artificial reference system to conclude on the apparent selectivity of sectoral aid schemes.
- (117) What is more, if one were to follow the Norwegian authorities’ reasoning, i.e. applying the three-step-test with the Act on Norway Price as reference system, consumer subsidy schemes for certain goods would as a rule fall outside state aid control. If the legislation enabling the public subsidy to a certain good were used as reference system, there would never be a deviation from that system, and hence no selectivity.
- (118) In our view, this would be a classic form over substance error, which is alien to state aid law, as repeatedly point out by EEA Courts and ESA in its guidance on the notion of state aid²².
- (119) Thus, if indeed the three-step test had to be applied, which we dispute, it would also require devising a reference system that would encompass all companies in the same factual and legal position, in light of the objectives pursued.
- (120) In that regard, the objectives would have to comprise not only providing households with predictable prices, but also with lower prices than what the market would provide. As pointed out before, if predictability was the only objective pursued by the scheme, it would not be necessary for the State to provide financing in excess of NOK 10 billion.
- (121) Accordingly, a minimum requirement for the plausibly correct application of the three-step test would be using an appropriate starting point – providing household customers with lower *energy* prices – as potential reference.
- (122) The reference system would then in our view need to encompass for example all heating energy.

²⁰ Final decision in case C 52/2005, paragraphs 100-101.

²¹ 037/24/COL, paragraph 88.

²² Compare NoA, paragraph 129: *It must be emphasised that Article 611) of the EEA Agreement does not distinguish between measures of State intervention in terms of their causes or aims, but defines them in relation to their effects, independently of the techniques used.*

- (123) If that were done, it would become quickly apparent that the scheme discriminates between competing undertakings in the same factual and legal position, such as for example producers of electricity and wood.

3.5 Conclusion

- (124) In view of the foregoing, we invite the Authority to widen its analysis into the effects of the scheme, either by swiftly opening a formal investigation procedure, or, initially, by requesting information from affected undertakings directly.
- (125) Norway Price is already doing lasting damage to a number of sectors that are critical for increasing energy efficiency in Norway. It has demonstrably increased electricity consumption and price, and thus jeopardises the objective to electrify industry, which already struggles with access to sufficient electricity and grid capacity.
- (126) The onset of yet another new and perhaps even graver energy crisis than that ensuing Russia's invasion of Ukraine increases the importance of ESA protecting the legal framework that is ultimately decisive for the continent's attempt to wean itself of fossil fuels, and obtain energy autonomy.

List of Annexes:

Annex I – memo on changes to electricity consumption

Annex II – memo on the flexibility of Norwegian household consumers

Annex III – memo on Norway Price customer's share of total electricity consumption

Annex IV – memo on alternatives to heating with electricity

Annex V – 2026 report of the Norwegian Climate Council

Further references can be provided on request.