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EFTA SURVEILLANCE  
AUTHORITY

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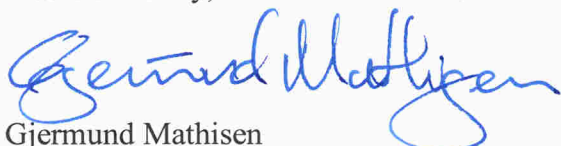
**Subject: Compatibility with provisions of the EEA Agreement**

The Competition and State Aid Directorate of the EFTA Surveillance Authority (“the Authority”) refers to its letter of 13 May 2016 (Doc No 801541) concerning compatibility of the exemption regulation, regarding cooperation within the agricultural and fishing sector (“the Regulation”)<sup>1</sup>, with provisions of the EEA Agreement. Further reference is made to the reply from the Ministry of Agriculture and Food, dated 20 June 2016 (your ref. 16/689-).

Ultimately in the interest of the consumer, Articles 53 and 54 EEA prohibit agreements and conduct that distort or restrict competition. Articles 53 and 54 EEA are part of Norwegian law through the EEA Act.<sup>2</sup> In addition, these provisions are largely mirrored in Sections 10 and 11 of the Norwegian Competition Act.<sup>3</sup> The main difference between the two sets of rules is that Articles 53 and 54 EEA apply only where cross-border trade in the EEA may be affected. However, it generally takes very little for this criterion to be fulfilled. For example, there is no need to show an actual effect on trade; a potential effect is sufficient.<sup>4</sup>

The Authority understands that the Regulation provides for certain exemptions from Sections 10 and 11 of the Norwegian Competition Act only. No exemptions are made from Articles 53 and 54 EEA. These provisions continue to apply with regard to all products covered by the EEA Agreement, including products such as flavoured yogurt. On this understanding, given that the full application of Articles 53 and 54 EEA with regard to all products covered by the EEA Agreement is thus not impeded, the Regulation would not seem to be incompatible with the competition provisions of the EEA Agreement.

Yours sincerely,



Gjermund Mathisen  
Director  
Competition and State aid Directorate

<sup>1</sup> In Norwegian: Forskrift om unntak for samarbeid mv. innen landbruk og fiske, FOR-2004-04-23-651.

<sup>2</sup> In Norwegian: EØS-loven, LOV-1992-11-27-109.

<sup>3</sup> LOV-1993-06-11-65.

<sup>4</sup> For a more detailed analysis of the effect on trade criterion, see e.g. the Authority’s amicus curiae observations before the Borgarting Court of Appeal in the NCC case (NCC AB and NCC Roads AS v Staten v/Konkurransetilsynet), and before the Reykjavík District Court in the Byko/Norvík case, both available here: <http://www.eftasurv.int/competition/national/co-operation-with-national-courts/>.

Cc.

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