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KULTUR- OG KIRKEDEPARTEMENT

Royal Ministry of Culture and Church Affairs

The European Surveillance Authority
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Your ref.
Letter 17 July 2003

Our ref.
2003/331 AØ/LS RFS

Date
1 September 2003

COMPLAINT REGARDING NORWEGIAN LOTTERY LEGISLATION

We refer to the Authority's letter of 17 July 2003 and previous correspondence.

I. Introduction

On 17 June 2003 the Norwegian Parliament enacted the Government's proposal to establish a monopoly for the operation of gaming machines in Norway. The amendment entails that the state owned company Norsk Tipping AS will have an exclusive right to operate gaming machines in the Norwegian market from 1 January 2006. The new regulation will be implemented by 2004 and with full effect from January 2006. The current licences are due to expire gradually at various times in the course of 2004/2005.

II. The aims of the new regulation

The main objective of the establishment of a monopoly for gaming machines in Norway is the prevention of gambling addiction. An additional objective is the reduction of crime, including breaches of conditions and regulations concerning the operation of gaming machines.

These objectives will be achieved by restructuring the market within a more stringent and controlled framework, in order to enable the Ministry to exercise direct influence on the operation of gaming machines. It is the Ministry's conclusion that these objectives can only be achieved on a sufficient and permanent basis within a different market structure than at present. The monopoly will ensure a substantial reduction in the total number of machines, more satisfactory machine functionality and the installation of machines in more appropriate gaming environments.

The decision to grant an exclusive right to the state owned company Norsk Tipping will ensure far greater flexibility with regard to future regulations than can be achieved in a competitive

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market or in a market with one concession granted to a single private operator for a specific period of time. A monopoly, operated by the government-owned Norsk Tipping will allow for regulations to be amended overnight and adjusted upon receiving updated knowledge on the reasons for gaming machine addiction and problem gambling. This will not be possible with a concession model.

As indicated in our letter of 24 February 2003 it is necessary to reduce the gross turnover from gaming machines in Norway in order to prevent problem gambling. The proposal for Parliament states that a monopoly system with a non-profit operator will be able to sustain the profits for the charity organisations even with a reduction of the total turnover by 40 % based on the total turnover and profit for 2001, see Ot.prp.nr 44 (2002-2003) page 27. Since the charity organizations' profits from gaming machines have increased significantly from 2001 to 2002, along with the increase in the total gross turnover from 9 mrd NOK til 15 mrd NOK, a sustained profit at 2001-level will entail a substantial profit reduction for these organisations from 2005. The Norwegian Government and the Parliament consider this necessary in order to achieve a more responsible and moderate market for gaming machines.

III. The role of Norsk Tipping AS – access to documents

Please find with this letter a copy of all documents exchanged between the Ministry and Norsk Tipping AS concerning the legislative history of the proposal set out in Ot.prp.nr. 44 (2002-2003). The information in the Norsk Tipping documents of 1 July 2002 and 19 September 2002 restricted according to national law, is indicated in yellow.

The Ministry wishes to underline the importance of Norsk Tipping AS as a policy instrument for regulating and controlling gaming activities. The company is under direct political control with regard to both the drawing up of regulations and through the Ministry's capacity, as owner and annual general assembly. At the same time the Gaming Board continuously controls and monitors all the games on offer.

IV. Proportionality of the new regime.

IV.1 Prevention of gambling addiction and under-age gambling

In order to prevent gambling addiction and under-age gambling, the Ministry considers it necessary to improve the control of machine software and reduce the number of machines as well as achieve more stringent regulations regarding machine locations. Within the new regulatory scheme, machine software can be changed overnight and adjusted upon receiving updated knowledge on the reasons for gaming machine addiction and problem gambling. The new machines will be reduced in number and only located in environments that do not expose the machines to minors and problem gamblers in the same way as today.

Based on experiences from the present model in Norway as well as experiences from Sweden and Canada, the Ministry is of the opinion that the direct presence of private interests in the market, makes it more difficult to regulate and control the market sufficiently, with regard to the negative consequences of gaming machines. The Ministry believes that the problems of regulation and control will increase in the future along with new technological advances as manufacturers develop their knowledge of the key factors that attract players to gaming

machines. In this perspective the Ministry considers it important to take the necessary steps towards a reduction and prevention of gambling problems.

In this regard the Government recalls that gaming and lottery activities in Norway have never been permitted as a free competitive market, due to the fear of negative social consequences. The Ministry considers it important to uphold this legislative aim. Against this background the Ministry finds that the market conditions for private providers of lottery and gaming services should not be given priority ahead of the weighty society's need for protection against gaming problems.

IV.1.1 *A stricter concession system as an alternative to the monopoly*

The Ministry is convinced that the new model with a single government-owned operator will contribute to a reduction in the risk of players developing problems related to gambling addiction. One will also solve the problem of machines not meeting the requirements in the prevailing regulations being installed in the market. Unforeseeable defects will easily be remedied by withdrawing machines quickly from the market so that they do not expose players to unpredictable risks of problem gambling. It is also the Ministry's assessment that an exclusive right model with a state owned operator will allow for fast and effective amendments to machine functionality. More efficient player protection will be achieved as machines can be adjusted without delay upon receiving new knowledge concerning which factors increase the risk of developing gambling problems. In the present model, such changes must be implemented on the basis of hearings and transitional periods, instituted to secure predictability for private operators. For the sake of good order, the Government notes that existing machines in breach of present regulations are however allowed to stay in the market through a transitional period in order to secure predictable conditions for the private operators.

At present the Norwegian gaming machine market is regarded as being one of the most liberal markets in Europe. It is therefore a declared objective that gaming machines should not only be operated pursuant to stricter regulations regarding location, but should also contain a totally new machine concept with regard to functionality. A monopoly will enable the Ministry, due to the authority of ownership of Norsk Tipping, to make amendments to legislation at short notice. The difficulties with regulations within the present model is partly caused by the fact that the standards of responsible gaming machine regulation are hard to define in absolute terms. This calls for a flexible system where regulations can be adjusted continuously, along with approved knowledge and experience. This is hard to achieve within a model where competitors have the right to demand public hearings of every change in soft-ware requirements etc. The same problem will arise in a concession system where the concession standards are defined for a period of several years. In a system with Norsk Tipping as a single operator, necessary changes in machine functionality, location or operations may be implemented solely on the basis of social considerations, without meeting mass opposition and lobbying from private business interests focusing on loss of revenues. The Ministry, as the authorities in Canada and Sweden, considers this to be a vital element in order to provide more responsible gaming opportunities through gaming machines in Norway.

IV.1.2 *The location of slot machines*

The reduced number of machines from 18 000 to 10 000, as well as stricter regulations on the location of gaming machines, will shelter minors as well as persons with gambling problems, who try to avoid such machines, from unwillingly coming across machines during their everyday shopping etc. It will also be easier to prevent under-age gaming because the new machines will have a voucher system which will make it possible to check the age of all prize winners as well as regulation and enforcement of obligations for the proprietors of locations where machine are installed. Failure to fulfil these obligations may result in a cancellation of the contract with the monopoly operator. In the current market, however, the proprietor of a location may easily contact another machine operator if his contractor should choose to move the machine to another location.

There is reason to believe that basically all kinds of regulations concerning the location of gaming machines could be implemented within both a competition/concession market and a state owned monopoly. However, the Ministry expects that violations to the regulations are less likely to occur within a monopoly model. A non-profit state owned operator has no incentive to push the limits of prevailing regulations in order to improve profits or strategic position in relation to competitors. Violation of regulations regarding machine location and functionality is therefore less likely to be instigated by the operator. Within a monopoly model a non-profit operator is more free to institute and enforce contractual obligations towards the owner of the location in order to improve the level of constant control by the staff at the location. As mentioned above, the present model allows the proprietor to contact another machine operator if his contractor chooses to move the machine away from the location.

The content of future legislation for gaming machines will be determined by the Ministry not by Norsk Tipping, though regulations and provisions ensuring that government policy on machines will be fulfilled in accordance with the objectives of the monopoly. The ownership structure implies that the Ministry evidently does not have to accept any kinds of preconditions from Norsk Tipping upon a re-regulation of the market. In this respect the only objective of the company is to be an instrument for government policy on gaming in Norway. The company has no legislative authority.

The Ministry has not given a formal response to Norsk Tipping concerning the preconditions in the letter of 19 December 2002. Final regulations regarding locations, machine software etc will be determined by the Ministry based on a dialog with Norsk Tipping and the Norwegian Gaming Board. A main objective is to remove machines from grocery stores and open areas in shopping malls, where gaming addicts and minors appear by necessity as part of their everyday shopping. In such areas, control and surveillance by local staff can only be done occasionally. In kiosks and gas stations minors and problem gamblers do not have to appear by necessity. In such smaller locations machines may also be kept under constant supervision by the local staff, so that addicted persons who want to be kept away from machines can more easily be helped to do so. On these terms it is likely that the category "stjernekiiosk" as well as kiosks and gas stations will be found suitable as a location for gaming machines. Public transportation waiting rooms will only be permitted as a location if the machines are kept under constant supervision from staff.

IV.1.3. *Enforcement of the 18-years age limit*

The new act granting a sole right to Norsk Tipping does not include the same strict limitations on the location of machines as outlined in the Ministerial proposal of 21 June 2002. Even though the final concept for machine locations in the monopoly regime has not yet been defined, the Ministry considers that the benefits from the monopoly model itself makes it possible to allow machines into locations without absolute access control. This is, as mentioned above, due to increased control of the location and the flexibility with machine software adjustments. The Ministry's view on this issue is not based on objections from Norsk Tipping, but on the assumption that a responsible development within the monopoly model allows for a less strict location policy than does the present regime.

IV.2 Prevention of crime

In contrast to the present model, a monopoly system will minimise manufacturers' attempts to find loopholes and bend the framework of current regulations in order to improve market shares through aggressive elements in the machines. Illegal use of charity revenues to secure and improve market shares is also a well known problem within the current regime. Such violations are obviously hard to disclose and even harder to prevent in a competitive system.

The new model will also prevent more efficiently violations like machine burglary and theft of machines as well as money laundering. The voucher system will minimise the cash supply in the machines by moving the cash for prizes from the machines to the locations' own cash supply. The network-system will make it possible to follow the cash-flow in detail. The economic risk of a loss caused by criminal acts will thus be moved from the machine operator to the location manager. This should encourage the local manager's efforts to prevent crime. Such improvements can however also be achieved in a system with private machine operators.

However, it is important to be aware of the fact that the negative social consequences caused by problem gambling also lead to criminal acts from players. This means that a reduction of problem gambling alone will contribute to a reduced level of crime.

IV.3 Improved business control

As mentioned above, the Ministry is of the opinion that the establishment of a monopoly is a necessary measure. Previous attempts to regulate the market within the framework of the existing system have failed, due to massive opposition from the market participants. It is the Ministry's assessment that a competitive market, compared with a state controlled monopoly, by nature is more preoccupied with sustaining optimal revenues and profits and less focused on the prevention of problem gambling and other social considerations.

The Ministry acknowledges the fact that the Gaming Board's control and inspections of machines have found few breaches in legislation with regard to machine functionality after type approval. The Ministry would, however, like to emphasise that in Norway the problem is not the presence of unlicensed software in machines. The problem is however, the presence of aggressive machines in locations that are not considered as natural gaming environments with regard to social considerations. Furthermore, in the type approval process it has been proven difficult to control the functionality of machines. Manufacturers strive to find loopholes and bend the framework of current regulations to allow them to introduce aggressive elements in

machines. These attempts to bypass regulations are reasoned by profit motives. Such attempts undermine the efforts of the Gaming Board's Authority to ensure that all machines function in accordance with the prevailing regulations. Only a system where the profit is not prevailing, will ensure the social objectives to be sufficiently taken care of.

IV.4. Additional considerations

At the present time regulations regarding the functionality of the new machines have not been drawn up. Norsk Tipping has begun making enquiries into the market with regard to machine type and possible manufacturers and suppliers. The company will however follow the procedures set out in the EEA initiated Public Procurement Act of 16 July 1999 concerning Norway's obligations pursuant to the European Economic Agreement with regard to the principle of the free flow of goods in Articles 8 and 65. Decisions on regulations concerning the games allowed on the machines can probably be expected during the first quarter of the year 2004.

Norsk Tipping will not be using subcontractors for the operation of gaming machines. The company will create its own gaming machine division within the present company structure.

Enclosed, please find a copy of all the requested documents. In addition, please find enclosed a copy of a letter of 23 May 2003 from the Ministry to the Parliament which includes the Ministry's comments on a memorandum of 19 May 2003 from the machine operator Norsk Lotteridrift ASA (NLD ASA) to the Standing Committee on Family, Cultural Affairs and Government Administration.

Finally, it should be emphasised that the Ministry is ready at any time to provide the EFTA Surveillance Authority with any other information needed for the further clarification of this matter, including separate meetings with the Authority in Oslo or in Brussels.

Yours sincerely,

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Director General

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