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**Subject: State Aid SA.57106 (2020/N)
Compensation scheme for the Danish media sector related to
COVID-19 - Denmark**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 14 May 2020, registered by the Commission on the same day, Denmark notified the above-mentioned scheme, under Article 107(2)(b) of the Treaty of the Functioning of the European Union (TFEU).
- (2) The Danish authorities have confirmed that the granting of the aid is conditional upon the decision of the Commission on the notified measure, pursuant to Article 108(3) TFEU.
- (3) The Danish authorities confirm that the notification does not contain confidential information.
- (4) Denmark exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958,¹ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

2.1 Context

- (5) In the context of the then incipient COVID-19 outbreak in Denmark, the Danish government issued an official recommendation on 6 March 2020², urging all public

¹ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

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events with more than 1000 participants as well as events targeted at designated COVID-19 related risk groups (such as the elderly and vulnerable, irrespective of the number of participants) to be cancelled, postponed, or substantially modified. The Danish government adopted several new measures on 11 March 2020, which included a recommendation by the Ministry of Foreign Affairs inter alia to avoid all unnecessary travel.

- (6) On 14 March 2020, the Danish government closed all Danish borders for foreign citizens, unless they had a valid purpose for entering Denmark, e.g. if the person lives or works in Denmark or has been commissioned to provide goods or services in Denmark.
- (7) On 17 March 2020, gatherings of more than ten people were prohibited. On that same day the government ordered a prohibition on nightclubs, bars, pubs, and on dining-in service at restaurants, cafes etc. Furthermore, hairdresser, tattooists, massage therapists, cosmetologists etc. and indoor shopping centres were to close (except for grocery stores and pharmacies).
- (8) On 6 April 2020, the government announced the extension of a prohibition on large public gatherings until August 2020, which resulted in the cancellation of numerous music festivals, sport events, (summer) fairs etc. that were scheduled to take place throughout the summer.
- (9) The implemented prohibitions were initially to be imposed for two weeks. On 11 May 2020, several prohibitions were extended until 8 June 2020. Measures are now being eased in consecutive phases. Phase 2³ was initiated on 11 May 2020, allowing those parts of the retail sector which had not previously stayed open, (including shopping centres etc.) to reopen. Restaurants could reopen on 18 May 2020, provided that certain requirements issued by the health authorities are adhered to.
- (10) Phase 3 was initially envisaged to start on 8 June 2020, but has been moved to 23 and 27 May 2020. The extent of the reopening during phase 3 will depend on socioeconomic considerations and the spread of infection. Requirements regarding social distancing and hygiene will be put in place for all activities that are open and will now be allowed to open. However, it is expected that the ban on gatherings will be raised to allow gatherings of 30-50 people, and museums, cinemas, theatres, outdoor amusement parks etc. can reopen.
- (11) Phase 4⁴ will be initiated in the beginning of August. The extent of this phase will also depend on socioeconomic considerations and the spread of infection, however,

² The Recommendation is not binding by nature. However, it was assumed that it would be followed and perceived by undertakings as a binding measure.

³ See full list of openings at http://www.stm.dk/multimedia/Aftale_om_plan_for_gen_bning_af_Danmark.pdf (in Danish only).

⁴ The current plan for phase 3 and 4 have been published on the Government's homepage; <https://www.regeringen.dk/nyheder/2020/aftale-om-plan-for-genaabning-af-danmark/> (in Danish only).

public pools, gyms, concert venues, nightclubs etc. will stay closed until phase 4. The ban on larger gatherings (up to 500 people) will be in force until 31 August 2020, entailing that all festivals, large concerts, large plays etc. will be cancelled until the end of August. Borders are still not fully open, but the list of valid purposes for entering Denmark has been slightly extended.

- (12) The Danish authorities point out that the COVID-19 outbreak and the governmental measures adopted have started to affect the real economy, as numerous cancellations of cultural events, restaurant visits, temporary closures of shops and business etc. have had a significant negative affect on the businesses concerned. As a direct consequence, these businesses have actively sought to mitigate their losses, in particular by limiting to the maximum their avoidable spending, causing their external communication budget to shrink. The Danish authorities have explained that as a direct consequence thereof, advertising revenues in the media sector, arising to a large extent from the very business brought to closure by the governmental measures, have also shrunk accordingly.

2.2 Objective of the scheme

- (13) The objective of the notified scheme is to compensate part of the damage that media entities⁵ suffer as a consequence of the measures imposed by the authorities in order to reduce the spread of the COVID-19 outbreak. A media entity is a printed/internet-based media, radio station, television station (title level, station name level) etc. including all affiliated platforms. The application will be submitted by an undertaking with one or more media entities, which will also be the aid beneficiary, however, compensation is based (and calculated) on the basis of each media entity belonging to the undertaking in question. This is similar to the structure of the Danish Media subsidies scheme for editorial production and innovation. See Commission decision SA.36366, prolonged by Commission decision SA.55996.
- (14) The Danish authorities have explained that under the scheme, the damage is defined as the difference between the profit/loss ratio incurred during the COVID-19 outbreak and governmental measures and the profit/loss ratio incurred in the reference period before these events (net losses).
- (15) The compensation will be calculated as a percentage of a media entity's advertising losses offset against other revenues⁶, expressed as the nominal decline in revenue experienced by the entity in the compensation period, and is subject to a claw-back mechanism following an ex post control to ensure that no overcompensation occurs (see recitals (34)-(43) and (66)).

⁵ For the purposes of this scheme, the term "media entity" encapsulates all the relevant business activities and revenue sources, including the production, distribution and sale of advertisements, subscriptions and copies.

⁶ Example: An entity has a total revenue of DKK 10 million during the reference period in 2019 (of which advertising revenue accounts for DKK 5 million and subscriptions account for DKK 5 million). During the compensation period the entity has a total revenue of DKK 8 million (of which advertising revenue accounts for DKK 2 and subscriptions account for DKK 6 million) Although the reduction in advertising revenue amounts to DKK 3 million, due to the increase in subscription revenue, the aid can only amount to DKK 2 million, which is the nominal decline in revenue experienced in the compensation period.

- (16) The Danish authorities have argued that media have an important role to play to ensure media pluralism, democratic debate and cultural diversity, as essential values underpinning a democratic society, as confirmed by Article 11 of the Charter of Fundamental Rights of the European Union⁷ as well as the Amsterdam Protocol,⁸ which sets out that the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism. For these purposes, it is essential, according to the Danish authorities, that the existence of publicly funded media is balanced by privately funded, viable media companies.
- (17) As described in recitals (5)-(12) the implementation of the COVID-19 related measures in Denmark makes it impossible for businesses in a broad range of sectors to carry out their activities during the period when the governmental measures apply, which causes them to reduce their advertising. As a consequence, Danish media entities have, according to the Danish authorities, started to face a significant reduction in advertising revenue in 2020.⁹
- (18) Information provided by the Danish authorities,¹⁰ on the size of overall advertising revenue for the media, per business sector, shows that sectors particularly hit by the COVID-19 outbreak and the government measures contribute significantly to advertising revenues for Danish media. The travel sector, real estate, games and lotteries, retail, cars, convenience goods, attractions, amusement and entertainment, together make up 42% of media undertakings' advertising revenues.
- (19) The Danish authorities have underlined that companies active in the media sector typically have two main sources of revenue¹¹, i.e. subscriptions and advertising, and to a smaller extent the sale of copies. Non-subscribed media companies rely almost entirely on advertising for revenue. No other substantial source of revenue is available to these companies, due to the nature of their activities. They cannot sell a different product or re-allocate staff to other activities, as producing editorial content and selling advertising are their only activities. During the COVID-19 outbreak, some media companies have seen their subscription revenues increase, when demand for news and information rise. In most cases, this does, however, not compensate for the advertising revenue loss.
- (20) The Danish media sector (except for public service providers funded by the Danish government) is to a large extent, and in some cases entirely, financed by advertising - although some media entities are also financed by subscriptions and

⁷ Charter of Fundamental Rights of the European Union, Article 11, Freedom of expression and information, 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. 2. The freedom and pluralism of the media shall be respected.

⁸ Protocol on the system of public broadcasting in the Member States.

⁹ Advertising revenue covers revenue from; sale of advertising space, sponsored content, sponsored (editorial) content etc. See Section 3 (2) of the draft administrative order.

¹⁰ Source: Global Analytics Firm Gallup.

¹¹ Source: Danske Medier.

sale of single copies. The media sector is therefore set to be significantly hit by the current reduced advertising expenditure. The Danish Media Association estimates that the total annual (2019) advertising revenue for all Danish media companies was approximately DKK 14.166 million (approximately EUR 1.899 million) (as compared to DKK 13.887 million (approximately EUR 1.861 million) in 2018).¹² The Danish Media Association also publishes a yearly report on total advertising revenue in the industry. This shows that the total advertising revenue for Danish media outlets (covered by the table below in recital (23)) in 2018 amounted to approximately DKK 3 677 million (approximately EUR 493 million). A 40% reduction in advertising revenue for Q2 in 2020 would therefore amount to a total loss of approximately DKK 368 million (approximately EUR 49 million).¹³

- (21) To address this problem, the Danish government has decided to set up a COVID-19-compensation scheme for Danish media entities irrespective of media outlet. This concerns printed media (including magazines, newspapers, periodicals), electronic media (including podcasts), and broadcasters (including commercial TV/radio) etc., which have experienced reduced advertising revenue due to the governmental measures following the COVID-19 outbreak.¹⁴
- (22) The scheme applies to the whole territory of Denmark. Media entities in the Faroe Islands, Greenland¹⁵, and parts of Germany bordering on Denmark, which are covered by Danish Media subsidies scheme for editorial production and innovation (SA.36366 - Production and innovation aid to written media as prolonged by Commission decision in case SA.55996) will also be eligible for aid under the scheme.
- (23) A recent inquiry carried out by the Danish Media Association aims to establish the extent of the expected decrease in advertising revenue following the COVID-19 outbreak and the governmental measures. The inquiry has been carried out amongst the members of the Danish Media Association and shows the expected decrease for different media outlets by comparing the actual advertising revenues for March 2019 and Q2 2019 to the expected reduced advertising revenue for March 2020 and Q2 2020, respectively:

¹² Advertising revenue excluding revenue from Google, Facebook, LinkedIn etc. (including cinemas) amounts to DKK 9.008 million (approximately EUR 1.207 million) in 2018, as 2019 split by category has yet to be published

¹³ It should be noted that any decrease in the market due to structural changes has not been taken into account.

¹⁴ A brief description of the scheme can be found in the political agreement of 2 April 2020 on the compensation scheme: https://kum.dk/fileadmin/KUM/Documents/COVID-19_DOX/Aftale_om_kompensationsordning_til_medier.pdf (in Danish only).

¹⁵ The Faroe Islands and Greenland do not fall within the jurisdiction of the EU state aid rules.

Average effect	March 2020 (expected decrease) compared to March 2019*	Q2 2020 (expected decrease) compared to Q2 2019*
Local radio	-32%	-49%
Special media/magazines (printed)	-18%	-39%
Daily newspaper/paper (printed)	-43%	-55%
Local newspaper/paper (printed)	-29%	-55%
Digital ¹⁶	-27%	-48%

Source: Coronakrisen – Medievirksomhedernes økonomiske udfordringer, Danske Medier, 26 March 2020 (in Danish only).

- (24) The inquiry shows that the industry expects advertising revenue for March 2020 to be reduced by 18-43 % compared to March 2019. For Q2 2020 the inquiry shows an expected reduction of 39-55 % in advertising revenue compared to Q2 2019.

2.3 Detailed description of the measure

Legal basis

- (25) The legal basis for the scheme is a direct act on the Danish Budget Law (Aktstykke no. 172), which will be elaborated in an administrative order (Bekendtgørelse om kompensationsordning for medievirksomheders tabte annonceindtægter i forbindelse med COVID-19 (issued under Lov om tillægsbevillinger for 2020).

Duration

- (26) The notified measure is intended to compensate for damage in the form of lost advertising revenue incurred from 9 March 2020 until 8 July 2020, as a consequence of the governmental measures following the COVID-19 outbreak, which resulted in advertisers, following the government measures, not being able to carry out their activities, reducing or refraining from advertising. The compensation is not to cover any other loss. Undertakings with media entities will be able to apply for compensation in either May 2020 or October 2020. For undertakings with media entities introducing their request for compensation in October 2020, compensation is expected to be granted no later than in Q1 2021.

Budget

- (27) The estimated budget is, at this stage, DKK 240 million (approximately EUR 32 million).

¹⁶ The category “Digital” covers both the online parts of daily newspapers, magazines etc. but also all online-only publications. No revenue will however be counted more than once.

Form of aid and financing mechanism

- (28) The aid takes the form of a direct grant for damage compensation financed directly by the national budget and is not co-financed by structural funds.

Granting authority or Administrator of the scheme

- (29) Aid will be granted and managed by the Danish Agency for Culture and Palaces, which is an agency under the Danish Ministry of Culture.

Beneficiaries

- (30) Beneficiaries of the notified measure are all undertakings with entities within the media sector which produce editorial content and are covered by the jurisdiction of the Danish Press Council.¹⁷ Entities not covered by the scheme are specified in Section 4 (1)-(5) of the draft administrative order. This jurisdiction entails that independent blogs and unedited online forums, which do not belong to a media entity covered by the jurisdiction of the Press Council, are not covered by the scheme. Furthermore, publications, with the main purpose of advertising – such as tourist brochures etc. – are not covered by the scheme.
- (31) TV and radio stations are only covered by the scheme where the entity has a broadcasting license issued by or is registered by the Radio and Television Board.¹⁸ The term media is to be understood in a wide sense, covering all sorts of media outlets. Thus, the scheme is technology neutral as it covers both written media, internet-based media, broadcasters, podcasts, apps, respectively. The scheme does not cover publicly owned (including partially owned) radio and TV stations, privately-owned radio and TV stations, which predominantly are financed by public funds, and on-demand services. However, one exception applies as media entities located in Südschleswig in Germany, the Faroe Islands, and Greenland, which are eligible for aid under the ordinary production and innovation aid to written media scheme, are covered by the COVID-19 compensation scheme even if they are predominantly being financed by public funds.
- (32) The Danish government estimates that roughly 1000 media entities will be covered by the scheme, ranging from small online specialist magazines to nationwide printed newspapers. It is a requirement that the beneficiaries be registered in the Danish Central Business Register (“CVR” register), on 9 March 2020 at the latest. The register is open for all undertakings.

¹⁷ See Section 2 (1)-(4) of the draft administrative order. The Press Council was established in 1992 pursuant to the Danish Media Liability Act. It is an independent, public tribunal which deals with complaints about the mass media. The aid application will be submitted by an undertaking, which will also be the aid beneficiary, whereas compensation is based (and calculated) on the basis of each media entity belonging to the undertaking. This is similar to the structure of the Danish Media subsidies scheme for editorial production and innovation. See SA.36366 and SA.55996.

¹⁸ See Article 2 (1)-(2) of the draft administrative order referring to Section 45 (1)-(2) and (5), and Section 47 (1)-(2) of the Danish Radio and Television Broadcasting Act <https://www.retsinformation.dk/Forms/R0710.aspx?id=208123> (in Danish only), respectively.

- (33) Undertakings with media entities, which are in difficulty, but fulfilling the requirements established in the notified scheme, may also benefit from the notified aid scheme. It is a condition to receive aid under the scheme that any undertaking with media entities that has benefited from earlier unlawful aid declared incompatible by a Commission Decision is excluded from the scheme, until that undertaking has reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid and the corresponding recovery interest.

Eligible costs and modalities for compensation

- (34) The scheme is intended to compensate part of a media entity's loss of advertising revenue incurred from 9 March 2020 until 8 July 2020 due to the COVID-19 outbreak only. The compensation will not cover any other loss. The compensation will be calculated as a percentage of a media entity's advertising losses offset against other revenues, expressed as the nominal decline in revenue experienced by the entity in the compensation period, and is subject to a claw-back mechanism to ensure that no overcompensation occurs (see recitals (15), (34)-(43) and (66)).
- (35) Compensation under the notified scheme can cover up to 60% of reduced advertising revenue incurred from 9 March 2020 until 8 July 2020, provided that the media entity's total decrease in advertising revenue amounts to 30-50%, and up to 80% of the reduced advertising revenue incurred from 9 March 2020 until 8 July 2020, provided that the media entity's total decrease in advertising revenue amounts to more than 50%.
- (36) The loss of advertising revenue incurred from 9 March 2020 to 8 July 2020 will be calculated based on a comparison of each media entity's average monthly advertising revenue in 2019 (defined as 2019 total advertising revenue divided by 12) multiplied by four compared to the entity's expected or actual reduction in advertising revenue incurred from 9 March until 8 July 2020 – depending on when the entity applies for aid under the scheme.
- (37) In some cases the standard reference period may not provide an accurate reference point, e.g. where an entity changes its publishing frequency (once a week to fortnightly etc.), is a newly established entity, has been divested or has acquired other entities, or has changed from being a physical publication to a digital publication. In these cases the aid may be calculated based on an alternative reference period (one out of two alternative options as described in recital (38)), provided that the entity is able to substantiate that the alternative reference period provides an accurate reference point for the calculation of the COVID-19 related loss.
- (38) Section 8(2)(1) of the administrative order provides that entities established after 1 January 2019, which have not generated advertising revenue for the entire year 2019, may use a reference period from 1 November 2019 until 29 February 2020. Section 8 (2)(2) provides that in special circumstances, which are defined in Section 8(3), entities may also use another alternative reference period. Such special circumstances are for instance where an entity changes its publishing frequency (once a week to fortnightly etc.), has been divested, or has acquired other entities, has changed from being a physical publication to a digital publication or does not have any advertising revenue for the entire year of 2019 or does not have any advertising revenue for the standard reference period. Special circumstances

are however not present in situations, where the standard reference period is affected by a general decrease in the market, seasonal fluctuations etc. Such circumstances are explicitly excluded from the definition of special circumstances in Section 8(3) of the draft administrative order. An alternative reference period must, however, cover four consecutive months (which must be between 1 January 2019 and 29 February 2020).

- (39) In its application for aid, the entity must specify why using an alternative reference period is necessary. The entity will still be required to submit a 2019 revenue statement (if possible), so that the Agency for Culture and Palaces can verify that the standard reference period is not applicable as a reference point. All statements must be verified by a qualified auditor. The Agency will then on a case-by-case basis assess: 1) whether it is necessary to use an alternative reference period, and 2) whether the chosen alternative reference period is an accurate reference point for calculating the COVID-19 related loss.
- (40) Undertakings with media entities applying for aid in May 2020 must submit a statement of advertising revenue for 2019 and a statement of the expected reduction in advertising revenue from 9 March 2020 until 8 July 2020. Aid is then disbursed on account and will be subject to adjustment, once the entity will be able to submit a statement of the reduced advertising revenue incurred from 9 March 2020 until 8 July 2020. Undertakings with media entities currently not covered by the “Production and innovation aid to written media” aid scheme¹⁹ will be entitled to apply for compensation for loss of advertising revenue during May 2020, whereas undertakings with media entities currently covered by the “Production and innovation aid to written media” aid scheme²⁰ will be entitled to apply for compensation from October 2020.²¹
- (41) Undertakings with media entities applying for aid from October 2020 must submit a statement of advertising revenue for 2019 and a statement of the reduced advertising revenue incurred from 9 March until 8 July 2020.
- (42) All undertakings with media entities applying for aid must substantiate that the actual or expected loss in advertising revenue is caused by the governmental measures following the COVID-19 outbreak.²² Irrespective of whether the undertaking applies in May or October, all statements of revenue for 2019 must be verified by a qualified auditor to ensure the accuracy of the reduced advertising revenue incurred. Where the aid exceeds DKK 100 000 (approximately EUR 13

¹⁹ Commission Decision of 20 November 2013, State aid SA.36366 (2013/N) – Denmark – Production and innovation aid to written media, C (2013) 7870 final, prolonged by Commission decision of 22 January 2020, State Aid SA.55996 (2020/N) - Prolongation of aid to production and innovation aid to written media – Denmark.

²⁰ Beneficiaries of aid are printed news media and written internet-based news media, the content of which is targeted at a Danish audience and which produce independent journalistic and editorial content. See Commission Decision of 20 November 2013, State aid SA.36366 (2013/N) – Denmark – Production and innovation aid to written media, C (2013) 7870 final, para 15.

²¹ The Media Board has decided to disburse the entire aid amount for 2020 in April 2020 rather than divided into three instalments (as usual) to entities covered by the “Production and innovation aid to written media” aid scheme.

²² See Section 5(1) of the draft administrative order.

400), statements of actual reduced advertising revenue incurred from 9 March until 8 July must also be verified by a qualified auditor.²³

(43) The Danish government confirms that:

- The Danish authorities commit to carry out control of all applications based on a statement of actual reduced advertising revenue incurred from 9 March until 8 July 2020. The May applications will be submitted at a time where the actual reduction of advertising revenue for the entire period is not yet known. An ex post control will verify in their regard the actual reduction of advertising revenue suffered in the compensation period. As regards the May applications, the compensation paid will be adjusted downwards (claw-back mechanism²⁴) or upwards based on the actual decline in the entity's advertising revenue compared to the reference period.
- The Danish authorities commit to ensure that compensation will only be granted to partly cover a damage that is a direct and documented consequence of the COVID-19 outbreak and the governmental measures taken (see recitals (13)-(15)).
- The Danish authorities commit to ensure that no entity will be overcompensated. To avoid any such overcompensation, the Danish authorities commit to ensure that any aid granted under another COVID-19 aid scheme²⁵ including aid and any other source of income that have a positive effect on the entity's operating losses (such as salary compensation etc.)²⁶, will be deducted from the amount of compensation²⁷. Furthermore, the Danish authorities commit to ensure that the amount of compensation cannot exceed the nominal decline in revenue experienced by the entity in the compensation period (see recitals (13)-(15)).
- The Danish authorities commit to carrying out in depth ex post controls and evaluations of the scheme. Any overcompensation will be recovered.²⁸
- The Danish authorities confirm that aid may only compensate for damage that is not covered by insurance, litigation, arbitration or any other source of

²³ For entities applying in May this is covered by Section 23 (1) of the administrative order. The Agency may also require beneficiaries, which received aid of less than DKK 100,000 to submit a statement verified by a qualified auditor, see Section 23 (3). For entities applying in October, this is covered by Section 15 (2) and (3).

²⁴ Sections 22 (3) and 27 of the draft administrative order.

²⁵ SA.56685, Compensation scheme for the cancellation and postponement of major events following COVID-19, SA.56774, Compensation scheme for fixed costs, SA.56791, Compensation scheme for self-employed, and Temporary salary scheme.

²⁶ See Section 9 of the draft administrative order. Salary compensation will be proportionally deducted in regard to the employees belonging to/working for the entity.

²⁷ See Section 9 of the draft administrative order.

²⁸ See Section 25 of the draft administrative order.

compensation for such damage²⁹. Aid may not be granted to undertakings which are responsible for the damage suffered and/or did not conduct their activities with due diligence or in compliance with applicable legislation, or did not take any measures to mitigate the damage caused by the COVID-19 outbreak and the governmental measures taken.

- Expenditure to cover the auditor's cost in preparation of the required documentation can be covered by the scheme with an aid intensity of 80% up to a maximum of DKK 16 000 (approximately EUR 2 145). Where the work carried out by the auditor concerns more than one media entity, the compensation may cover up to DKK 50 000 (approximately EUR 6 702) per undertaking with media entities.³⁰

3. ASSESSMENT OF THE AID MEASURE

3.1 Lawfulness of the aid measure

- (44) The Danish authorities have fulfilled their obligation according to Article 108(3) TFEU by notifying the aid measure before putting it into effect.

3.2 Existence of aid within the meaning of Article 107(1) TFEU

- (45) Article 107(1) TFEU defines State aid as 'any aid granted by a Member State 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 Member States'.
- (46) The qualification of a measure as aid within the meaning of this provision therefore requires that the following cumulative conditions be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and affect trade between Member States.
- (47) The measure is imputable to the State, since it is based on the legislative acts referred to in recital (25). The compensation envisaged by Denmark will be paid from the State budget and is therefore provided through State resources within the meaning of Article 107(1) TFEU.
- (48) The measure confers an advantage on its beneficiaries in the form of a direct grant for damage compensation (recital (28)). It relieves those beneficiaries of costs, which they would have to bear under normal market conditions. The advantage corresponds to the amount of compensation paid under the scheme (recitals (34)-(43)).
- (49) Since the compensation will be granted only to those entities within the media sector, which produce editorial content and are covered by the jurisdiction of the Danish Press Council (recitals (30) and (32)), the measure is selective.

²⁹ See Section 9 (1) of the draft administrative order.

³⁰ See Section 18 of the draft administrative order.

- (50) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (51) The proposed aid measure therefore constitutes State aid within the meaning of Article 107(1) TFEU.

3.3. Compatibility assessment

The notion of exceptional occurrences within the meaning of Article 107(2)(b) TFEU

- (52) Article 107(2)(b) TFEU stipulates that aid to make good damage caused by natural disasters or exceptional occurrences shall be compatible with the internal market. Neither the TFEU, nor other Union legislation, contains a precise definition of the notion of exceptional occurrence. As they constitute exceptions to the general prohibition of State aid within the internal market laid down in Article 107(1) TFEU, the Commission, in line with the consolidated Union case-law³¹ has consistently held that the notions of ‘natural disaster’ and ‘exceptional occurrence’ referred to in Article 107(2)(b) TFEU must be interpreted restrictively.
- (53) The characterization of an event as being an exceptional occurrence is made by the Commission on a case-by-case basis, having regard to its previous practice in the field³². In this regard, the following indicators relating to the event concerned must be cumulatively met: (i) unforeseeable or difficult to foresee³³; (ii) significant scale/economic impact³⁴, and (iii) extraordinary³⁵.

³¹ Judgement of the Court of Justice of 11 November 2004, *Spain v. Commission*, C-73/03, ECLI:EU:C:2004:711, paragraph 37 and judgment of the Court of Justice of 23 February 2006, *Giuseppe Atzeni and others*, in joined cases C-346/03 and C-529/03, ECLI:EU:C:2006:130 paragraph 79.

³² Exceptional occurrences which have been accepted in the past by the Commission include war, internal disturbances and strikes, and, with certain reservations and depending on their extent, major industrial accidents which result in widespread economic loss, see *Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020*, paragraph 330 (OJ C 204, 1.07.2014, p. 53).

³³ Commission Decision of 1 August 2008, case SA.32163, *Remediation of damage to airlines and airports caused by seismic activity in Iceland and the volcanic ash in April 2010, Slovenia*, paragraph 31.

³⁴ Elements taken into account by the Commission to consider that the occurrence reached a significant scale: negative consequences cannot be contained (Commission Decision of 4 October 2000 on case NN 62/2000, *Régime temporaire d'aides aux entreprises victimes des intempéries et de la marée noire – France*), or because of the number of dead or injured people (Commission Decision of 11 April 2012 on case SA.33487, *Agricultural and fisheries aid to compensate for damage due to exceptional occurrence (red mud "Aluminium accident")*, Hungary, paragraph 35; Commission Decision of 2 May 2002 on case N241/2002, *Régime en faveur des entreprises victimes de la catastrophe industrielle de Toulouse, France*, paragraph 19), the immense ecological and economic damage (Commission Decision of 11 April 2012 on case SA.33487, paragraph 36), the amount of material damage despite the local character of the industrial accident (Commission Decision of 2 May 2002 on case N 241/2002, paragraph 19).

³⁵ In its Decision of 19 May 2004 in case C-59/2001 (OJ L 62, 2007, p. 14), the Commission considered that the (alleged) fall in sales of poultry meat in a Member State not directly affected by the dioxin contamination, did not constitute in itself an exceptional occurrence. It was yet an unforeseeable event, but formed part of the normal commercial risks to which an undertaking is exposed.

The COVID - 19 outbreak as an exceptional occurrence

- (54) Following the first reports of cases of COVID-19 in the Chinese Wuhan municipality at the end of December 2019, the Chinese authorities have identified a novel coronavirus (SARS-CoV-2) as the main causative agent, which had not been previously identified in humans. The outbreak has rapidly evolved affecting not only other parts of China but has also spread to the majority of countries worldwide, including almost all EU Member States. Outbreaks of novel virus infections among people are always of public health concern and can have a significant economic impact. Specific sectors and areas are particularly affected by the outbreak, be it because of national outbreak control measures, travel restrictions or supply chain disruptions.
- (55) The World Health Organization ('WHO') has declared the COVID-19 outbreak a pandemic. In order to avoid an exponential increase in the number of cases, accompanied by social alarm and severe economic consequences, containment measures need to be adopted. According to WHO reports and derived from the observation of the current situation, the spread of COVID-19 and the containment measures adopted can result in far-reaching disruption of various economic sectors. This disruption is thus clearly outside the normal functioning of the market.
- (56) The pandemic³⁶, associated with the public health risk deriving from the absence of therapeutics or vaccines for the novel COVID-19, determine the exceptionality of the circumstances. The measures to contain the rapid spread can cause enormous consequences in terms of economic and societal disruption.
- (57) In view of the above, this event qualifies as an exceptional occurrence as it was not foreseeable, as it clearly distinguishes itself from ordinary events by its character and by its effects on the affected undertakings and the economy in general and therefore lies outside of the normal functioning of the market. In this context, the COVID-19 outbreak can be considered as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU.

Causal link between the damage to be compensated by the notified scheme and the exceptional occurrence of the COVID-19 outbreak

- (58) The Court has held that only damage caused by natural disasters or exceptional occurrences may be compensated for under Article 107(2)(b) TFEU. It follows that there must be a direct link between the damage and the exceptional occurrence, which the State aid measure provides compensation for and that as precise an assessment as possible must be made of the damage suffered by the beneficiary concerned. The COVID-19 outbreak qualifies as exceptional occurrence (see recital (57)).
- (59) The Commission has examined the notified scheme pursuant to Article 107(2)(b) TFEU. This assessment has led to the following observations.

³⁶ WHO, Coronavirus disease 2019 (COVID-19) – Situation Report 50, 10 March 2020. On 11 March 2020, the WHO characterised the COVID-19 disease as a pandemic.

- (60) As a result of the latest developments of COVID-19 outbreak in Denmark, as of 6 March 2020, and in particular 11 and 17 March 2020, the Danish government has issued a number of recommendations/prohibitions aiming at avoiding the dissemination of the virus by closing down a large part of the Danish society and Danish businesses - including cancellation of all cultural events, professional sports, closure of shopping centres, restaurants and cafes, bars etc. (see recitals (5)-(12).
- (61) As described in recitals (12) and (17), the implementation of the COVID-19 related measures in Denmark made it impossible for businesses in a broad range of sectors to carry on their activities, which resulted in them reducing or refraining from buying advertising for their products and services. As a consequence of these governmental measures, advertising is expected to decrease significantly throughout the duration of the governmental measures, resulting in economic damage for the media sector. As underlined in recital (20), the media sector is to a large extent, and in some sectors entirely, financed by advertising, making it difficult for these media outlets to uphold on their business when advertisers reduce or refrain from advertising due to the fact that they are unable to carry out their activities following the government measures, and therefore have none or limited products and services to offer. As explained in recital (18), sectors particularly hit by the COVID-19 outbreak and the government measures in ordinary circumstances contribute significantly to advertising revenues for Danish media. The travel sector, real estate, games and lotteries, retail, cars, convenience goods, attractions, amusement and entertainment, together make up 42% of media companies' advertising revenues.
- (62) The demonstrated damage of those companies can be quantified as the difference between the profit/loss incurred in the new circumstances (after the COVID-19 outbreak and governmental measures) and the profit/loss incurred in the reference period before these events (net losses). In light of the fact that the media sector is so dependent on advertising, in particular by the business sectors whose activity was substantially affected by the Covid-19 related measures, the Commission considers that that damage is directly linked to the exceptional occurrence, since the causal chain starts directly from the governmental measures imposing restrictions on economic and civil life, and not from advertisers having less means or will to advertise.
- (63) Denmark confirmed that, while the prohibitions and recommendations suspending all activities that are not essential to avoid dissemination of the virus are now progressively being lifted, some are still, and will remain, in force (see recitals (9)-(12). For instance the prohibition against gatherings of more than ten people is expected to be modified to 30-50 people by June, and the prohibition against gatherings of 500 people is expected to remain in place until August 2020. The Danish borders remain closed until further notice. The progressive lifting of the prohibitions and recommendations are intended to ensure a slow and controlled return to normal business conditions. The Commission considers the duration of the measure until 8 July 2020 reasonable in this context, and the entirety of the notified duration of the scheme is considered to be directly linked to the COVID-19 outbreak and the government measures issued because of it.
- (64) As described in recitals (16)-(24) and (42) of this decision, only undertakings establishing a direct link between the damage suffered from the COVID-19

outbreak and the measures taken by the Danish government to prevent the spread of the virus on the national territory, shall be entitled to compensation under the scheme.

- (65) The Danish government has defined the damage, which give rise to compensation under the scheme, as the difference between reductions in advertising revenue incurred from 9 March 2020 to 8 July 2020 with the media entity's average monthly advertising revenue in 2019, subject to a claw-back mechanism to ensure that no overcompensation occurs (see recitals (34)-(43) and (66)).
- (66) The submitted information will be checked by the Agency for Culture and Palaces ex-post and recovery will take place against actual figures of reduction in revenue. As compensation is based on the level of actual reduction in advertising revenue together with ex post controls and a claw-back mechanism, the Commission considers that entities which were already loss making before the COVID-19 outbreak will not be overcompensated. As described in recitals (16)-(24) and (42) of this Decision, only beneficiaries establishing a direct link between the damage suffered from the reduction in advertising revenue as a direct result of the COVID-19 related decisions and bans issued by the Danish government on 6, 11, 14 and 17 March and 6 April 2020, closing down a large part of the Danish society and Danish businesses to prevent the spread of the virus on the national territory, shall be entitled to compensation.

Proportionality of the aid measure

- (67) In order to be compatible with Article 107(2)(b) TFEU, the aid must be proportional to the damage caused by the exceptional occurrence. Aid must not result in overcompensation of damage; it should only make good the damage caused by the exceptional occurrence.
- (68) As described in recitals (13)-(15), the demonstrated damage of those companies concerned is the difference between the profit/loss incurred after the COVID-19 outbreak and governmental measures and the profit/loss incurred in the reference period before these events (net losses). In the present case, the compensation will be calculated as a percentage of a media entity's advertising losses offset against other revenues³⁷, expressed as the nominal decline in revenue experienced by the entity in the compensation period, and is subject to a claw-back mechanism to ensure that no overcompensation occurs (see recitals (34)-(43) and (66)).
- (69) The Danish authorities have put in place the following safeguards, so that the compensation under the notified measure does not exceed what is necessary to make good the damage and thus meets the above-mentioned criteria.
- (70) First, the amount of compensation cannot exceed the nominal decline in revenue experienced by the company in the reference period (see recital (15)(13)).

³⁷ Example: An entity has a total revenue of DKK 10 million during the reference period in 2019 (of which advertising revenue accounts for DKK 5 million and subscriptions account for DKK 5 million). During the compensation period the entity has a total revenue of DKK 8 million (of which advertising revenue accounts for DKK 2 and subscriptions account for DKK 6 million) Although the reduction in advertising revenue amounts to DKK 3 million, due to the increase in subscription revenue, the aid can only amount to DKK 2 million, which is the nominal decline in revenue experienced in the compensation period.

- (71) Second, as set out in recital (35), the amount of compensation is limited to maximum 80% of the demonstrated damage.
- (72) Third, aid may only cover damage that is not covered by insurance, litigation, arbitration or any other source of compensation for such damage. Aid may not be granted to entities which are responsible for the damage suffered and/or did not conduct their activities with due diligence or in compliance with applicable legislation, or did not take any measures to mitigate the damage caused by COVID-19 and the related government measures. Expenditure to cover an auditor's cost in preparation of the required documentation can be covered by the scheme with an aid intensity of 80% up to a maximum of DKK 16 000 (approximately EUR 2 145). Where the work carried out by the auditor concerns more than one media entity, the compensation may cover up to DKK 50 000 (approximately EUR 6 702), see recital (43).
- (73) Fourth, as explained in recitals (37)-(39), the standard reference period may in some cases not provide an accurate reference point, e.g. where an entity changes its publishing frequency (once a week to fortnightly etc.), is a newly established entity, has been divested or has acquired other entities, or has changed from being a physical publication to a digital publication. In these cases the aid may be calculated based on an alternative reference period, provided that the entity is able to substantiate that the alternative reference period provides an accurate reference point for calculating the COVID-19 related loss. This ensures that an adequate compensation is provided. Fourth, all undertakings with media entities applying for aid must substantiate that the actual or expected loss in advertising revenue is caused by the governmental measures related to the COVID-19 outbreak. All statements of revenue for 2019 must be verified by a qualified auditor to ensure the accuracy of the reduced advertising revenue incurred. Where the aid exceeds DKK 100 000 (approximately EUR 13 400), statements of actual reduced advertising revenue incurred from 9 March until 8 July must also be verified by a qualified auditor, see recital (42).
- (74) Fifth, in case the aid granted on the basis of this scheme exceeds the nominal decline in revenue caused by COVID-19, it will be recovered (claw-back mechanism), as foreseen in recital (43) thereby avoiding overcompensation.
- (75) Sixth, the Agency for Culture and Palaces will make in depth ex post verifications following a methodology to be previously agreed with the Commission of the audit performed, see recital (43).
- (76) The Danish authorities have therefore ensured that the compensation under the scheme will not exceed the damage directly suffered by each beneficiary as a result of the measures imposed by the Danish government on 6, 11, 14 and 17 March and 6 April 2020, in order to contain the spread of the virus.

Cumulation

- (77) The Danish government confirms that where aid under this scheme is cumulated with other COVID-19 aid schemes³⁸, the amount of aid received under another COVID-19 scheme which has a positive effect on the entity's operating losses will be deducted from the aid granted under this scheme to avoid overcompensation (see recital (43)).³⁹
- (78) In view of the above, the Commission considers that the notified aid scheme is compatible with the internal market in accordance with Article 107(2)(b) TFEU.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(2)(b) of the Treaty on the Functioning of the European Union.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION

³⁸ See Commission decision of 12 March 2020, State Aid SA.56685 (2020/N) – DK – Compensation scheme for cancellation of events related to COVID-19, Commission decision of 21 March 2020, State Aid SA.56708 - Danish guarantee scheme for SMEs affected by COVID-19, Commission decision of 25 March 2020, State Aid SA.56791 - Temporary compensation scheme for self-employed financially affected by the COVID 19, Commission decision of 30 March 2020, State Aid SA.56808 (2020/N) - Denmark Liquidity guarantee scheme under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, Commission decision of 2 April 2020, State Aid SA.56856 (2020/N) - Denmark COVID-19: State loan for the Danish Travel Guarantee Fund, Commission decision of 3 April 2020, State Aid SA.56892 (2020/N) – Denmark – Amendment to the aid scheme SA.56791 on temporary wage-compensation scheme for self-employed financially affected by the COVID-19, Commission decision of 8 April 2020, State Aid SA.56774 - Compensation scheme to companies exposed to large turnover decline related to COVID-19, Commission decision of 15 April 2020, State Aid SA.56795 Compensation for the damage caused by the COVID-19 outbreak to Scandinavian Airlines, Commission decision of 30 April 2020, State Aid SA.57027 - Covid-19 - Credit facility and tax deferrals linked to VAT and payroll tax – Denmark, Commission decision of 5 May 2020, State Aid SA.57151 - Adjustment and prolongation of compensation scheme to companies exposed to large turnover decline related to COVID-19 (fixed costs), Commission decision of 5 May 2020, State Aid SA.57164 - Denmark – Covid-19 - Loan scheme for early stage and companies in the venture segment, and Commission decision of 7 May 2020, State Aid SA.57199 - Prolongation and adjustment of temporary compensation scheme for self-employed financially affected by the COVID 19.

³⁹ See Section 9 of the draft administrative order.