

01.12.2015

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**Notification**  
**VAT zero rating for electronic news**  
**services**

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## I

### INTRODUCTION

Pursuant to Part I Article 1 (3) and Part II Article 2 of Protocol 3 to the Surveillance and Court Agreement, the Ministry of Finance (hereafter referred to as the Ministry) on behalf of the Norwegian Government hereby describes to the EFTA Surveillance Authority (hereafter referred to as the Authority) a measure relating to Value Added Tax (VAT) on electronic news. The measure is neither adopted nor in force.

The notified measure comprises an implementation of a zero rate VAT for electronic news. According to the VAT Act section 6-1, print newspapers are zero rated. The existing legislation concerning VAT-zero rating for print newspapers will not be altered, and is not part of the notification. The notified measure entails that all electronic news services, including broadcast and on-demand news services will be subject to zero VAT-rating. The measure is described further in Part II below.

It is the Government's principal position that zero rating for electronic news does not fulfil the selectivity criterion and consequently does not constitute state aid within the meaning of article 61 (1) of the EEA Agreement. However, we acknowledge the view taken by the Authority in decision 150/15/COL and will in this paper primarily argue that the measure is compatible with the functioning of the EEA Agreement according to Article 61(3).

The Ministry's detailed assessment of the measure is in Part III below.

## II

### FACTS

This section contains descriptions of the Norwegian VAT system, the notified measure and media policy objectives and instruments.

#### 1. THE NORWEGIAN VAT SYSTEM

Value Added Tax (VAT) was introduced in Norway with effect from 1 January 1970. The tax is levied on the final consumption of goods and services and is considered as a fiscal tax to secure the State's income.

Council directive 2006/112/EC of 28 November 2006 on the common system for value added tax establishes a common system of VAT in EU (hereafter referred to as the VAT directive). The VAT directive is not a part of the EEA Agreement. However, the Norwegian VAT system is to a large extent based on the same principles as the EU VAT system.

The Norwegian VAT system – as VAT systems in the EU member countries - is based on the principles of self-assessment and self-declaration. This means that the tax subject must assess whether the transaction is taxable or not, for instance if the transaction is exempted or zero rated. The tax subject shall on his or her own account, calculate and pay the tax to the tax authorities. The tax authorities offer guidance in interpreting the [VAT Act](#) and [Regulation](#) and will in the future control whether the calculation is correct or not. Such controls may be executed by random or because of suspicion of incorrect VAT calculation.

According to the VAT section 16-1 the tax subject shall give the tax authorities information which may have relevance for booking or tax obligation. The tax authorities may require that the information is proved by written documents etc.

Both input and output VAT shall be proved, cf. VAT Act section 15-10. It is up to the tax subject to decide how correct VAT calculation shall be proved. According to the [Booking Act](#) section 13 (2) accounting documents shall be kept for five years.

If the control reveals that the tax subject has interpreted the VAT Act and Regulation incorrectly and the tax subject for instance is not entitled to VAT zero rating, the tax authorities will stipulate correct tax. Such decisions by the local tax office may be appealed to the Directorate of taxes or the Board of Appeal for VAT. Decisions by the tax authorities may be taken to court.

VAT and the VAT rates are adopted annually by the Parliament <sup>[2]</sup>. The general VAT rate is 25 percent of the net price (taxable base). The VAT rate on foodstuff is 15 percent. Certain services are levied a reduced rate of 8 percent, e.g. passenger transport, admission fees to cinemas and museums, hotel accommodation.

VAT is collected on the supply of goods and services falling within the scope of the VAT Act. The importation and self-supply of goods and services are also considered taxable events.

Persons engaged in trade or business, whose taxable supplies exceed a financial limit of NOK 50 000 over a period of 12 months, must be registered in the VAT register and are liable to pay the tax.

A registered person may deduct input VAT on goods and services that are intended for use in the business cf. section 8-1 of the VAT Act. The deduction right for businesses implies that VAT is not finally levied until the goods or services are sold to a customer without a right to deduction. Thus, VAT is a tax on the final consumption of goods and services.

When reporting VAT to the authorities, the input VAT will be set off against the output VAT for the same period. If the input VAT exceeds the output VAT, repayment can be claimed from the tax authorities.

Exemptions and zero rates are laid down in the VAT Act. Exemptions and zero rates have economic effects and form a part of the annual budget process. Exemption means that the supplier of the exempted goods/services with the effect that no output VAT shall be charged, and suppliers are not entitled to deduct input VAT. Health care, social services and financial services are examples of exempted services.

Some goods and services are levied output VAT, but the rate is zero. Suppliers of such goods and services are nevertheless entitled to credit for input VAT. Consequently, the supplier is de facto subsidised through the VAT system.

Few domestic supply situations are zero-rated. Most of them have existed since the introduction of the VAT in Norway (1970), e.g. the zero rating on newspapers, books, periodicals, and electricity for domestic use in northern parts of Norway.

## **2. MEDIA POLICY OBJECTIVES**

Norwegian media policy is grounded in the so-called “infrastructure requirement” of the Norwegian Constitution (paragraph 6, section 100) which states:

*“It is incumbent upon the state government to create conditions that facilitates an open and enlightened public discourse”.*

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<sup>[2]</sup> The Parliament’s decision concerning VAT for 2015 is [here](#)

The provision expressly obliges the government to ensure that individuals and groups are able to express their opinions, obtain information and participate in an open political debate.

This requirement constitutes the basis for any Norwegian Government's media policy. However, the detailed media policy objectives will, differ between governments. The current coalition government presented the following main objectives for its media policy in the Ministry of Culture's budget proposal for 2015:

*"The main responsibility of the state on the media field is to promote freedom of speech and democracy by facilitating an open and enlightened public debate, cf. section 100 of the Norwegian Constitution. The main goal of the Government's media policy for editorial media is therefore to promote good news production and a broad and enlightened public discourse in the digital media society of the future. This shall be achieved by stimulating an innovative and competitive media industry and a diversity of news- and current affairs media characterized by high quality and independent journalism, including a strong public service broadcaster."*

As the VAT-legislation falls within the responsibility of the Ministry of Finance, the Ministry of Culture's budget proposal does not include media policy goals related to the zero rated VAT for newspapers. It is, however, clear that the zero rating is based on media policy objectives, cf. point 3.2 below.

### 3. OVERVIEW OF CURRENT AID MEASURES FOR THE MEDIA

#### 3.1 Grants for news and current affairs media

Reference is made to the notification of the production grant for news and current affairs media cf. the Ministry of Culture's letter 20 June 2013 (see excerpt in annex 1). Below is a short update of the current grant schemes.

*Table 3.1 Current schemes of direct grants for Norwegian news and current affairs media*

| Name of grant scheme   | Value (in 2015) | Number of recipients (in 2014) |
|--|-----------------|--------------------------------|
| The production grant for news and current affairs media        | 308 mill NOK    | 147                            |
| The production grant for Sami newspapers                       | 25 mill NOK     | 4                              |
| The production grant for weekly and monthly niche publications | 14.6 mill NOK   | 6                              |
| Distribution aid for newspapers in Finnmark                    | 2 mill NOK      | 8                              |
| The project grant for local broadcasting                       | 13.5 mill NOK   | ?                              |

For 2015, the licence fee for the public service broadcaster (NRK) is NOK 2.552 per household. Revenue from the fee is estimated to approximately NOK 5.2 billion in 2015<sup>1</sup>. The licence fee is levied reduced VAT rate (8 percent).

The production grant for minority-language publications, presented in the notification 20 June 2013 (point 3.1.3), was repealed from 2015. The Ministry of Culture is currently working on a review and modernization of the production grant for weekly and monthly niche publications, which today is managed by the Arts Council, cf. point 3.1.4 of the production grant notification (see excerpts in annex 1).

A new scheme, or amendments to the production grant for news and current affairs media, will probably be notified to the Authority later this year.

<sup>1</sup> Estimated net revenue, before losses and costs related to collection.

## 3.2 Zero-rated VAT on newspapers

### 3.2.1 Legal framework

According to the VAT Act section 6-1 news are zero rated. The zero rating applies only to news on paper (newsprint), i.e. electronic news is not entitled to zero rating. The zero rating applies only to newspapers published regularly with at least one edition a week.

The zero rating applies only to consumption of newspapers, i.e. the zero rating does not apply to the newspaper's supply of advertisement or other services. The zero rating applies to both Norwegian and foreign newspapers provided they are supplied in Norway and that the general conditions are met.

Newspapers were zero rated also under the previous VAT Act <sup>[3]</sup>. The new VAT Act implied no changes in the regulations concerning VAT on newspapers.

According to the preparatory works of the VAT Act from 1969 (Ot.prp. nr. 17 (1968-69) Om lov om alminnelig omsetningsavgift og særskilt avgift på visse varer og tjenester and Ot.prp. nr. 31 (1969-70) Om lov om endringer i lov om merverdiavgift, the rationale for zero rating on newspapers is that Norwegian is a small language and should be exempted from the burden of VAT. Another main purpose of the zero-rating has been to promote the expression of public opinion. The zero rating is therefore historically based on similar media policy goals as the production grant, i.e. promoting media pluralism as a prerequisite for freedom of expression and democracy.

It must be distinguished between newspapers and periodicals. Both are zero rated, but the conditions for zero rating differ. Periodicals are defined in the VAT Regulation section 6-2.

The VAT Regulation does not define newspapers. In administrative practice, the definition of newspaper is in accordance with the definition of daily press as used by the State and press Committee (Hellerud-komiteen) in its recommendations of 28 September 1967. The State and press Committee was appointed in 1966 due to the concern about the future of Norwegian newspapers. The object of the State and press Committee was to make proposals in order to preserve pluralism of information.

In order to define publications considered as a part of the daily press, the State and press Committee referred to the definition that was recommended by the Daily Press Committee (Dagspresse-utvalget) in 1966. The conditions in the definition may be considered as elements which can be taken into account when assessing if the publication is a newspaper or not, but that they are not binding or absolute.

As a starting point, the publication is considered a newspaper entitled to VAT zero rating if the newspaper:

- Is published at least once a week (cf. VAT Act section 6-1)
- Informs the public about news and current affairs home or abroad
- Has a responsible editor
- Charge payment for the paper

The principal condition concerns the newspaper's content. According to administrative practice, the publication must provide relevant news, i.e. information of general public interest, such as politics, economics and cultural matters. Thus, publications which

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<sup>[3]</sup> Act 19 June 1969 No. 66 section 16 No. 7

predominantly provide information about one sector or interest - for instance culture, religion, sport, occupation - is not considered as a newspaper according to the VAT Act section 6-1.

### 3.2.2 Budget

As mentioned above, zero rating means that the supplier of the zero rated goods/service is entitled to credit for input VAT, but that the output VAT is zero. The consequence is that the supplier de facto is subsidised through the VAT system.

For 2014, the loss of revenue from the zero rate of VAT on newspapers is estimated to NOK 1.5 billion.

## 4. THE NEED FOR A REVIEW

Zero rated VAT on newspapers has been an integrated and substantial part of Norwegian media policy since the VAT system was established in 1970. In combination with the direct grant schemes, mainly the production grant for newspapers, it has ensured a high level of newspaper readership and media pluralism in Norway. This has ensured the public access to a diversity of information, voices and opinions, and promoted democracy on both local and national levels. Today it is clear that that the media policy instruments established in the late 1960s are not suited to address the current challenges in media industry. For instance, both the production grant and the VAT system were developed when newsprint was the only medium for text based news content, and the newspapers in practice enjoyed a monopoly position in local advertising markets.

In October 2009, the Norwegian Ministry of Culture appointed the Media Grant Committee, which was given the mandate to review the use of financial support instruments for the media. The Committee submitted its recommendation in December 2010.

The Committee concluded that the media sector is under pressure and that public intervention is still necessary in order to ensure the public broad access to news and public debate of a high quality and editorial standard. The Committee therefore recommended adapting government instruments, including the production grant for newspapers and the VAT system, to the emerging digital media landscape.

The main problem the Committee identified, relating both to the production grant and the VAT system, was that the measures only applied to newsprint publications. This provided negative incentives to innovation and development of digital services. Therefore, a harmonization or reduced difference between the VAT rates for different platforms was desirable.

The notified measure is related to news and current affairs content, and not to the distribution technology, cf. chapter 5. Platform expansion and convergence in the media sector has led the Norwegian media houses to expand their services to new digital platforms. Newspapers are increasingly using audio-visual content to reach their audience, while TV-stations have established text-based online news services. For instance, the newspaper VG has established several media services (in addition to its printed newspaper) on mobile and online platforms, TV and radio (podcasting), while the TV-houses TV 2 and the NRK have well-established online newspapers. Hence, the convergence and media platform expansion have led to a situation where the news media are publishing content on a multitude of platforms. It can be argued that the objectives of the zero VAT rating for newspapers (*i.e. supporting the demand and use of news and current affairs media, and promoting media pluralism*) apply to all types of media.

Furthermore, as newspaper circulations have fallen and the digitization of the news media services has increased a larger share of the news consumption falls outside of the scope of the zero rated VAT. Norwegian authorities argue that this development has the following negative effects:

- 1) Reduced demand and use of news services with negative effects on public debate and democracy.
- 2) Distortion of competition between different distribution platforms.
- 3) Obstacles for development of digital news media services.

These effects are especially challenging as the news media are trying to establish new business models in order to finance the production of high quality journalism on digital platforms.

The traditional business models are based on revenues from subscription sales and advertisements. Even though news in digital form can be distributed at lower costs, establishing digital business models can be challenging, partly because of increasing competition in the advertising market. Non-news competitors and global actors like Google and Facebook take an increasing share of total ad spending. According to a recent prognosis from the IRM<sup>2</sup>, it is expected that Facebook and Google will claim approximately 4 of a total of 19 billion NOK of ad-spending in Norway in 2015. There has also been a significant expansion in the number of operators selling online advertisements. This development has, together with new methods of collecting and processing online user data changed the competition conditions in the advertisement market significantly in recent years. The development of programmatic advertising<sup>3</sup> is according to Schibsted ASA<sup>4</sup> one of the main causes for the reduction in digital ad-revenues from 2014 to 2015 for VG, one of the most read newspapers in Norway. Amedia AS<sup>5</sup> has experienced stagnation in ad-revenues in the second quarter of 2015, and claims that the programmatic advertising sale is the main reason for this.

Establishing digital business models is also challenging because the consumers are used to get free access to online news services. This is due to the fact that most news media for many years used their online editions mainly as a mean to attract advertisers and readers to (paid) print editions. As on line-services will become the main distribution channels for news content, it will be necessary to establish viable forms of user payment for on-line services.

On this background, the Government will adopt two measures for the news media sector. The first measure was the new production grant for news and current affairs media, which entered into force in 2014, cf. notification of 20 June 2013 and the EFTA Surveillance decision of 12 March 2014 (Dec. No. 112/14/COL). The second measure is changes in the VAT regime as presented in this paper.

## **5. DESCRIPTION OF THE NOTIFIED MEASURE**

### **5.1 Introduction**

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<sup>2</sup> The IRM Institute for Advertising and Media Statistics

<sup>3</sup> The term programmatic advertising encompasses an array of technologies that automate the buying, placement, and optimization of media inventory, in turn replacing human-based methods. In this process, supply and demand partners utilize automated systems and business rules to place advertisements in electronically targeted media inventory.

<sup>4</sup> Schibsted Media Group is a Norwegian media group with operations in 29 countries, the most important being Norway and Sweden

<sup>5</sup> Amedia AS is one of the largest media houses in Norway with more than 60 newspaper titles

As mentioned in point II, 3.2 the existing VAT zero rating on news applies only to written news, i.e. news on paper. In this chapter the Government presents the notified zero rate VAT scheme for electronic news media. The scheme will be implemented through amendments to the Act on Value Added Tax and the Regulation concerning Value Added Tax<sup>6</sup>. Please see Annex 2 for the draft amendments to the Act and Regulation.

## **5.2 General comments**

The draft legislation concerns electronic media. The existing legislation concerning the VAT zero rating for print newspapers will not be altered and is not a part of the notification. The existing VAT zero rating for printed news is regulated in the VAT Act section 6-1. The VAT Regulation has no further provisions concerning newspapers. The conditions for VAT zero rating on newspapers are results of the tax authority's administrative practice. Consequently, the conditions are not laid down in Act or Regulation. The legislation concerning the VAT zero rating is described in chapter 3.2.

However, the existing VAT zero rating on printed news is an important reason for the notified VAT zero rating on electronic media. A main objective of the existing zero VAT rate on newspapers is to promote the democratic function of media, including freedom of expression, diversity and quality. Consequently, the objective of the zero rating for printed newspapers is not linked to the paper format as such, but to the news content included in newspapers, and its democratic value for society. The notified measure will secure that all news media are zero rated, regardless of distribution technology. A further argument is that equal treatment will reduce negative incentives for investment in digital news services and for development of sustainable business-models.

The notified measure has the intention to promote the same underlying media policy goals as the production grant for news and current affairs media and the existing zero rating for newspapers. In addition, the aim is to ensure equal treatment for all electronic news and current affairs media. Therefore, the notified amendments to the VAT Act and Regulation are based on the same basic set of conditions for VAT zero rating.

The amendments in the VAT Act and Regulations are not yet adopted. The Authority's view or comments concerning the scope of the measure etc. will be assessed when preparing the proposal for public hearing and adoption.

## **5.3 Comments to the draft amendments**

According to the notified VAT Act section 6-2 the VAT zero rating will apply to the supply of "electronic news services", i.e. news provided on cell phones, tablets, computer and news on radio and television.

The second paragraph of the provision gives the Ministry of Finance the authority to adopt regulations regarding the definition of the term. Amendments in the VAT Act must be adopted by the Parliament.

Norwegian authorities acknowledge that there will be difficulties related to defining electronic news services because such services may be mixed with other services not entitled to VAT zero rating. EU countries are not allowed to introduce lower rate on digital services and as far as we know no other country has done so. Consequently there is no experience from other countries and legislations to rely on.

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<sup>6</sup> [Act on Value Added Tax of 19 June 2009 No. 58](#) and [Regulation concerning Value Added Tax of 15 December 2009 No. 1540](#).

As mentioned the notified amendments to the VAT Act and Regulation are based on the same basic set of conditions for VAT zero rating on printed news.

According to the notified VAT Regulation (to be adopted by the Tax Directorate) section 6-2-1 "electronic news services" are defined as services if they

a) *mainly include news and current affairs content from different areas of society*

This condition concerns the medium's content and is the principal condition for zero rating. It means that in order to be eligible for VAT zero rating, the medium must mainly contain news and current affairs content from different areas of society. The same applies to media that primarily contain material from just one or a few areas of society or that primarily contain material aimed at a specific professional, political, ideological, religious or ethnic background.

The conditions correspond to the zero rating on printed newspapers as laid down in administrative practice. According to practice concerning print newspapers, the publication must provide relevant news, i.e. information of general public interest, such as politics, economics and cultural matters. Therefore, publications which predominantly provide information about one sector or interest - for instance culture, religion, sport, occupation - is not considered as a newspaper according to the VAT Act section 6-1. A traditional newspaper is considered a newspaper even if some content cannot be characterized as news, for instance, horoscopes, TV-guides, comic strips etc. According to the notified scheme, the same will apply to news on electronic platforms.

For news broadcasting through television or radio, the VAT zero rating will apply only to channels that mainly broadcast a broad range of news. TV 2 Nyhetskanalen, BBC World, CNN and Al Jazeera will probably fulfil the condition. Channels providing either only one type of programs (except news), such as sport or entertainment, or channels providing a wide spectrum of programs, for instance entertainment, drama, movies, game shows, sports etc., will not. TV 2 Hovedkanalen and TVNorge will probably fall within the last category of channels, and consequently not be entitled to VAT zero rating.

The main question is whether the medium has a broad and general news profile, whether the news coverage – seen as a whole – is sufficiently broad and general to keep readers informed about a broad range of events and current political issues in society.

The direct<sup>7</sup> and indirect<sup>8</sup> support schemes for the news media – as well as examples of media sector legislation<sup>9</sup> – are reserved for the *broad and general* news and current affairs media.) The dividing line between broad, general coverage news media and other types of media is a general and long-standing characteristic of Norwegian media policy and there is a long consistent administrative and judicial practice drawing the line between broad, general news services and more narrow services like the trade press or the popular weekly press. Even though digital content can be more integrated with other services and types of content than printed papers, the distinction is in principle not new.

As an example reference is made to the Tax Authority's decision regarding Se & Hør. The Tax Authority concluded that the publication is a magazine not qualified for zero rated VAT. The decision was i.a. based on the following reasons:

*In the opinion of the Tax Authority Se og Hør, as it appears after the restructuring in the fall of 2003, does not contain sufficient relevant news content. By relevant news*

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<sup>7</sup> I.a. the production grant for news and current affairs media (and the previous production grant for newspapers)

<sup>8</sup> The zero rated VAT for newspapers

<sup>9</sup> The Act of 13 June 1997 on Media Ownership

*content the Authority regards, as mentioned earlier, news which have the character of public service, i.e. news which must be regarded as important for society, as described by the Hellerud Committee. The common expectation that a general newspaper shall cover important events regardless of sector or area of society, and that it contributes to illuminate the political and cultural development in society, has not been met in this case. In our opinion there is also a lack of background content, expository articles, debates and exchange of views, which the Hellerud Committee defined as characteristic properties of newspapers.*

The decision also refers to a report presented by the newspaper researcher Sigurd Høst:

*Sigurd Høst states in his report that a general newspaper in principle shall cover all types of events within its area of coverage: politics, public administration, business, accidents, crime, sports etc, cf. page 23 of the report. Such an understanding is also supported by the use of the term "newspaper" in international statistics. Reference can be made to the fact that UNESCO/WAN defines "newspaper" as follows: "Newspaper are periodic intended for the general public and mainly designed to be a primary source of written information on current events connected with public affairs, international questions, politics etc."<sup>10</sup>*

The reasoning behind the criterion is that the broad and general news and current affairs media perform a particular democratic function in promoting an open and enlightened public debate. By informing citizens about current events and political questions, these media stimulate public opinion-forming and political debate, which in turn provides individuals with a basis for independent and active participation in public affairs and democratic processes like elections.

Almost any type of material about current events and developments can be defined as "news" when presented in an editorial context in a general news medium, including content about environment, art, astronomy, cooking, agriculture, celebrities, chemistry, medicine etc. This is content which may constitute a natural and integral part of almost any broad and general news medium. However, if a medium includes only one or a few of these types of content, it cannot keep readers informed about a broad range of events and political issues, and it will therefore not be a general news-medium eligible for zero rated VAT.

A trade press publication will normally concentrate the coverage on one particular trade, sector or business, and weekly popular press publications will typically be focused on entertainment and celebrity content. Trade press, popular press and other kinds of periodicals (on any distribution platform) may make contributions to opinion-forming and debate within their particular fields, but in general such media will lack the broad range of content which may directly promote the informed democratic participation of the general public.

The criterion is therefore directly linked to the stated purpose of government media policy, which is to promote freedom of expression and democracy. The most relevant characteristic separating these media from other media or services is the broad and general coverage of news and current events from different areas of society.

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<sup>10</sup> The Tax authority's quotation from the UNESCO contains some errors. The actual text is: "Newspapers are periodic publications intended for the general public and mainly designed to be a primary source of written information on current events connected with public affairs, international questions, politics, etc." (UNESCO Recommendation concerning the International Standardization of Statistics on the Production and Distribution of Books, Newspapers and Periodicals 1 November 1985)

Certain services - for instance, access to wine societies, music streaming, films etc.- may be supplied in connection with electronic news services. The question is whether such mixed or bundled services are entitled to VAT zero rating or not. As a starting point each service must be assessed separately. If the service is charged separately, it will as a main rule not be entitled to VAT zero rating. Such services do not form an integral part of the news service, but must be regarded as individual supplies, which have to be treated according to the main rules in the VAT Act. For services not charged separately the starting point is again that they are considered separate services. However, if the news service is the main element and the other service is of minor importance (ancillary) to the buyer, the service may be considered a part of the VAT zero rated news service.

*b) has the general public as target audience*

According to this condition the medium must have the general public as a target audience, which implies that the zero-rating will not include media which are primarily aimed at members or employees of specific organizations, associations or companies etc. The condition further ensures that the medium is a broad and general news service. This criterion is therefore connected to the first criterion.

*c) has an editor in chief*

The medium must have an editor in chief. Blogs or non-editorial services like content generators, search engines, social media etc. do in general not have an editor in chief. Such services will consequently not be subject zero rating.

An editor shall protect the free and independent role of the medium, as well as freedom of expression, press freedom and the principle of access to public documents. As a rule, the editor will be personally responsible for the content of the publication and for providing ethical guidelines and procedures for the journalists. The editor is also responsible for ensuring that the published material differentiates clearly between information, facts and editorial opinion – and between independent editorial content and marketing.

This criterion therefore ensures editorial and journalistic quality and trustworthiness of the media and consequently promoting the democratic function of news media.

*d) is published at least once a week*

The medium must be published at least once a week. The rationale for this criterion is that with fewer publications, the medium does not inform the public about current events and on-going public debate.

The criterion is clear for printed editions. For media published or updated continuously – for instance online services – the interpretation of the criterion is less straightforward. The question is addressed in the Norwegian Media Authority's Regulation on the determination of circulation and editions in news and current affairs media<sup>11</sup>. According to the Regulation section 4 a new digital edition must have at least 50 percent new and internally produced editorial content. The Regulation concerns the production grant for news and current affairs media, but may give guidance to the interpretation of the VAT Regulation.

As regards broadcasting, the Ministry assumes television channels will not rely so heavily on re-runs that the criterion is not met.

As mentioned in Part II 1 the VAT system is based on the principle of self-assessment, but the tax authorities give guidance, both in general (interpreting the VAT Act and Regulation) and

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<sup>11</sup> [Forskrift 17. september 2014 nr. 1207 om fastsettelse av opplag og utgaver i nyhets- og aktualitetsmedier](#)

in individual cases. The description of the criteria above may give guidance when the tax subjects shall interpret the VAT Act and Regulation.

A proposal to VAT Regulation will be sent on public hearing. Based on the opinions and questions in the hearing the tax authorities intend to give further guidelines concerning VAT zero rating on electronic news services.

#### **5.4 Budget**

The zero-rating for electronic news is in the short term estimated to reduce governmental revenue by approximately NOK 350 mill annually. In the longer term, the annually revenue loss will be larger because the sale of digital news is expected to increase in the future.

### **III**

## **ASSESSMENT OF THE AID**

### **1. STATE AID - ARTICLE 61 (1) OF THE EEA AGREEMENT**

Article 61(1) of the EEA Agreement Article reads as follows:

*(1) Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.*

In order to constitute state aid within the meaning of Article 61(1), a measure must meet the following six cumulative criteria:

1. the measure is an economic advantage for the recipient
2. the advantage is granted by the State or through state resources
3. the measure is selective by favouring certain undertakings or the production of certain goods
4. the advantage is granted to one or several undertakings that engage in economic activity
5. the measure distorts or threaten to distort competition
6. the measure has an effect on trade between the Contracting Parties

As mentioned above we acknowledge the view taken by the Authority in decision 150/15/COL concluding that VAT zero rating may constitute state aid. Consequently, the state aid criteria will be only briefly assessed below.

#### **1.1 Economic advantage to businesses**

The right for businesses to deduct input VAT implies that VAT is not finally levied until the goods or services are sold to a customer without a right to deduction, mostly private consumers, but also undertakings exempted from VAT (financial sector etc.).

To the extent that the zero rated VAT only affects consumers, it will not favour “*certain economic undertakings or the production of certain goods*” and will not constitute state aid.

However, the Ministry acknowledges that the zero rating for electronic news services stimulate the demand for news and consequently constitute an indirect advantage for news media undertakings. We acknowledge that such indirect advantages may constitute state aid.

## **1.2 State resources**

The zero rating leads to a loss of tax revenue and therefore constitutes a benefit granted by the State or through state resources.

## **1.3 Selectivity**

In order to constitute state aid, a measure must be selective by favouring certain undertakings or the production of certain goods. The Ministry acknowledges that the zero rating for news constitutes an advantage for the sector supplying news. Consequently, the measure is in principle selective.

However, a tax advantage is not selective if it falls within the nature of the system.

Our principal position has been that reduced rates and the zero VAT rating for certain goods and services forms an integral part of the Norwegian VAT system and consequently is not selective. Indeed, the general VAT rate is 25 percent, but there are several reduced rates, including a zero rate, and some supplies are exempted from VAT. Reduced rates and zero rating is also in line with Council directive 2006/112/EC of 28 November 2006 on the common system for value added tax establishes a common system of VAT in EU (the VAT directive). However in Decision No. 150/15/COL the Authority did not share this view. The Authority noted that one of the principles of the Norwegian tax system is that consumption of goods and services should be charged with a tax on consumption. The Authority further noted that exemptions may be justified by an objective of common interest, but that they are not within the logic and general nature of a consumption tax system.

Thus we will not argue further along this line in this notification.

## **1.4 Undertaking – economic activity**

The Ministry acknowledges that the sale and import of electronic news must be considered as economic activities carried out in a market. Consequently the criterion is fulfilled.

## **1.5 Distortion of competition**

According to case law and administrative practise, the threshold for considering this criterion to be fulfilled is low. Electronic news and for instance magazines may compete in the same market. On this background the Ministry acknowledges that the support to electronic news has a potential to distort competition. VAT zero rating on the sale and import of electronic news may also distort competition.

## **1.6 Effect on trade**

According to case law and administrative practise, the threshold for considering this criterion to be fulfilled is low. Since there is trade of electronic news between Norway and EU the zero rating on electronic news will likely have an effect on trade between the Contracting Parties. Consequently, the criterion must be considered fulfilled.

## **1.7 Conclusion**

The Ministry's principal position has been that zero rating for electronic news does not fulfil the selectivity criterion and consequently does not constitute state aid within the meaning of

article 61 (1) of the EEA Agreement. However, with reference to the Authority's decision No. 150/15/COL we acknowledge that the measure may constitute state aid, we will not argue further on this issue in this notification.

## **2. COMPATIBILITY WITH ARTICLE 61(3) OF THE EEA AGREEMENT**

The following assessment of the compatibility of the aid has been carried out in accordance with the balancing test methodology as set out by the European Commission in "Common Principles for an economic Assessment of the Compatibility of State Aid under Article 87(3) of the EC Treaty", hereafter called "the Common Principles".

## **3. IS THE AID AIMED AT FULFILLING A WELL-DEFINED OBJECTIVE OF COMMON INTEREST?**

### **3.1 Relevant objectives of common interest**

The objective of the measure is to promote freedom of expression and democracy by

- 1) supporting the demand and use of news and current affairs media among consumers and
- 2) promoting media pluralism and diversity, including continued production of high quality news and current affairs journalism.

In the Ministry's view, the two objectives are linked. A high level of media diversity will only promote the principal goals of freedom of expression and democracy if the media diversity is in fact accessed by the public. For instance, measures to promote the *production* of a diverse range of news services will not effectively promote democracy if the state simultaneously taxes news *consumption* so severely that few citizens choose to subscribe to a news service. The zero VAT rate therefore complements the direct state aid measures, by promoting the demand and use of the diverse media.

Reference is made to the decision of the Authority of 12. March 2014 concerning the production grant for news and current affairs media:

*"The Norwegian authorities submit that the objective of the measure is the promotion of media pluralism and media diversity. The importance of these objectives was confirmed in the Authority's State Aid Guidelines on public service broadcasting, which refer i.a. to the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions. The Convention states that each party may adopt "measures aimed at protecting and promoting the diversity of cultural expressions within its territory". Such measures may include, among others, "measures aimed at enhancing diversity of the media.*

*Furthermore, the European Union also recognises pluralism as one of its fundamental values in the Treaty of Lisbon, and its Charter of fundamental rights sets out that the freedom and pluralism of the media shall be respected."*

### **3.2 Media pluralism and media quality in the digital market**

#### **3.2.1 Introduction**

The digitization has a profound impact on all aspects of the media, and represents great opportunities for news providers, consumers and the democratic discourse:

Digital platforms offer new and innovative ways to present news content by;

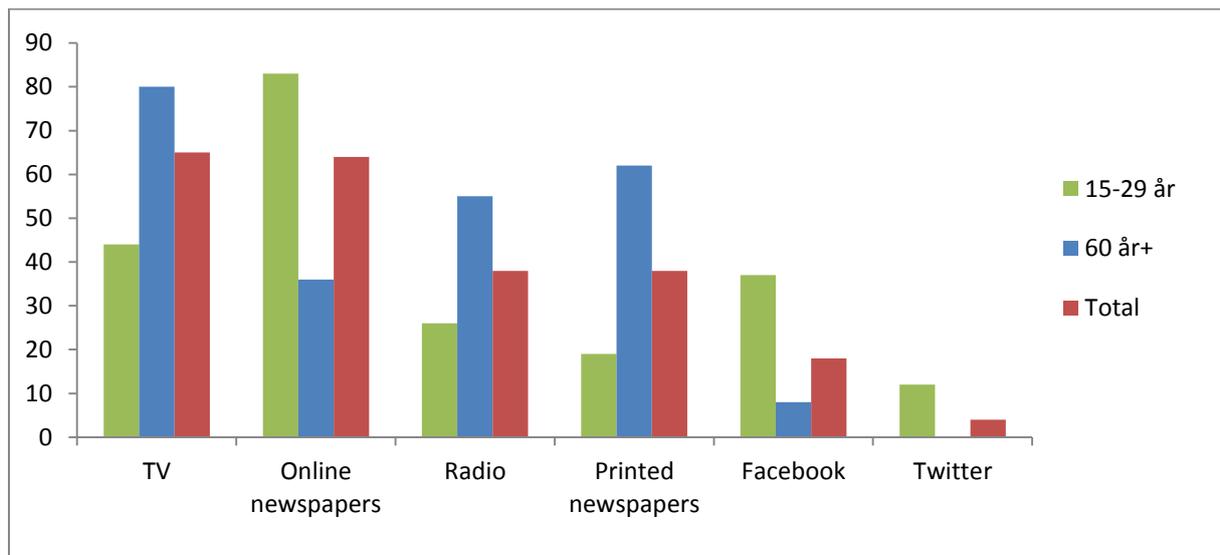
- enabling the use of video, sound and/or other interactive effects - in addition to text,
  - stimulate to a broad and enlightened public debate by enabling sharing of news, discussions and interactions between users, for example on social media platforms,
  - enabling access to news services wherever the consumers are and whenever they want via the Internet.
- According to data from Statistics Norway, there is a high demand for digital media services, including news and current affairs content<sup>12</sup>. The growth of digital platforms has maintained a high level of news consumption in Norway, despite falling newspaper circulations, cf. 3.2.2 below.
  - Distribution costs (including printing plants and distribution networks) constitute almost half of the operating costs for newspapers. Therefore, digital distribution has a potential to dramatically reduce the operating costs for the press. With reduced costs, digital news media may reduce user prices and hence stimulate to increased consumption of news.

On the other hand, digitization disrupts the traditional business models in a way that may threaten the financial basis of news journalism. Below the challenges with establishing sustainable business models for digital news production and the potential consequences if the news media fail in this effort are described.

### 3.2.2 Media consumption

Changes in media technology have led to more fragmented news consumption. As shown in figure 3.1 traditional TV is still an important source of news for the Norwegian population. However, there are significant differences among various age groups. In the age group 60+, TV is the most important source of news, followed by printed newspapers and radio. For the age group 15-29, the most important source of news is online newspapers, followed by TV and Facebook.

Figure 3.1 Most important source of news, 2<sup>nd</sup> quarter 2014

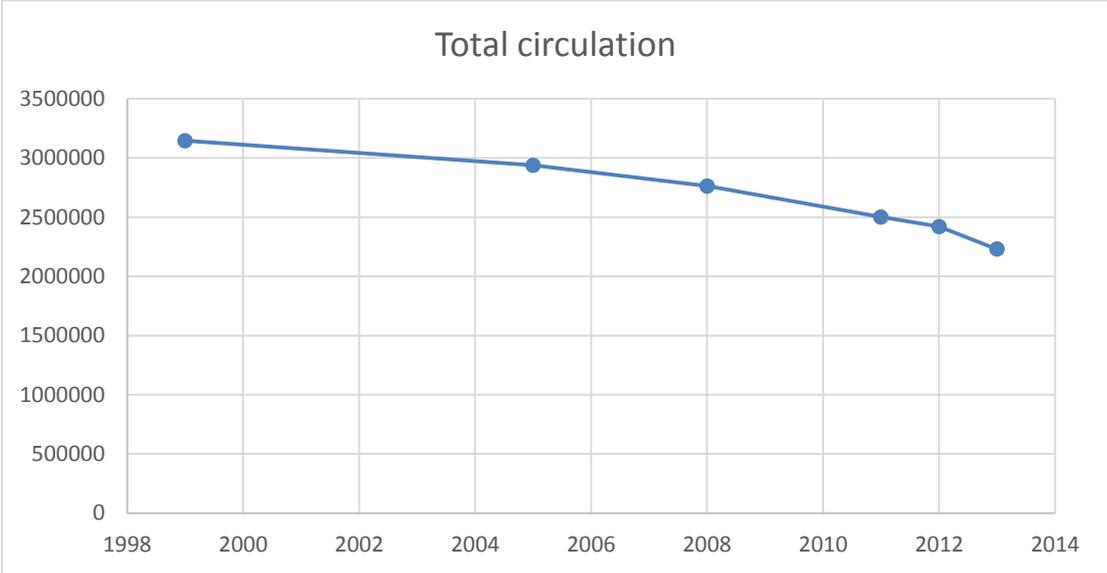


Source: TNS Gallup (Social Media Tracker 2<sup>nd</sup> quarter 2014)

<sup>12</sup> SSB (2015) Norsk Mediebarometer 2014

Since 1999 the newspaper circulations have gradually decreased (see figure 3.2). At the same time, the use of digital media (web, mobile etc.) has soared, and the Internet has become an important source of news content.

Figure 3.2 Total newspaper circulation in Norway (newsprint)



Source: Avisåret 2013, Sigurd Høst, Høgskolen i Volda

Online newspapers now have surpassed the print editions in number of daily readers, see figures 3.3 to 3.5. The combination of falling circulations and increasing use of online newspapers suggests that there has been a migration of newspaper readers from print to online editions.

Figure 3.3 Daily users of newspapers on print and digital platforms, all newspapers

Source: Norwegian Media Businesses Association (MBL)

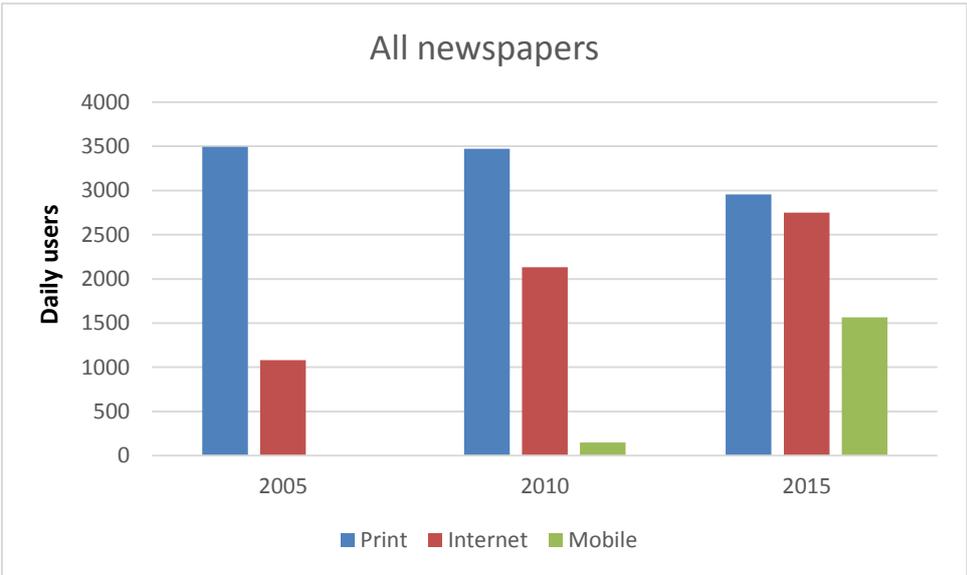
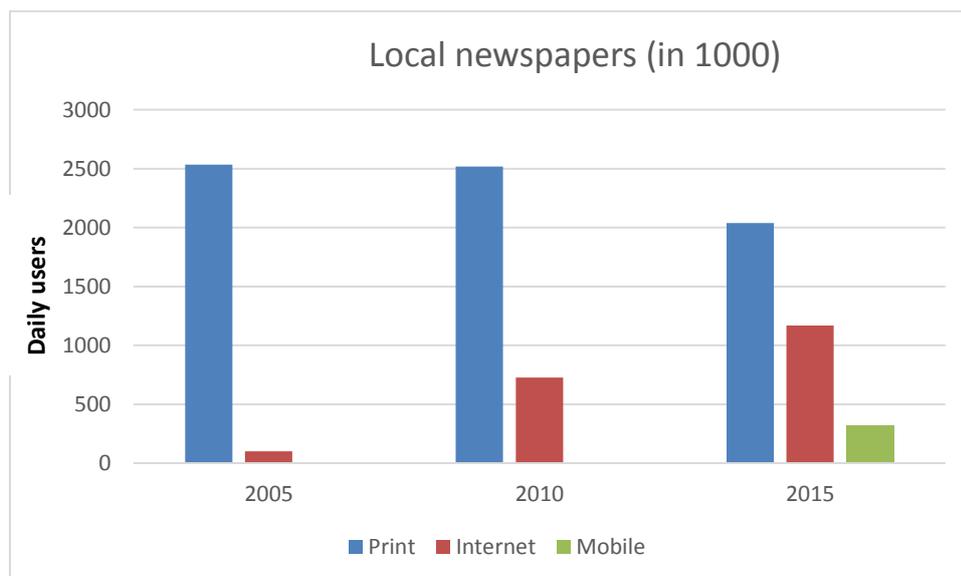
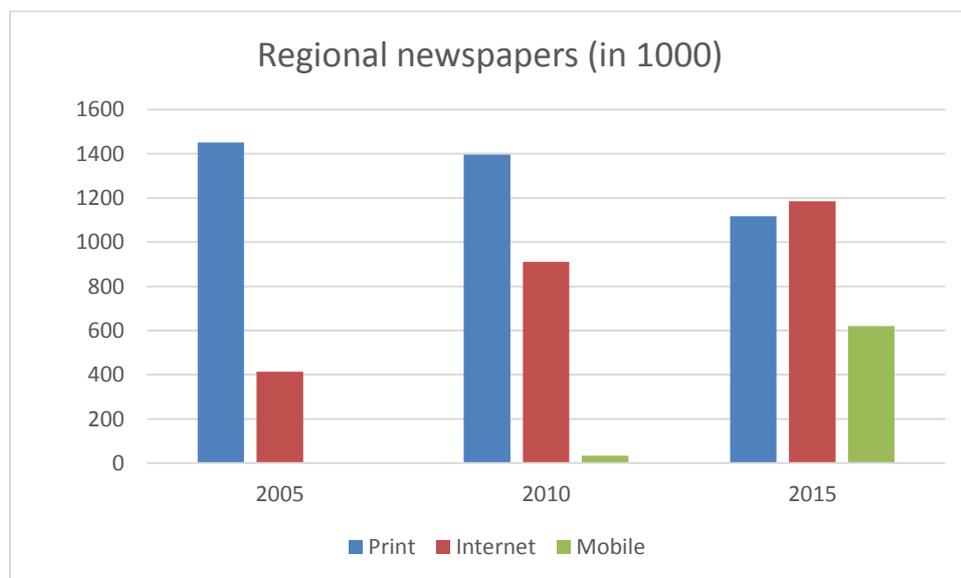


Figure 3.4 Daily users of newspapers on print and digital platforms, local newspapers<sup>13</sup>



Source: Norwegian Media Businesses Association (MBL)

Figure 3.5 Daily users of newspapers on print and digital platforms, regional newspapers<sup>14</sup>



<sup>13</sup> Alle lokalaviser, uavhengig av eierskap: Agder (Flekkefjord Tidende), Agderposten, Akers Avis/Groruddalen, Akershus Amtstidende, Altaposten, Andøyposten, Arbeidets Rett, Askøyværingen, Aura Avis, Aust Agder Blad, Avis Nordland, Bergensavisen (BA), Bladet Vesterålen, Brønnøysunds Avis, Budstikka, Bygdanytt, Bygdeposten, Dalane Tidende, Demokraten, Drammens Tidende, Driva, Eidsvoll Ullensaker Blad, Fanaposten, Lister, Finnmark Dagblad, Finnmarken, Firda, Firda Tidend, Firdaposten, Fjordabladet, Fjordenes Tidende, Fjordingen, Fosna- Folket, Framtid i Nord, Fredriksstad Blad, Fremover, Gjengangeren, Glåmdalen, Grimstad Adressetidende, Gudbrandsdølen Dagningen, Hadeland, Halden Arbeiderblad, Hallingdølen, Hamar Arbeiderblad, Hamar Dagblad, Hardanger Folkeblad, Harstad Tidende, Haugesunds Avis, Helgelendingen, Helgelands Blad, Hordaland, Indre Akershus Blad, Innherreds Folkeblad og Verdalingen, Jarlsberg Avis, Jærbladet, Kragerø Blad Vestmar, Kvinnheringen, Levanger-Avisa, Lillesands-Posten, Lindesnes, Lofotposten, Lofot-Tidende, Lokalavisen Øyene, Laagendalsposten, Malvik-Bladet, Moss Avis, Namdalsavisa, Nordhordland, Nordlys, Nye Troms, Opdalingen, Oppland Arbeiderblad, Porsgrunns Dagblad, Rakkestad Avis, Rana Blad, Raumnes, Ringerikes Blad, Ringsaker Blad, Rogalands Avis, Romerikes Blad, Romsdals Budstikke, Røyken og Hurums Avis, Saltenposten, Sandefjords Blad, SandnesPosten, Sarpsborg Arbeiderblad, Smaalenenes Avis, Sogn avis, Strandbuen, Strilen, Sunnhordland, Sunnmørsposten, Sør-Trøndelag, Telemarksavisa, Telen, Tidens Krav, Troms Folkeblad, i Tromsø, Trønder-Avisa, Trønderbladet, Tvedestrandsposten, Tønsbergs Blad, Valdres, Varden, Varingen, Vesteraalens Avis, VestNytt, Vikebladet Vestposten, Ytringen, Østlandets Blad, Østlands-Posten, Østlendingen, Åndalsnes Avis, Bygdebladet Randaberg og Rennesøy, Gjesdalbuen, Lokalavisa Sør-Østerdal, Solabladet, Vennesla, Tidende, EikerBladet, Sande Avis, Svelviksposten, Lierposten, Møre Nytt, Enebakk Avis, Ås avis, Vestby avis, SortlandsAvisa, Søgne og Songdalen Budstikke, Rjukan Arbeiderblad, Sør-Varanger Avis, Øksnesavisa, Karmøyntyt.

<sup>14</sup> Adresseavisen, Aftenposten, Fædrelandsvennen, Stavanger Aftenblad, Bergens Tidende.

Source: Norwegian Media Businesses Association (MBL)

The market shares for the most popular linear TV-channels in Norway are shown in figure 3.6. Among the channels included in the survey, TV 2 Nyhetskanalen is the TV-news channel with the highest market share (2.6 per cent in 2014). There are several other international linear TV-news channels available in Norway (BBC World, CNN, Sky News, Al Jazeera etc.) However, the market shares of these channels are so low that they have not been individually identified in the TNS Gallup survey. The market shares of these channels are included in the "other/andre" category in figure 3.6.

Figure 3.6 TNS Gallup: Market shares per day 2010-2014 (in per cent)

| År   | Alle        | Tids-rom | NRK1 | NRK2 | NRK3/ SuperTV2 | TV2 Zebra | TV2 Nyhet | TV2 Film | TV2 Bliss | TV2 Sport | TV N | FBM | MAX | VOK | TV3 | Viasat4 | TV6 | Canal9 | Andre | Totalt |     |
|------|-------------|----------|------|------|----------------|-----------|-----------|----------|-----------|-----------|------|-----|-----|-----|-----|---------|-----|--------|-------|--------|-----|
| 2014 | Alle 12+ år | Døgn     | 29,6 | 4,7  | 3,4            | 21,3      | 2,3       | 2,6      | 0,5       | 1,2       | 0,8  | 8,1 | 2,3 | 2,8 | 1,9 | 3,6     | 2,2 | 1      | 0,1   | 11,5   | 100 |
| 2013 | Alle 12+ år | Døgn     | 32,4 | 5,3  | 3,6            | 18,9      | 1,9       | 2,2      | 0,5       | 1,2       | 0,4  | 7,8 | 2,2 | 2,7 | 1,4 | 4,5     | 2,4 | -      | 0,3   | 12     | 100 |
| 2012 | Alle 12+ år | Døgn     | 31,9 | 5,3  | 3,9            | 19,3      | 2,3       | 2        | 0,6       | 1,3       | -    | 7,6 | 2,2 | 2,4 | 1   | 4,4     | 2,6 | -      | -     | 13     | 100 |
| 2011 | Alle 12+ år | Døgn     | 31,7 | 5,3  | 3,9            | 19,3      | 2,7       | 2,2      | 0,7       | 1,4       | -    | 7,9 | 2,1 | 1,7 | -   | 5,3     | 2,9 | -      | -     | 12,8   | 100 |
| 2010 | Alle 12+ år | Døgn     | 32,5 | 4,6  | 3,8            | 20,5      | 3         | 2,1      | 0,7       | 0,2       | -    | 7,3 | 2,4 | 0,3 | -   | 6,2     | 3,7 | -      | -     | 12,8   | 100 |

Source: TNS Gallup – Norsk TV-meter panel (2010 – 2014)

### 3.2.3 Newsprint vs online revenues

So far, online news services have been free of charge even though the media have attempted to develop new sources of revenues from digital platforms.

Initially, the hope in the business was that advertising revenues from online-editions would grow to a level which could replace the lost newsprint revenues. Gradually, the large majority of newspapers have realized that digital ad revenues will not be a sufficient source of income, and that user payment (in addition to advertising) will be necessary. However, media undertakings have been hesitant to introduce user payment, fearing that the first-movers would lose a large share of readers to (free) competitors, and thereby also lose ad revenues. Therefore, the first paywall trials were not introduced until 2010, ten years after print circulations started to fall.<sup>15</sup>

A recent study regarding digital business models in the Norwegian newspaper market<sup>16</sup> finds that 82 percent of the Norwegian newspapers distributed news online in 2014. Furthermore, according to the study several business models for collecting user-payment for news content online have been established and developed since 2010. Figure 3.7 lists some of the main business models in the Norwegian newspaper market from 2011 to 2014.

Figure 3.7 Newspapers with paid online services

|   | 2011 | 2012 | 2013 | 2014 |
|---|------|------|------|------|
| Metered access                              | 1    | 2    | 2    | 1    |
| Liberal (plus-service)                      | 1    | 6    | 10   | 23   |
| Restrictive (hard payment)                  | 3    | 7    | 15   | 31   |
| Paid services total                         | 5    | 15   | 27   | 55   |
| Newspapers with online news services, total | 194  | 190  | 186  | 187  |
| All newspapers                              | 228  | 227  | 229  | 230  |

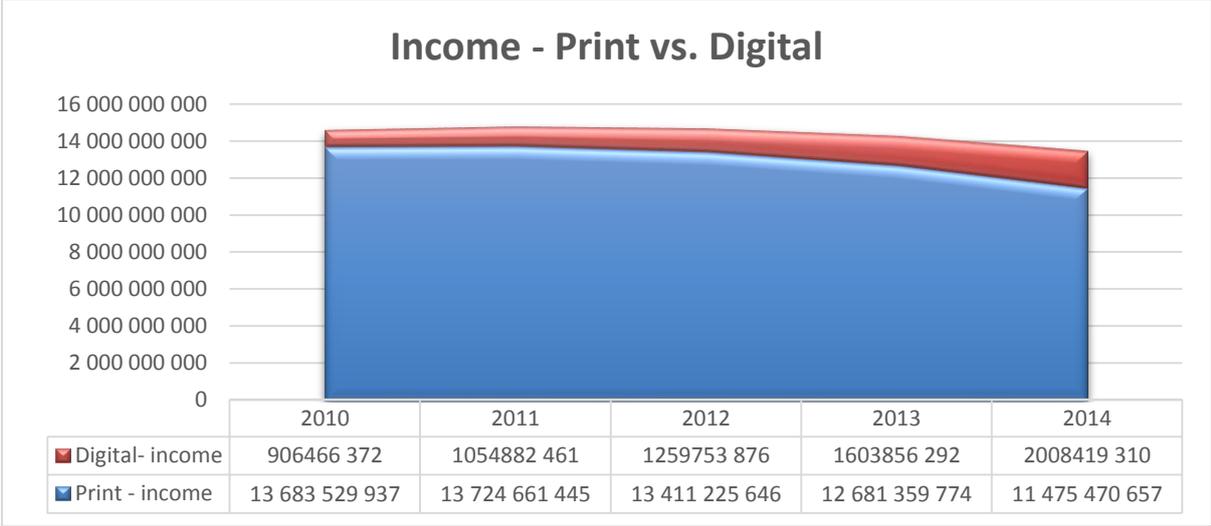
Source: *Aviser og digital betaling, status 2014*, Sigurd Høst, Høgskulen i Volda (2015)

<sup>15</sup> Høst (2015:4) *Aviser og digital betaling, status 2014*

<sup>16</sup> *ibid*

Figure 3.8 illustrates how the revenues of digital versus print sales of newspapers have developed over the past years. Despite efforts of developing digital business models and the high level of news consumption on digital platforms, revenues generated on digital platforms still constitute a marginal share of the newspapers' total revenues. Furthermore, as illustrated in figure 3.9, a new prognosis from the Norwegian Media Businesses' Association suggests that user revenues from digital platforms will be relatively small compared to revenues from paper sales also in the near future.

Figure 3.8 Norwegian newspapers' revenues from digital and paper sales



Source: Norwegian Media Authority

Figure 3.9 Prognosis for the development of user revenues, print and digital

| Fremskrivning av brukerinntekter. Tall i 1000 |                  |                  |                  |                  |                  |                  |                  |
|---|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
|   | 2014             | 2015             | 2016             | 2017             | 2018             | 2019             | 2020             |
| Papir   | 5 976 007        | 5 903 811        | 5 471 738        | 5 057 776        | 4 659 151        | 4 273 374        | 3 898 210        |
| Digital                                       | 493 684          | 739 967          | 1 045 714        | 1 357 898        | 1 690 555        | 2 027 862        | 2 370 046        |
| <b>Total</b>                                  | <b>6 469 691</b> | <b>6 643 777</b> | <b>6 517 451</b> | <b>6 415 673</b> | <b>6 349 706</b> | <b>6 301 236</b> | <b>6 268 256</b> |
| Digital andel                                 | 7,6 %            | 11,1 %           | 16,0 %           | 21,2 %           | 26,6 %           | 32,2 %           | 37,8 %           |

Source: Norwegian Media Businesses' Association

The majority of digital revenues stems from advertisement sales. Only 156 mill NOK, or about 8 percent, is circulation revenues (sale of pdf-editions, e-papers etc.).

Thus, even though the number of daily readers of online newspapers surpassed the print editions in 2014 newspapers will, at least in the short term, still be highly dependent upon newsprint revenues. A further consequence is that newspapers are not yet able to reap the benefits of lower distribution costs online. As long as a significant share of readership and revenues are related to print editions, the newspapers must maintain the infrastructure necessary for newsprint distribution (printing plants and newspaper distribution networks). This implies that distribution costs will remain high until news distribution to a larger extent is digitized.

Furthermore, as noted in Part II (4), Norwegian media houses and newspapers have experienced stagnating digital ad-revenues in the second quarter of 2015, and some newspapers (e.g. VG) has even experienced a reduction in digital ad-revenues from 2014 to 2015.

As illustrated above, news consumption and ad spending have largely been digitized, but so far the newspaper business has not been able to maintain previous revenue levels on the new platforms.

#### 3.2.4 Consequences for media pluralism and quality

Above, it so demonstrated how digitization changes and disrupts the traditional business models for news production.

The fact that the newspaper business has not been able to maintain previous revenue levels on digital platforms is not a problem in itself. The problem arises if the revenues fall below the level necessary to support the production of a diverse range of high quality news and current affairs journalism. This will have a negative effect on media pluralism, public discourse and democracy. The notified measure therefore aims at maintaining a high level of production and consumption of high quality news and current affairs, which should be regarded as a well-defined objective of common interest.

### 3.3 Efficiency objectives

According to the Common Principles chapter 2, state aid must either contribute to efficiency or equity objectives. In order to identify the effect of state aid on market efficiency, the Common Principles (17) state that it is necessary to analyse the presence and order of magnitude of market failures.

Market failure exists when the allocation of goods and services by a free market is not efficient. In such cases, the overall efficiency can be improved by adjusting undertakings' incentives through public intervention (cf. the Common Principles chapter 17). Thus it can be argued that a zero VAT rate for electronic news media addresses several forms of market failures, as well as other relevant objectives, cf. above.

As mentioned in the notification of the production grant, the production of high quality news media can be subject to the following market failure of positive externalities, cf. point 6.4.2 and 6.4.3 (see excerpt in annex 1).

Journalistic content produced by the media is to a large extent shared, linked, reworked and republished by others. Even though the value of re-using news content is usually less than the value of producing original content, re-use of information adds value to the society as more people are given access to the information. Furthermore, the quality of the original story might increase when reworked by other journalists and editors. Thus, the news market is subject to a market failure, as the media producing the news bears the whole cost but does not reap the whole benefit and thus they do not consider the external value of the editorial content when deciding how much to produce. Consequently, this may lead to sub-optimal investments in editorial content. A related phenomenon is that firms tend to underinvest in research and development if competitors easily can reap the benefits from the investments without paying the associated costs<sup>17</sup>. In a study of published news content in Denmark, Lund et.al (2008) finds that about 64 per cent of the news content presented in news media in 2008 can be categorized as re-used, loaned or stolen from other media<sup>18</sup>. A similar study was conducted in Norway in 2010 by Professor Ivar John Erdal. According to Erdal<sup>19</sup>, 30 to 50 per cent of the content in national newspapers in Norway can be characterized as original news. For regional and local newspapers, respectively 50 to 80 and 0 to 30 per cent could be regarded as original

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<sup>17</sup> Motta, M (2009) *Competition Policy, Theory and Practice*. New York: Cambridge University Press

<sup>18</sup> Lund et.al (2009) *Hvor kommer nyhederne fra? Den journalistiske fødekæde i Danmark før og nu*. Århus

<sup>19</sup> Data collection was conducted in one week. The short time period for collection of data could have had an impact on the results of the study.

news content. Compared to the newspaper market, the digital market faces lower copy and distribution costs, faster distribution and lower marginal revenues. Thus, news media operating on digital platforms is likely to have lower incentives to invest in original journalistic content than print newspapers. This has negative impacts for the media pluralism, as less original journalistic content is produced.

Well-informed citizens are more likely to make better decisions; for themselves, in job situations and as electorates. Using panel data from 150 local newspapers in Norway, Bruns & Himmler (2011) finds that increased local newspaper circulation are associated with higher levels of local government efficiency. Thus, citizens benefit from the level of news consumption in their municipality. However, it is unlikely that the consumers consider the impact on the society from a higher level of news consumption when deciding whether to buy news content. This implies a market failure, as the market does not internalize the positive externalities of high quality journalism and news consumption in the society.

Reference is also made to the EFTA Surveillance Authority decision of 21. April 2015 on i.a. zero rated VAT for electric vehicles. The Authority assesses whether the measure responds to a market failure and states:

*”Environmentally harmful emissions represent a negative externality that economic agents may well disregard in their actions. Economic agents may not be ready to pay for the extra costs linked to environmental protection if those costs are not compulsory or subsidised. Consumers will have little direct incentive to acquire goods (in this case electric vehicles) to limit environmental pollution since consumers will typically consider only their own private costs and benefits, without taking into account the environmental effect of their options. This implies that environmental negative externalities represent a market failure (i.e. the market will not resolve them by its own) that justifies public intervention.”*

### **3.4 Equity objectives**

#### Distortion of competition

Zero rating on newsprint may produce inequalities (and distorts competition) between distribution platforms and media enterprises. Equal treatment of distribution technologies will reduce negative incentives for investment and obstacles to develop digital news and current affairs services, and for development of sustainable business-models, cf. above.

According to the Common Principles (ch.42), state aid can lead to distortion of competition if it has a long-term effect on the incentive to invest and compete in a market. The Ministry finds the existing VAT scheme for sales of news content to distort competition due to the unequal treatment of distribution platforms for news and current affairs content. While news distributed on digital platforms is subject to a 25 per cent VAT rate, news content on newsprint is zero-rated.

The unequal treatment of distribution platforms in the VAT scheme may impact the allocation in the market by increasing the

- obstacles for media to develop sustainable business models for news distributed on digital platforms and
- importance of advertisement revenues relatively to user revenues.

#### Demographic differences

On the recipient side, there are considerable demographic differences in media consumption (see for instance figure 3.1). While 82 percent of persons between 67 and 79 read a print newspaper an average day in 2014, the share of newspaper readers between the ages of 16 and 24 was 26 percent. This difference in media consumption has increased over time. In 2010 the shares were 84 percent to 48 percent, and in 2005 89 percent to 56 percent. The effect is that an increasing share of the state revenues lost on account of the zero rating, supports the media consumption of the middle-aged or elderly.

### Conclusion

The notified VAT scheme for electronic news will address the two problems mentioned above, and thus reduce the inequalities caused by the existing VAT scheme.

## **4 IS THE AID WELL-DESIGNED TO DELIVER THE OBJECTIVE OF COMMON INTEREST?**

### **4.1 Is the aid an appropriate policy instrument to address the policy objective concerned?**

According to the Common Principles 28, a state aid instrument can only be justified if it contributes to public policy objectives and to one or more of objectives of common interest. An EEA State's choice of a particular policy instrument may be made on the basis of experience, through benchmarking or as a result of cost-benefit analysis. According to the Common Principles 29, a measure will constitute an appropriate instrument if other policy options have been considered, and the advantages of using state aid can be established and demonstrated.

As stated, the main objectives of the notified measure are to support the demand and use of news and current affairs content among consumers, and to promote media pluralism and diversity, including continued production of high quality news and current affairs journalism.

This requires instruments aimed at consumers. Reducing the cost of electronic news services is a direct and effective means of ensuring high news consumption, and thereby a broad and enlightened public discourse. VAT is a tax on consumption, which in principle may directly influence price and consumption. However, the effectiveness of the measure will depend on different market mechanisms, including the pricing policy of the media enterprises.

Alternative measures to promote the demand and use of news media might include education, awareness campaigns etc. For instance, the Ministry of Culture has earlier supported a project run by the Norwegian Media Businesses' Association promoting knowledge about newspapers and newspaper production in the primary and secondary schools. Such projects will almost irrespective of the size of the aid, have very limited scope and effect compared to a general instrument that applies to all news consumption. The notified measure is also both general and non-discriminatory, and therefore involves less risk of impeding competition or press freedom.

The need for state aid to promote media pluralism and diversity was addressed in the notification of the production grant, cf. chapter 6.5.1 (see excerpt in annex 1).

The question which was not addressed is why direct aid schemes, including the production grant, are not sufficient to address the mentioned media policy goals.

The notified measure has a different profile, objectives and scope than the production grant:

1. While the production grant is selective and directed towards news media in certain defined types of difficult market positions (of a total of 241 newspapers, only 147

received production grants in 2014), the zero VAT rate will apply equally to all news media. Therefore, the zero VAT rate for electronic news media is a more general financial instrument promoting media pluralism and diversity, while the production grant is targeted to more concrete instances of market failure in the market for news and current affairs media.

2. While one of the main objectives of the zero VAT rate is to support the demand and use of news and current affairs content among consumers, the main objective of the production grant is maintaining diversity in news and current affairs media characterised by high quality and independent journalism – by supporting media in difficult market positions.

Consequently, the production grant for news and current affairs media and the notified zero VAT rating for electronic news media are complementary aid schemes, addressing to some extent different policy objectives.

The zero VAT rate for newspapers has been the financially most significant media policy instrument for many years, in addition to the licence fee for the public service broadcaster (NRK).

## **4.2 Is there an incentive effect, i.e. does the aid change the behaviour of the aid recipient?**

According to the Common Principles chapter 2.4, aid must have an incentive effect for the recipients, i.e. the aid must likely lead to the achievement of the targeted policy objectives.

As mentioned, the zero rating has a two-part objective, firstly to support the demand and use of the (diverse) media offering, and secondly to promote media pluralism and diversity. Also, while the main beneficiaries of the zero rating are the consumers, media enterprises may also obtain an indirect advantage.

In this chapter, several studies that are relevant when assessing the notified measure's incentive effect are mentioned. Several of the studies concern the effect VAT rates have on pricing and the demand and use of books. We acknowledge that books and news media are sold in separate markets, and that the studies therefore must be read against this background. However, we find the studies to be relevant for the assessment, since there are similarities between the book market and the media market.

### **4.2.1 Effects on pricing and consumption**

Similar to other normal goods and services, the price of news influences the consumption level. Lower prices are expected to stimulate to higher consumption, while increased prices are expected to lower consumption.

The proposed reduced VAT rate for electronic news services is meant to stimulate to high demand and use of news services. A taxation paper published by the European Commission, Copenhagen Economics<sup>20</sup> (2007) states the following;

*"It is important from the outset to stress that there is little doubt that permanently lowering the VAT rate on a particular good (or service) sooner or later will lead to a reduction in the price of the good more or less corresponding to the monetary equivalent of the lower VAT-rate".*

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<sup>20</sup> Copenhagen Economics (2007) *Taxation Papers- Study on reduced VAT applied to goods and services in the Member State of the European Union*. Working Paper NO 13 2007. European Commission.

As further noted by Copenhagen Economics, the impact of the lower VAT rate do however depend upon the consumer response to lower prices of the particular good (or service) and the level of competition within the sector. A large study performed on behalf of the European Commission by Rambøll, confirms a significant negative relationship between price and demand of news<sup>21</sup>. Undertaking a consumer survey with 1 000 responses from each of the 24 Member States included in the study, they find the demand of newspaper, both print and digital, to be affected by the price level. The price elasticity was estimated to -3.7 for printed newspapers and -2.3 for digital newspapers<sup>22</sup>. However, despite the lower price elasticity for digital newspapers than printed newspapers, over half of the respondents in the study believed that the price of digital products should be at least 50 % less than the comparable printed products.

With the exception of the study from the EU-Commission, there are few relevant studies regarding the relationship between price and consumption in the market for electronic news services. One could however argue that the market for printed newspapers is somewhat similar to the electronic news market as the content of the products sold in these markets are to a large degree the same. Findings in the newspaper market will however be more relevant for digital newspapers, while it will be less relevant for other electronic news media, such as television and radio.

Evidence from the newspaper market in Sweden confirms a negative relationship between price and consumption of news. The VAT rate on newspapers increased from zero to six per cent in 1996. According to Gustafsson (2007)<sup>23</sup>, this caused an abnormally high reduction in subscription sales due to the following price increase. The price of subscription newspapers increased by 10 to 11 per cent in 1996, twice as much as normal.

There have also been changes in the VAT-rates for newspapers in Finland the last years. 1<sup>st</sup> of January 2012, the VAT rate on newspapers in Finland increased from 0 to 9 per cent in order to harmonize the VAT rates of newspapers, books and periodicals. Figure 4.1 shows how this lead to a significant leap in the prices in 2012. In their report on mass media statistics 2012, Statistics Finland states the following "subscription sales was affected by the increased prices as a result of a nine per cent value added tax that was added to newspaper and magazine subscriptions from the beginning of 2012".

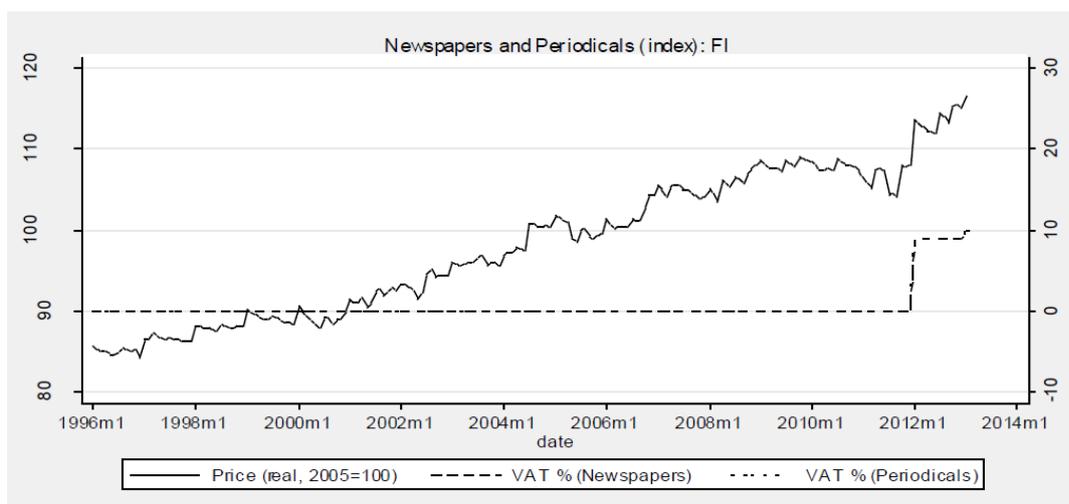
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<sup>21</sup> Rambøll et.al (2015) *Economic Study on Publications on all Physical Means of Support and Electronic Publications in the context of VAT*. Final Report. European Commission

<sup>22</sup> The finding is significant at a 5 percent significance level or better.

<sup>23</sup> Gustafsson (2007) *Det svenska presstödet marknadskonsekvenser – En analys på uppdrag fra Kulturdepartementet*

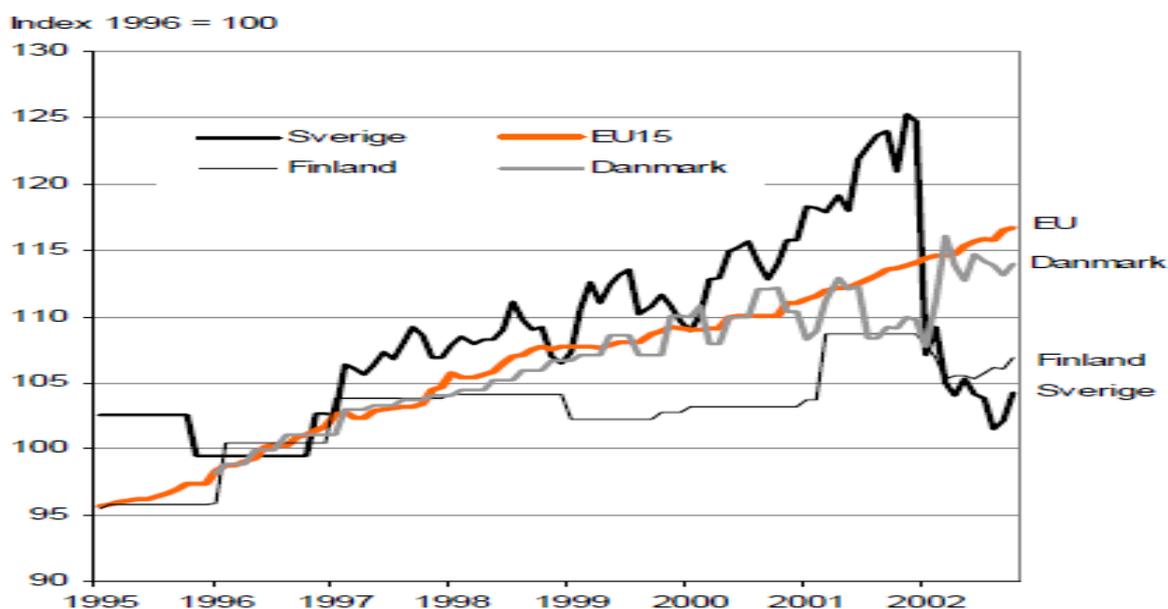
Figure 4.1 Price trend of newspapers and periodicals in Finland 1996-2012



Source: Source: Ramböll (2013) *Economic Study on Publications on all Physical Means of Support and Electronical Publications: Appendix A: Member States Reports*

In 2002 Sweden changed the VAT rate on books from 25 to 6 per cent. As illustrated in 4.2, the price of books in Sweden has historically increased significantly more than the average for the EU-region up until 2001. However, at the end of 2001 and in the beginning of 2002, there was a significant drop in the prices of books sold in the Swedish market. In the report to the EU Commission<sup>24</sup>, Ramböll suggests that the price reduction could be explained by the industry anticipating the reduced VAT rate from January 1<sup>st</sup> 2002, by reducing their prices in advance. The reduction of the VAT rate in 2002 therefore seems to have had an immediately significant impact on the price of books sold in Sweden.

Figure 4.2 Price trends of books in EU (1996-2002)



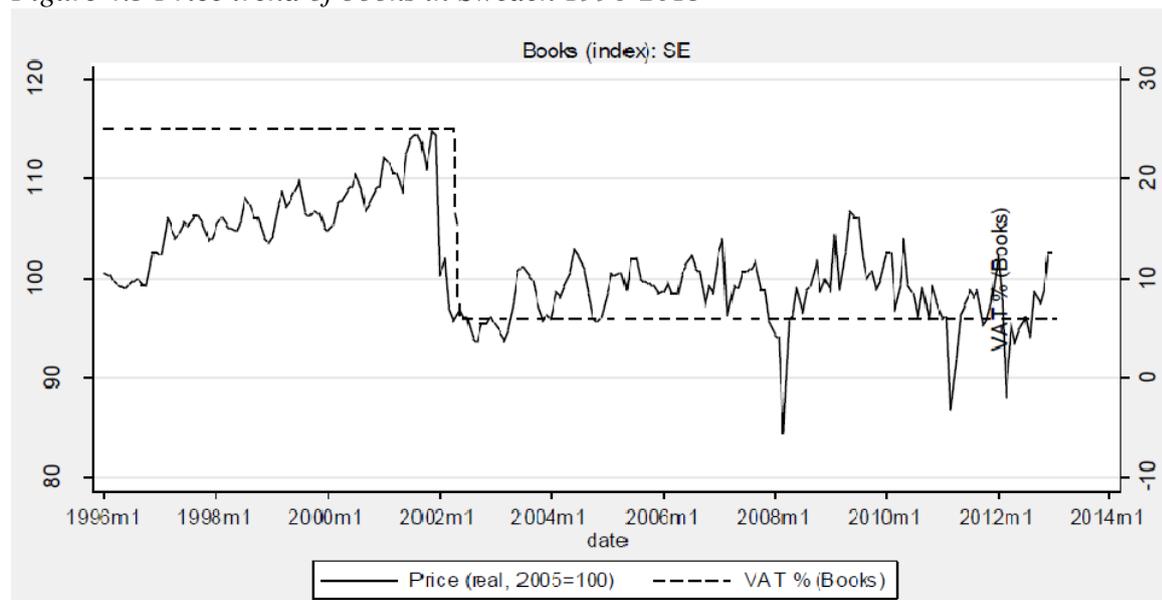
Source: Statistics Sweden (2003) *Effekter av sänkt mervärdesskatt på böcker och tidskrifter*

At the end of 2004, three years after the VAT reduction on books, Statistics Sweden (SCB) concluded that the book prices in the Swedish market still were lower than they would have

<sup>24</sup> Ramböll et.al (2015)

been without the VAT reduction<sup>25</sup>. If the VAT reduction had been fully internalized in the market prices, this would have led to a price reduction of 11.4 per cent in the period 2001 to 2004, corrected for the annual consumer price index. In reality the prices were reduced by 7.6 per cent from 2001 to 2004. The price reduction varied greatly from one genre to another<sup>26</sup>. For fiction literature, the price reduction was estimated to 10.9 per cent (+/-2.3), while for professional literature the price reduction was estimated to 3.4 per cent (+/-3.1). Based on the findings, the Bookprice Commission concludes that most consumers had gained benefits from the reduced VAT rate on books. As noted in figure 4.3, the findings of the Bookprice Commission are supported by data collected by Ramböll on the price trend of books in Sweden in a longer term.

Figure 4.3 Price trend of books in Sweden 1996-2013



Source: Ramböll (2013) *Economic Study on Publications on all Physical Means of Support and Electronical Publications- Appendix A: Member States Reports*

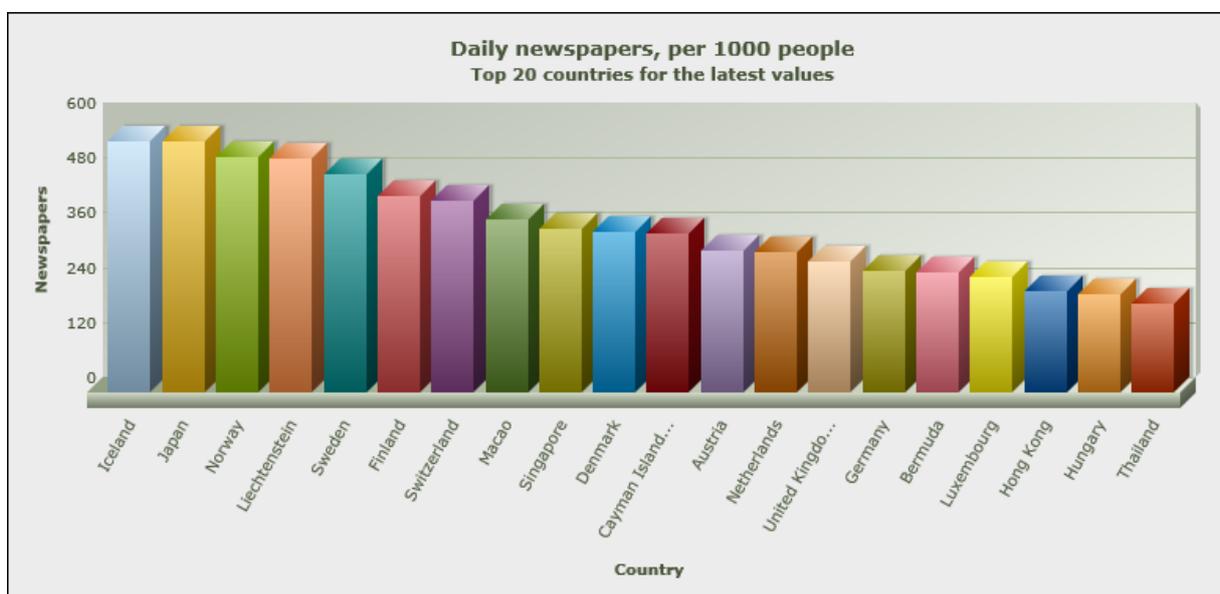
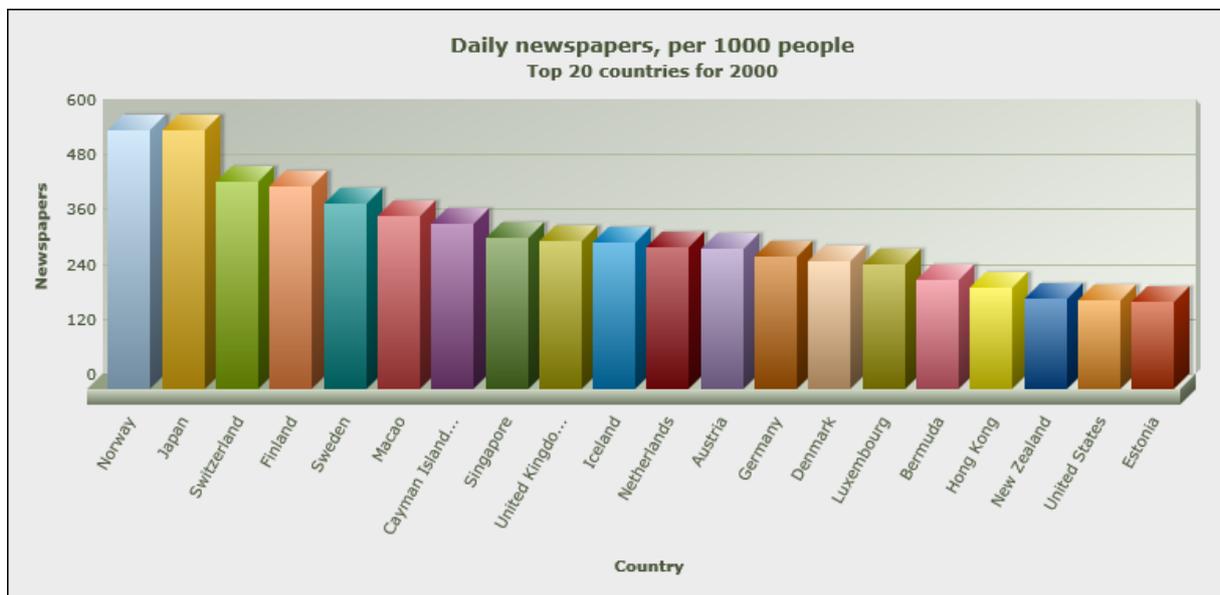
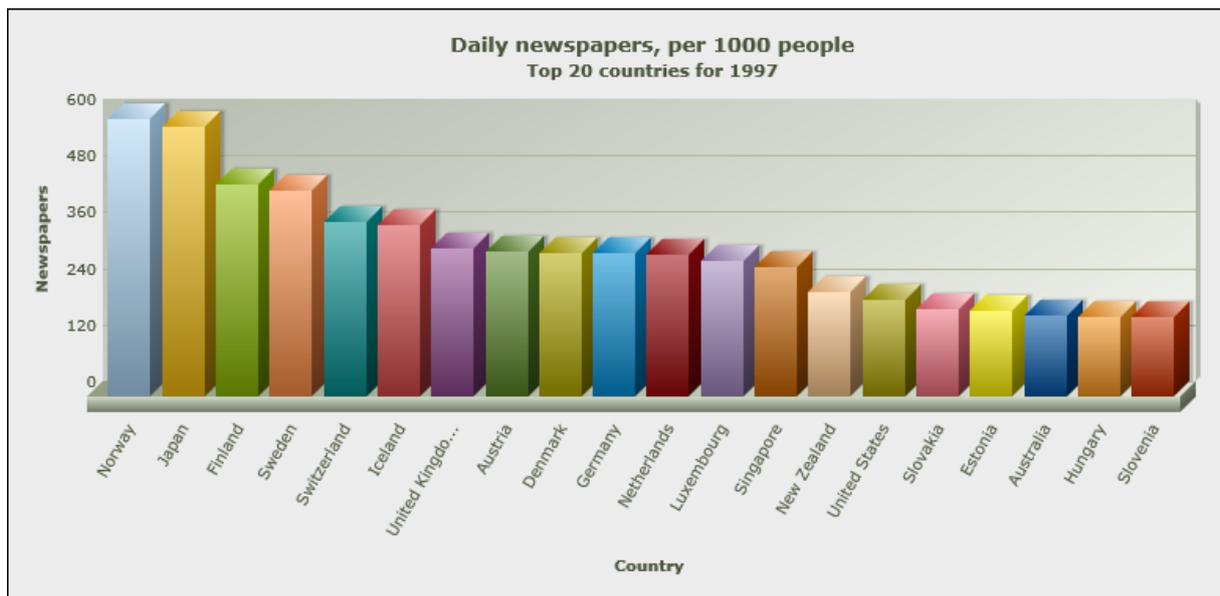
The Ministry acknowledges that there are dissimilarities between the book market and the electronic news market. The documentation from the response in the Swedish book market of the VAT-reduction is nevertheless interesting as it shows how a larger reduction in the VAT rate affects price and consumption. The examples from Sweden and Finland show how a changed VAT rate affects the price level and the consumption of newspapers and books. There are also other studies showing how consumer prices of goods and services reflect changes in VAT rates. The study by Copenhagen Economics in 2007 assesses several examples of changed VAT rates of different goods and services in Europe, and concludes that larger changes in the VAT rates to a large degree is reflected in changed consumer prices. One of the examples referred to in the study was that a 10 per cent increase in the VAT rate on weekly magazines in Italy in 2002 was followed by a 14 per cent price increase<sup>27</sup>.

<sup>25</sup> Statistiska Centralbyrån (2005) *Slutrapport til Bokkommissionen: Tre år efter momssänkningen på böcker och tidskrifter*

<sup>26</sup> SOU (2005) *Bokpris kommissionen- slutrapport*

<sup>27</sup> Copenhagen Economics (2007) *Taxation Papers- Study on reduced VAT applied to goods and services in the Member State of the European Union*. Working Paper NO 13 2007. European Commission

Figure 4.4 Daily newspapers sold per 1000 people in 1997, 2000 and 2004



Furthermore, as illustrated in figure 4.4., data on the development of newspapers circulations over time also indicates that the existing zero rating on print newspapers probably has had a positive effect on news consumption in Norway. Between 1997 and 2004 the newspaper consumption among 130 countries were compared in statistics comprised by the World Bank. As illustrated in figure 4.4, Norway had the highest newspaper consumption in the world between 1997 and 2000, but had fallen down to third place in 2004.

The studies referred to in this chapter shows that the consumers gain benefits from reduced VAT rates by reduced prices that lead to increased consumption. Based on the findings in these studies, it is probable that a zero VAT rate on electronic news services will lead to lower prices for the consumers compared to a situation with a 25 per cent VAT on electronic news services. The conclusion is therefore that a zero VAT rate for electronic news will lead to an incentive effect for the recipients (the consumers) by promoting the demand and use of electronic news media.

#### 4.2.2 Effects on media diversity

The studies referred to chapter 4.2.2 indicate that the pass-on rate to the consumers is not 100 per cent, meaning that changes in the VAT rate are not necessarily fully internalized in the consumer's prices. Consequently, the zero VAT rate may also, to some extent, lead to an indirect advantage for media enterprises. However, this effect may be regarded as a mean to improve the economy of media enterprises, and thereby stimulating media pluralism and diversity, and production of high quality news. The notified measure will make it easier for media enterprises to introduce paywalls or other models of user-payment, and therefore contributing to the development of sustainable business models for the production of high quality news and current affairs journalism. This is in line with one of the main objectives of the notified VAT scheme (see part III section 3.1).

### **4.3 Is the aid measure proportionate to the problem tackled, i.e. could the same change in behaviour not be obtained with less aid?**

According to the Common Principles chapter 2.5, aid is considered to be proportionate only if the same result could not be reached with less aid and/or less distortion. The amount and the intensity of the aid must be limited to the minimum needed for the aided activity to take place.

It is only aid for "*certain economic undertakings or the production of certain goods*" which is defined as state aid under the EEA Agreement. As mentioned, the main recipients of aid through a system of zero rated VAT for news and current affairs media are the consumers, because the VAT is a tax on consumption. Any advantage for the media sector is secondary and indirect, and therefore also very difficult to determine. The size of the aid element for the media sector will depend on to what degree the cost of the VAT is absorbed or passed on to consumers, as well as how lower prices effect the consumption and the media businesses' turnover and revenues. As illustrated in 4.2, it is probable that a zero VAT rate on electronic news services to some extent will be passed on to the consumers, by reducing prices and supporting the demand and use of electronic news media.

Regarding the effect for consumers, the desired political goal is to be able to maintain a high level of news consumption in the future. News consumption maintains an individual's literacy and general knowledge. Persons never consuming news services will not be able to manage its democratic rights in a good way. Informed citizens make better decisions, not only for themselves but also for their children and in political elections. High consumption of news therefore has a value for the society as a whole. It is therefore neither possible nor desirable to

define an upper limit to the level of news consumption, or exactly define which level of news consumption (on the low end of the scale) that would constitute a threat to freedom of expression and democracy. Consequently, it is not possible to assess whether a higher VAT rate than zero also would lead to a sufficient change in consumer behaviour. Since the desired result in this case is a high level of news consumption in the future, the aid intensity (a zero rate) is needed to reach the desired result.

In relation to the state aid element for the media sector, the desired result is media pluralism, i.e. production of a diverse offering of high quality news and current affairs journalism. The aid element for media undertakings is, however, a secondary and indirect effect. It is therefore hard to determine the effective size of the accurate aid. Presumably, it is relatively limited compared to the primary and direct effect for consumers. The main effect of the measure for businesses, and for the promotion of media pluralism, lies in the equalizing of VAT rates for different distribution platforms.

#### **4.4 Distortions of competition**

In the following, we assess the notified measure's potential concerning distortion of competition, and whether the measure exclude services that may be regarded as de facto substitutes, thereby distorting competition.

The notified zero VAT rate for electronic news services (described in detail in part II chapter 5) will apply to all general news and current affairs media, irrespective of distribution channel or media type. The notified measure will primarily have a positive effect on competition in the news media market. The notified scheme eliminates the different VAT rates currently in force in the news media market by de facto introducing common zero VAT rate for all news media.

The criteria in the notified measure are intended to ensure that the scheme efficiently targets broad and general news media. The notified measure targets broad and general news media because of their democratic function. The notified measure is therefore aimed at media that predominantly consist of news and current affairs content from different areas of society. Media services that predominantly provide content aimed at one sector or interest, for instance culture, religion, sport, are not covered by the notified measure and will not be subject to 25 per cent VAT rate. For a partial description of the Norwegian media market, reference is made to chapter 6.5.4 of the notification of the production grant for news and current affairs media dated June 20 2013 (see excerpt in annex 1).

Further reference is made to the letter of 18 September 2007 from the Ministry of Finance, which discusses the effects on competition of the different treatment of newspapers and the weekly popular press in the VAT system. The justification still applies, and is relevant also for non-news media on other distribution platforms (broadcasting and digital). In the letter the Ministry states:

*"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 "provide its readers with a primary source of general information".*

*The Ministry believes that in this respect there are differences between newspapers and weekly 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 regards a small minority of newspapers. 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.”*

The Ministry also presented documentation showing that there are significant differences in content, public usage and expectations between newspapers and weeklies, which suggest that they do not compete in the same product market. For instance, reference was made to a survey performed on the commission of The Norwegian Media Businesses Association, which showed that during the period 27 August 2007 – 9 September 2007, newspapers provided 2 410 articles about the election, whilst the weeklies provided 33. In addition, the newspapers had more than 10 times more text about the election in every single issue. The conclusion was also substantiated by two reports by Møreforskning Volda/Høgskulen i Volda, which analysed the content of various newspapers and weekly press publications.

We consider the arguments and conclusion to be still valid, and that they are valid also for news media distributed on other platforms. Regardless of distribution technology (newsprint, broadcasting or digital platforms) there are significant differences between broad, general news media and other media (trade, entertainment, hobby, sports, social etc.) when it comes to the content of the media, usage and consumer expectations. In general, these media not included in the scheme fulfil different functions in society, are not regarded as substitutes by consumers and therefore do not compete in the same market.

It is our conclusion that notified measure has limited distorting effects on competition.

#### **4.5 Effects on intra community trade**

In its decision on the production grant for news and current affairs media of 12. March 2013, the EFTA Surveillance Authority concluded:

*“... the Authority considers that the overall effect on trade is nevertheless limited, given the relative size of the media concerned as well as their limited potential readership outside Norway.”*

In our opinion, this must also apply to the notified zero rated VAT for news and current affairs media. Primarily because the measure is aimed at consumers and that an aid effect for enterprises, if any, is secondary and indirect. The measure will apply equally for all user paid consumption of general news and current affairs media services in Norway, including domestic consumption of foreign news services fulfilling the criteria included in the scheme. Consequently, the effect on intra-community trade is negligible.

### **5 COMPATIBILITY ANALYSIS – POSITIVE EFFECTS OUTWEIGH NEGATIVE EFFECTS**

The last step in the compatibility analysis is to evaluate whether the Member State has demonstrated that the positive effects of the aid, if any, outweigh its negative effects.

As identified in this notification, the notified scheme exhibits the following positive effects:

- The measure will promote a high level of news consumption and thus stimulate broad participation in public discourse and democracy. This effect will be achieved by lower consumer prices. As argued in part III, chapter 4.2, it is probable that a zero VAT rate

on electronic news services will lead to lower prices for the consumers compared to a situation with a 25 per cent VAT rate, and thereby support the demand and use of electronic news media.

- A further effect of the notified scheme is that it will result in equal treatment of distribution platforms for news media in the VAT system, thus reducing effects on competition and removing obstacles for development of sustainable business-models for news journalism.

The zero VAT rate may lead to an indirect advantage for media businesses covered by the scheme. As stated above, this effect is intentional and justifiable since the advantage might improve the economy of the recipients, and thereby stimulate media pluralism and diversity. Since the notified scheme may lead to an indirect advantage for media covered by the scheme, it cannot be ruled out that the notified scheme may have some limited effects on competition. However, as illustrated above, the positive effects of the scheme outweigh its potential negative effects on competition. We would also like to emphasise the notified scheme will have a positive effect on the competition within the news media market, by eliminating the different VAT rates between printed newspapers and electronic news media. Further, we would like to highlight that the notified scheme will include all broad general news and current affairs media. Consequently, the aid will not affect the competition in the market for paid news media.

The Ministry finds that the positive effects of the scheme outweigh its potential negative effects.

## **6 DURATION**

As mentioned, one objective of the notified measure is to maintain a high demand and use of news and current affairs media, and thereby to facilitate an open and enlightened public debate. Also, the measure harmonizes the VAT rates and thus removes the distortion of competition between different platforms for distribution of news content. The measure therefore addresses problems which by nature are not transitory, and which will exist in the foreseeable future. We would also like to point out that the zero VAT rate for newspapers is not a part of this notification. The zero VAT rate for newspapers must be regarded as existing aid, and will therefore not be subject to a limited duration.

However, Norwegian authorities recognize that an aid scheme must be of a limited duration. The Ministry would therefore propose to limit the measure to six years.

## **7 TRANSPARENCY**

According to Regulation no 651/2014/EU and the State aid Guidelines state aid shall be published in a public /open register. This obligation will be fulfilled.



## Excerpts from the notification 20 June 2013 of the production grant for news and current affairs media

### 3. OVERVIEW OF CURRENT AID MEASURES

*This chapter offers a short presentation of current aid measures for news and current affairs media (see table 3.1 for overview). Please note that this chapter gives an overview of all existing aid measures for the media, including aid measures that are not subject to changes and consequently not subject to notification. As a general rule, a beneficiary cannot receive grant under more than one grant scheme.<sup>28</sup>*

*Table 3.1 Current aid measures for news and current affairs media*

| Direct vs. Indirect | Sector       | Incentives  |
|---------------------|--------------|---|
| <b>Direct</b>       | The press    | - Production grant for newspapers<br>- Production grant for Sami newspapers<br>- Production grant for minority language publications<br>- Production grant for weekly and monthly niche publications<br>- Distribution aid (Troms and Finnmark) |
|                     | Broadcasting | - License fee (NRK)<br>- Project grant for local broadcasting   |
| <b>Indirect</b>     | The press    | - Zero-rate of VAT on newspapers  |
|                     | Broadcasting | - Reduced VAT (NRK)   |

#### 3.1 The production grant for newspapers

The production grant for newspapers was originally introduced in 1969, with the aim of maintaining a plurality of daily newspapers. It was introduced as a response to the potential prospect that newspapers would continue to disappear from the market, similar to what had occurred in Sweden and Denmark during the 1960s. Between 1950 and 1969, approximately 40 newspaper titles disappeared in Norway.<sup>7</sup> The majority were centre to right-leaning publications that held secondary positions in their respective markets (so-called “number two” newspapers).

*From 1969 to 1984 the aid took the form of a production grant based on the number of tons of newsprint multiplied by a grant rate. The rate differed according to the competitive position of the respective newspapers. The production grant was selective, in the sense that it targeted specific*

<sup>28</sup> There are two exceptions to this rule: The first exception is the zero VAT regime on newspapers, which benefits all printed newspapers in Norway, regardless of whether they receive other aid. The second exception is the distribution aid for newspapers in Finnmark, which benefits publications that may also receive the general production grant for newspapers (see more below).

<sup>7</sup> NOU 2010:14, Section 4.2.1.

*newspapers and varied according to the newspaper's competitive position. The purpose was primarily to promote newspapers in difficult market positions.*

Since 1984 the grant has been calculated on the basis of the number of copies distributed, i.e. circulation multiplied by number of issues. One reason why the paper-grant was replaced by a production grant was that the former grant scheme provided the recipients with an incentive to increase the number of pages of each edition, in order to maximise grants. Since 1984, the main features of the scheme have remained unchanged.

Today, there are four direct production grant schemes targeting the Norwegian press sector (see table 3.2 below).

*Table 3.2 Overview of the different production grant scheme for news media, their value and number of recipients*

| Name of grant scheme   | Value (in 2012)   | Number of recipients (in 2012) |
|--|-------------------|--------------------------------|
| The production grant for newspapers                            | 287,9 million NOK | 138                            |
| The production grant for Sami newspapers                       | 23,4 million NOK  | 4                              |
| The production grant for minority-language publications        | 0,8 million NOK   | 3                              |
| The production grant for weekly and monthly niche publications | 16 million NOK    | 6                              |

The different grant schemes are in practice mutually exclusive, as the target groups differ. In the case of the production grant for newspapers and the production grant for minority-language publications, it is explicitly stated that grants cannot be allocated to publications that receive other forms of operating grants. A similar provision is included in the draft regulations<sup>29</sup> on the new production grant for news and current affairs media, presented later in this document (see chapter 5).

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### **3.1.2 The production grant for Sami newspapers**

*The objective of the grant for Sami newspapers is to “foster democratic debate, informed opinions and the development of languages in the Sami community”.<sup>30</sup> For 2013 a total of NOK 24,1 million is allocated to this grant.*

Aid is granted to newspapers that target the Sami community. The qualification criteria under this scheme generally correspond to the criteria under the production grant, cf. above, except for the circulation criteria, which state that the aid is only allocated to newspapers with a circulation of at least 750 copies and a minimum of 48 editions annually. The Norwegian Media Authority manages the grant.

### **3.1.3 The production grant for minority language publications**

*The objective of the production grant for minority language newspapers is to “promote the publications for language minorities and the development of high editorial quality of these publications”.<sup>31</sup> For 2013 a total of NOK 0,8 million has been allocated to this grant.*

<sup>29</sup> Cf. Appendix I “Draft Regulation”.

<sup>30</sup> Forskrift 17. mars 1997 nr. 248 om tilskudd til samiske aviser.

<sup>31</sup> Forskrift 22. oktober 2003 nr. 1256 om tilskudd til minoritetsspråklige publikasjoner.

*The aid is granted to publications that cover editorial content from both Norway and the minorities' country of origin. In order to receive aid under this scheme, the publications must i.a. be published regularly (at least six times per year) and average a net circulation of at least 400 copies. The Norwegian Media Authority manages the grant.*

#### **3.1.4 The production grant for weekly and monthly niche publications**

The production grant for weekly and monthly niche publications targets a finite list of weekly and monthly niche publications. In 2012, approximately NOK 15 million was given to a total of 9 recipients. The purpose of the scheme is to maintain and develop weekly and monthly niche publications with various cultural and social opinions. The Arts Council of Norway manages the grant.

#### **3.2 Distribution aid**

Distribution aid is granted to newspapers published in the county of Finnmark. For 2013 a total of NOK 1,9 million is allocated to this type of aid. Distribution aid may be granted to newspapers that also receive regular production grants. However, the distribution grant is aimed at covering extra costs related to newspaper distribution in Finnmark due to the sparse population of the region and distances involved. The Norwegian Media Authority manages the distribution aid.

...

#### **3.4 The licence fee**

The licence fee is the most important direct support scheme for broadcasting. The rationale for the fee is to ensure that the public service broadcaster, the NRK, continues to serve social, cultural and democratic needs of the Norwegian society. The license fee is a mandatory government fee levied on all households that hold a broadcast receiver. The fee is set annually in the national budget. For 2013, Parliament set the fee to NOK 2482 for each household. Revenue from the fee is estimated at approximately NOK 5.1 billion in 2013.

#### **3.5 The project grant for local broadcasting**

The main objective of the project grant for local broadcasting is to support high quality in and a financially viable local broadcasting. The project grant is allocated to projects that fulfil these objectives.<sup>32</sup> For 2013, NOK 13, 5 million is allocated to this grant. The Norwegian Media Authority manages the grant. The Ministry is currently reviewing this grant scheme.

...

#### **6.4.2 Efficiency objectives**

*According to the Common Principles, state aid can only be given in cases where market failure is present. Market failure exists when the allocation of goods and services by a free market is not efficient. In such cases, the granting of state aid may produce effects and overall efficiency can be improved by adjusting undertakings' incentives through state aid (c.f. the Common Principles chapter 17).*

The Ministry finds the production of high quality news media to be subject to the market failure of positive externalities, in the sense that the media do not fully internalize the whole benefit of their actions. The reason for this is two-fold. Firstly, journalistic content produced by the media is to a large extent republished and further developed by others, in similar ways as academic research is done. Hence, the external value of editorial content will not be fully

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<sup>32</sup> Forskrift 7. september 2001 nr. 1108 om tilskudd til lokalkringkasting.

internalized by the media which originally produced the content. Consequently, this may lead to sub-optimal investments in editorial content.

Secondly, besides giving individuals information and a basis for their decisions, news media play a pivotal role in securing democratic debates, scrutinizing political processes and producing content reflecting national language, culture and identity. The value of content provided by the news media may therefore be said to not only be of value to those consuming and paying for it, but for society as a whole.

Consequently, a media market characterised by market failure would not produce an optimal level of news and current affairs content without subsidies. Furthermore, the overreaching goals of ensuring a pluralistic media landscape and an open public discourse in democracy would be undermined.

Furthermore, it could be argued that Norwegian demographics – characterized by sparse population and many small communities – represent a form of market failure in it self as many localities do not provide a sufficient market basis to sustain economically viable local news media. These small societies neither have enough potential buyers nor advertisers to finance local news production. Still, it is an explicitly stated political goal to maintain a diversity of news media publications throughout Norway (c.f. chapter 2). The production grant enables the publication of news media in small local markets that otherwise probably would not have been able to sustain such news media.

#### **6.4.3 Equity objectives**

*In addition to efficiency objectives, state aid can be awarded in cases where markets select winners and losers, simultaneously producing or reinforcing inequalities. The Ministry finds also this to be relevant in the case of the secondary news media.*

News media, as most other journalistic media, operate in two separate markets; the consumer market and the advertising market. Analyses of newspaper economy show that holding a second position in any given market (nationally, regionally or locally) is economically difficult. The leading medium with the largest circulation will on account of its reach also be the most attractive advertising channel. As a consequence, it will receive a disproportionate share of local advertisement spending. Secondary media in the same market will on the other hand receive less advertising income than their circulation and readers would imply. This leads to lower income and a weaker economy than its competitor – which in turn will influence the media product – and eventually further reduce readership and sales (the so-called circulation spiral theory).<sup>33</sup> This means that the underlying dynamic in the advertising market acts in the direction of less pluralism than what would be the case if advertising revenues corresponded more closely to actual readership or user payment. The production grant for news media is constructed to counteract this market failure.

...

#### **6.5.1 Is the aid an appropriate policy instrument to address the policy objective concerned?**

According to the Common Principles 28, a state aid instrument can only be justified if it contributes to public policy objectives and to one or more of the common interest objectives of the EEA. The EEA State's choice of a particular policy instrument may be made on the basis of experience, through benchmarking or as a result of cost-benefit analysis. According to the Common Principles 29, a measure will constitute an appropriate instrument if i) other policy options have been considered, and ii) the advantages of using state aid can be established and demonstrated.

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<sup>33</sup> NOU 2010: 14 Lett å komme til orde, vanskelig å bli hørt – en moderne mediestøtte

### **6.5.1.1 Non state aid policy instruments**

The Ministry has assessed whether non-state aid policy instruments may deliver the policy goals concerned.

There are currently several policy instruments in force in Norway that work together to address the overall objectives of freedom of expression and media pluralism:

- The Media Ownership Act ensures a diversity of ownership in media companies, both nationally and regionally. The purpose is to promote a plurality of journalistic content and opinions and to avoid dominant ownership positions which may be utilized to promote the media owner's political or financial ends.
- The Act on Editorial Freedom in the Media safeguards the media's role as independent information source. In accordance with this act, owners of media companies may not instruct or overrule the editor in the day-to-day editing of the medium.

Although these policy instruments to a certain extent are designed to promote the same objectives as the production grant, they are not designed to provide the relevant media with financial support to operate and fulfil media policy goals for news media, namely to maintain media publications in as many places as possible and to maintain local news media pluralism, i.e. access to several alternative sources of news, current affairs and social debate where possible. These two policy instruments are neither designed to alleviate market failure nor to provide a financial basis for a pluralistic media sector.

Based on the experiences from the current production grant scheme, the Ministry finds that there is a need for a state aid instrument that specifically promotes media pluralism objectives through direct state aid.

### **6.5.1.2 Assessment of different state aid policy instruments**

The Ministry has assessed different types of state aid instruments that may contribute to the fulfilment of the objectives concerned, several of which also were discussed by the Media Grant Committee<sup>34</sup>:

Firstly, the Ministry has considered several *project based grant schemes* that may fulfil the objectives concerned:

- Grants to media development projects, i.e. projects where several market players' cooperate, for example in developing new publication platforms.
- Establishment grants, in order to facilitate and facilitate the market entry of new media companies.
- Grants for the education of journalists.

A project based aid scheme may promote specific types of journalistic or other projects, but will not have the desired broad and general effect of promoting plurality and quality in the news media sector as a whole.

Secondly, the Ministry has assessed a state aid model where the *grant is calculated according to the recipients operating costs*. This model may to some extent deliver the policy goals concerned. However, a calculation of the aid according to the recipients operating costs may provide recipients of aid with incentives to inflate operating costs. Furthermore, since the aid under this model is calculated exclusively on the basis of the beneficiaries' costs, there is no

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<sup>34</sup> NOU 2010:14.

direct link to the value and quality of media as experienced by the users, as opposed to a model related to circulation and number of editions as described below.

Finally, the Ministry has assessed and decided upon a model of *aid calculation according to circulation and number of publication* (cf. chapter 5). The Ministry considers this grant model to be the type of aid instrument that most precisely targets the relevant media policy objectives, of several reasons:

Firstly, the notified scheme is based on the current production grant that has been in force since 1969. The Ministry finds that the aid model has been contributed successfully in fulfilling several media policy goals:

- A very large number of newspapers continue to be published in Norway. When the direct subsidies were introduced in 1969, there were 191 titles. In 2012 the figure was 227.
- The number of geographical locations with one or more newspapers – providing a measure of geographic distribution and diversity – has also increased steadily throughout the period since the introduction of subsidies. In 1969 newspapers were published in 123 locations in Norway. In 1990 the figure had increased to 154, while in 2012, the number was 185.
- Print newspapers continue to enjoy a strong position in Norway. While total daily circulation in 1969 was approximately 2 million copies, this figure had risen to approximately 2.4 million in 2012.
- Also when it comes to news consumption the number is high: In 2012 nearly 66 per cent of the population read a newspaper on a daily basis, 86 per cent of the population if one includes also digital newspapers.

Secondly, as grant levels are calculated on the basis of circulation and number of editions, the grant scheme is designed to facilitate the production of content that is in high demand among media users. An aid model based on these parameters yields a simple, objective and effective measure of the value and quality of the different media covered by the scheme, as experienced by the users. The public role of the media in a democratic society implies that this type of quality assessment should not be conducted by the government.

Finally, and perhaps most importantly, the appropriateness of the instrument must be considered in a historical context. The Norwegian press has adapted to the current aid scheme. The present structure of newspapers may partly be seen as a product of the specific state aid scheme that has been effective in Norway for more than 40 years. A radical change of state aid instruments may therefore yield unpredictable and harmful consequences for the structure of the press. Consequently, a shift of support mechanisms may have adverse effects on the ability of the sector to fulfil its crucial role in society. The Ministry also finds that the potential negative consequences that may arise from a shift in state aid models should be assigned particular importance during the current period in which the media sector is adapting to digital productions platforms.

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#### **6.5.4 Distortions of competition**

*The assessment of the product markets and geographical markets affected by the aid is assessed individually below with respect to the leading and sole media, the secondary media published locally and the nationwide secondary media.*

##### **6.5.4.1 Leading and sole media**

*The geographical market for leading and sole media is primarily local and to some extent regional, as these media per definition operate in small, local markets.*

Due to the local and regional nature of the leading and sole media covered by the scheme, the Ministry finds that the *product market* for these media is limited to other local news media that operate in the same geographical areas as the recipients of the grant. In the local product markets concerned, the main substitute media are private local radio broadcasters, or local radio and television broadcasts by the NRK.

The NRK has 12 regional services. This implies that the regional footprint of the NRK covers a larger geographic area than the leading and sole media. Consequently, the editorial content of the regional services of the NRK overlap only to a limited degree with that of the leading and sole media. This implies that the readers of the papers may not be inclined to view the NRK regional services as a de facto substitute to the leading and media covered by the scheme.

There are approximately 250 local radios in Norway, located in 141 license areas. As these radios are dependent upon access to scarce radio frequencies, the largest of these are subject to content requirements by the Norwegian Media Authority. The present licence period expires in 2017. Some of these radios may operate in overlapping geographical markets. However, as most commercial radios rely heavily on music, the Ministry assumes that the local radios to a very limited degree operate in the same product markets as the leading and sole media.

As mentioned in chapter 3.4 and 3.5, both the NRK and local radios are covered by other state aid schemes.

In sum, the Ministry concludes that the leading and sole media operate in markets with few or no other substitutes. Consequently, state aid targeting these media probably has little or no effect on competition.

#### **6.5.4.2 Secondary media**

*As described in chapter 5.5, the secondary media are divided into three groups according to their competitive positions and cost levels. There are therefore three different grant rates for the secondary media covered by the scheme. The Ministry finds that the different grant rates reflect the competitive climate in the different geographical markets that the secondary media operate in.*

##### *Nationwide secondary media*

*The nationwide secondary media offer a broad variety of news and current affairs to a national market. These news media operate in the same geographical market as nationwide broadcasters (the NRK, TV 2 etc) and nationwide newspapers that do not qualify for the production grant (Aftenposten, VG etc). Even though it is not a requirement, the nationwide media covered by the scheme provide news and current affairs content with distinct ideological, social or religious perspectives.<sup>35</sup> Because of the distinct perspectives of the content that these recipients provide, they have few substitutes within their product markets.*

The Ministry finds that state aid to nationwide secondary media may have some effects on competition. However, as these media largely have a specialized editorial content, they may to a certain degree be deemed to operate in separate product markets. In addition, the recipients in this group are per definition not leaders in their respective markets. In sum, the Ministry assumes that the distorting effect of the grant to nationwide secondary media is of a limited nature. Furthermore, the Ministry finds that it could be argued that the presence of the

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<sup>35</sup> As for today, the following news media will qualify as nationwide secondary media: Vårt Land and Dagen (religious perspectives), Klassekampen (socialistic ideological perspectives), Nationen (rural perspectives) and Dagsavisen (social-democratic ideological perspectives).

grant promotes competition in the market for nationwide media. This is due to the fact that a number of the present nationwide media would probably not be able to operate without grant.

#### *Metropolitan secondary media*

The secondary media in the metropolitan areas operate in a market for news services where local private broadcasting and local broadcasting by the NRK and other commercial companies are available. In addition, the recipients in this group are per definition not leaders in their respective markets, as they face competition from the leading media in the localities where they are published. In sum, the Ministry assumes the grant to metropolitan secondary media to contribute a healthy competitive environment in the areas where they are present.

#### *Other secondary media*

*The Ministry considers the group “other secondary media” to have the same substitutes as mentioned under the metropolitan secondary media. Consequently the Ministry finds that it can be argued that the grant to these news media promote competition in the areas where they are operating.*

#### **6.5.4.3** Effects on intra-community trade

The grant is calculated according to circulation in Norway. This implies that the scheme in principle is limited to news and current affairs media in Norwegian. The media that are qualified for the notified scheme publish in Norwegian. However, the Ministry would like to point out that the scheme does not rule out publications in other languages than Norwegian. The scheme furthermore does not include any national ownership requirements.

Since the scheme in practice is limited to media in Norwegian, the Ministry considers the effects on intra-community trade to be limited.

#### **6.5.4.4** Media not covered by the scheme

*In this chapter the Ministry gives an overview of media services not covered by the scheme.*

##### *Leading and sole media with circulation above 6000 copies*

*Media with relatively large circulations and/or which are the sole or largest media in the county of publication operate under favourable competitive conditions and often have a strong financial position. These media, consequently, do not require grants.*

##### *Linear broadcasting news media*

*There are two reasons why linear broadcast news media is excluded.*

*Firstly, broadcasting services differ substantially from other types of news media with regard to its business model, as it is not based on circulation figures or editions. Consequently, it would be complicated to include broadcasting services in the existing scheme. In both the current scheme and the proposal for a new scheme, the eligibility criteria and allocation criteria are based on circulation and publication frequency. A grant scheme for linear broadcasting would require a completely different grant model.*

*Secondly, other forms of public support to the broadcasting sector exist. The NRK is funded by a mandatory licence fee on all households that possess a television receiver. The revenues from the licence fee amounts to more than NOK 5 billion. In addition, a separate grant scheme for local broadcasting exists. This grant scheme was not addressed in the consultations, but the Ministry has instructed the Norwegian Media Authority to make this scheme subject to an evaluation. The Norwegian Media Authority will finalise the evaluation in August 2013.*

Further, it should be noted that the exclusion of broadcasting services applies merely to traditional, linear broadcasting. Audiovisual on-line news services on the internet may be

eligible for grants, provided these services meet the other eligibility criteria of the grant scheme.

#### *Free media services*

A wide variety of free news services are provided in the Norwegian market. For the purpose of this document, three separate categories of free news services are identified: free daily and weekly newspapers, free online news services that are offered as an integral part of established media offerings and stand-alone online news services.

Free daily or weekly newspapers are less common in Norway than in many other EEA countries. There are no examples of large free newspapers with significant market-shares. In the Commission decision on the Swedish grant scheme to the press, the Commission stated that free newspapers do not fall within the same product market as paid newspapers, due to the specific content and format of free newspapers. The Ministry considers this principle applicable also to the Norwegian market.

The established media houses offer popular free online services as a part of established media offerings. These online services may be regarded as one of several platforms for publication of the same journalistic content. Most of the recipients offer this type of online news services.

According to the regulations Section 5, the grant may only be used for the production and publication of the principal medium or the associated media products that are organised in the same limited company as the principal medium. This implies that the grant may be used for the production and publication of associated free online news services, provided that the free service shares more than 50 per cent of news, current affairs and debate content with the principal medium, cf. the regulations Section 2, second paragraph. The rationale is that the high quality news content produced by the principal medium should not be limited to publications that charge a user fee. An important goal for the grant scheme is to facilitate distribution of high quality news content on all media platforms, in order to support the recipient medias' important role in society. In this context, the Ministry finds that the beneficiaries' contribution to media pluralism and quality, thus, should be distributed as widely as possible, on all platforms and types of services, and not be limited to services that charges user payment. Consequently, online news services that are offered as an integral part of established media offerings may be financed by media that qualify for the grant. However, free news services are not relevant for the calculation of the grant.

*Stand-alone online news media services fall outside the grant scheme. There are some examples of such services, the most important being Nettavisen. Such services may to some extent offer similar content as that of online services offered as integral parts of established media offerings. Stand alone free news media are not covered by the scheme because user payment is a simple, objective and effective unit of measurement of the value and quality of the different services, as experienced by the users. If free media services were included in the scheme, this would open up for a vast array of services of varying quality and content. This would probably necessitate some kind of monitoring of the quality of these services, to preserve the legitimacy of the grant scheme. As the principle of editorial independence is a key element in media policy in Norway, such a system would neither be viable nor desirable. In contrast, online news services that are part of established media offerings do not raise similar concerns with respect to quality, since at least 50 per cent of the editorial content is offered as part of media services that readers have demonstrated a willingness to pay for.*

Stand-alone free media services that provide the same type of content as the recipients, i.e. news and current affairs content, may be covered by the scheme, provided that they change their business models to user payment and meet the other conditions for the scheme.

### *Trade press, weekly popular press and niche media*

The goal of the production grant is to promote the broad and general public debate, hence the weekly popular press the trade press and other narrow niche publications are excluded from the scheme. The democratic function of the media lies mainly in its role as a source of general news and debate – because this broad scope of news content gives readers a basis for developing independent and informed opinions about political, social and other issues, which is a prerequisite for active participation in democratic processes.

The extension of the grant scheme to include other media than print newspapers has made it necessary to introduce new content criteria to ensure that the scheme still targets the relevant objectives. The criteria are linked partly to the objectives of the business and partly to the published content:

The media enterprise must have as primary objective journalistic production and distribution of news, current affairs and social debate to the general public. Grants are not awarded to media whose primary objective it is to engage in advertising or marketing. In addition, grants are not awarded to media that are aimed primarily at members or employees of specific organisations, associations or companies.

Furthermore, media covered by the production grant must include a broad range of news, current affairs and debate content from different areas of society. Grants are not awarded to media in which a majority of the content consists of advertisements. In addition, grants are not awarded to media that primarily contain material from just one or a few areas of society, or which primarily contain material aimed at a specific professional, political, ideological, religious or ethnic background.

#### **6.5.4.5 Conclusion**

*The Ministry finds that the grant to leading and sole media has negligible distorting effects.*

State aid to secondary media may have some distortive effects as they operate in geographical markets in competition with media that do not benefit from the production grant. However, the distortive effects are of limited significance. Many of the nationwide secondary media has a distinct editorial profile that differs from those of other media in the same geographical market. Furthermore, the secondary media are per definition not market leaders and dependent on the production grant in order to fulfil adequately the media policy goals concerned. Hence, it seems reasonable that the potential removal of the grant would force many secondary media to cease operating. If the secondary media cease to exist, it would lead to less competition in the local and national news media market, resulting eventually in fewer choices for the consumer.

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*DRAFT ACT AND REGULATION*

**Act on Value Added Tax of 19 June 2009 No. 58**

*§ 6-2 Elektroniske nyhetstjenester*

- (1) Omsetning av elektroniske nyhetstjenester er fritatt for merverdiavgift.
- (2) Departementet kan gi forskrift om hva som menes med elektroniske nyhetstjenester.

**Regulation concerning Value Added Tax of 15 December 2009 No. 1540**

**§ 6-2 Elektroniske nyhetstjenester**

*§ 6-2-1 Elektroniske nyhetstjenester*

Med elektroniske nyhetstjenester menes tjenester som omsettes elektronisk og som

- a) hovedsakelig inneholder nyhets- og aktualitetsstoff fra ulike samfunnsområder,
- b) er rettet mot allmennheten,
- c) har en ansvarlig redaktør og
- d) gis ut minst en gang i uken.