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KULTUR- OG KIRKEDEPARTEMENT

Royal Ministry of Culture and Church Affairs

The EFTA Surveillance Authority
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Your ref.
Letter 6th January 2004

Our ref.
2003/331 AØ/LS RFS

Date
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**AMENDMENTS TO NORWAY'S GAMING AND LOTTERY LEGISLATION
– GRANTING OF EXCLUSIVE RIGHTS TO NORSK TIPPING A/S**

We refer to your letter dated 6 January 2004 concerning the above. The Ministry's reply and comments to the questions and observations in your letter are given below.

**1. Significance of the Gambelli case for an evaluation of Norway's gambling policy,
ref. question 1 on page 5 of your letter**

The Ministry agrees with the presuppositions and interpretations presented by the Authority in respect of the statements of the Court of Justice of the European Communities (the ECJ) in case C-243/01 (the Gambelli case), ref. III and IV in the Authority's letter of 6 January 2004. Generally speaking, however, it is difficult to see that the Court of Justice's statement in the Gambelli case represents any changes in the principles established by the Court in previous cases on national regulation of gaming and lotteries. This applies in particular to the question of gambling addiction and problematic gambling behaviour, which are the main concerns behind Norway's gaming and lottery legislation. Insofar as the question of gambling addiction and gambling behaviour is touched on in the Gambelli case, it is difficult to see that the ECJ's conclusions supplement or amend statements in previous cases where importance has been attached to this consideration.

We would also draw attention to the fact that the Gambelli case has its origin in particular circumstances in the Italian gambling market and is thus not immediately applicable to the situation in Norway.

The Ministry would like to comment as follows on the observations made by the Authority in the last two paragraphs on page 4 of its letter, concerning the games at present offered by Norsk Tipping.

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a) Electronic gambling via the Internet

It has been possible in Norway since 2000, as part of a pilot project, to provide money games via electronic platforms such as the Internet. The background for this trial scheme is the wish to gain experience from electronic gambling services before any approval is given for such services on a permanent basis. On page 16 of Ot.prp. nr. 44 (2002-2003) *On the Act relating to Amendments in Gaming and Lottery Legislation*, the Ministry wrote (translated from Norwegian):

“Against the background of an evaluation of the trial projects, among other things, the Ministry will consider allowing games via the Internet and other electronic channels. However, consideration must be given to the fact that the Internet provides easy access to gambling from the privacy of one’s own home, and this could pave the way for undesirable gambling behaviour. In light of this, the authorities will under all circumstances exercise caution in permitting new money games that are custom-made for the Internet and other electronic channels.”

The Norwegian Gaming Board (*Lotteritilsynet*) is in the process of evaluating the trial project on online gaming services and plans to submit its report to the Ministry in the course of this year.

As far as Norsk Tipping is concerned, the pilot project has only made it possible for the company to offer existing games via electronic platforms. The company has not developed special games for electronic services; it has only adapted the games it already has. Norsk Tipping offers seven different games today: Lotto, VikingLotto, Joker, Oddsen, Extra, Tipping and Flax. With the exception of Flax, all of these games are included to some degree in the pilot project. Supplementary rules have been issued in connection with the testing of online gambling in order to allow the games to be adapted for the new media. However, this does not mean, as the Ministry sees it, that a opening has been provided for new kinds of games, which seems to be the basis for the Authority’s comment in the second last paragraph on page 4 of its letter.

The games offered by Norsk Tipping via electronic channels are covered by the Ministry’s regulatory framework and they comply with the guidelines issued by the Ministry for the establishment of pilot projects. In accordance with these conditions, Norsk Tipping is offering games today via the Internet, mobile phones and DTV (digital TV). The online games are the same as the games offered by Norsk Tipping through its agents, with the exception of Flax which is a scratch card game. The company has decided not to offer instant games like Flax. This type of game will probably require different monitoring and control measures with regard to limiting problematic gambling behaviour than the company’s other games. More experience with this sort of game is therefore desirable before it can be offered on line. Participation in Norsk Tipping’s Internet games requires special registration and the installation of a separate card reader connected to the Internet terminal. As of today, about 2,5 per cent of Norsk Tipping’s players can participate in Norsk Tipping’s games via the Internet.

Norsk Tipping’s Langoddsen without system betting and lightening Lotto are accessible via mobile telephones by about 400 selected participants in a limited test programme. This is a smaller laboratory-based test aiming first and foremost for technical verification of the system and a basis on which to assess its user-friendliness and what products it is suitable for. On the basis of the experience already gained, the company is planning new systems for further testing.

The fixed odds game, Langoddsen, again without system betting, is available via DTV. From the middle of May, Norsk Tipping will also offer Lotto and VikingLotto via DTV. These games are available to punters who have Norsk Tipping's new player's card (smart card) and who are also customers of Canal Digital (i.e. have a digital TV connection).

In money games where there is a distance in time (hours or days) between betting and winnings, there is little danger of developing an addiction. Norsk Tipping's games, with the possible exception of Oddsen, must be characterized in all gambling addiction contexts as low risk games. As regards Oddsen in particular, the regulations have been tightened up (due to aggressive activities) in order to limit gambling behaviour problems, see below. The Ministry has therefore agreed that the state-owned money games, with their low risk profile, can be offered via electronic platforms on a trial basis.

b) Paying by electronic payment card

The Authority claims in the second last paragraph on page 4 of its letter that Norsk Tipping has opened up the possibility of paying with smart cards and credit cards. It is correct that Norsk Tipping allows electronic payment, both when the game is sold over the counter by an agent and when it is sold over the Internet or other electronic platforms. However, payment by smart card depends on real time electronic confirmation of payment prior to the sale. This form of payment is regarded as cash settlement on a par with notes and coins.

We must, moreover, emphasize that selling games on credit is not accepted by the Norwegian authorities. Gambling on credit presumes sales of money games before cash payment has been made for the game. If a cardholder has an overdraft agreement/credit agreement with his/her bank or card company, settlement can be confirmed even if the cardholder's account has a negative balance. It is the Ministry's view that purchases of money games that are covered by such credit agreements must in principle be regarded as settled by cash payment, as long as credit is not being granted by the gambling company or seller of games. This kind of credit agreement allows, for example, cash withdrawals from cash dispensers, and settlement with borrowed notes and coins is also regarded as cash payment. Reference is also made to the Ministry's mention of the prohibition of gambling on credit in subsection 6.4 of Ot.prp. nr. 44 (2002-2003).

c) Marketing of Norsk Tipping's games

It is one of the general principles for the gaming and lottery sector in Norway that the main foundation for the government's gambling policy must be the government-controlled money games, see subsection 3.1.2 in Ot.prp. nr. 44 (2002-2003). The Government shall furthermore exercise caution in expanding government-controlled gaming. Traditionally, however, the Government should not plan changes which will diminish the income from these games. It is also a general principle that the licensed money games and lotteries may be marketed within the framework of general marketing rules.

Although Norsk Tipping has in recent years introduced pure fixed odds games, where customers bet on the result of, for example, certain football matches, both the wager options and share of the prize money in these games are so limited that they cannot compare with commercial bookmakers and gaming companies in the international gaming market. The maximum stake for such fixed odds games was reduced from NOK 30,000 to NOK 5,000 in the

course of 2003, with a view to making Norsk Tipping's games less attractive to the 'big punters'. These deliberate restrictions caused the turnover from Norsk Tipping's Oddsen to fall from NOK 1,847 million in 2002 to NOK 1,612 million in 2003.

As mentioned above, it has never been Norway's policy to make changes in Norwegian gaming services which will lead to the eradication of the significant division between the Norwegian and the international gaming opportunities. In June 2003, for example, a clear majority of the Storting opposed the introduction of international-standard casino games in Norway. Norway's fundamental attitude has also been clearly stated by Minister of Culture and Church Affairs Valgerd Svarstad Haugland on a number of occasions. In her speech to Norsk Tipping's board of directors and management at the company's AGM on 9 April 2003, she concluded by emphasizing the following (translated from Norwegian):

"Finally, I would like to point out that both the national and international gaming markets have changed considerably in recent years. Technology provides openings for new games and new ways of distributing games. So far, these developments have weakened the overall control of the games offered in Norway. More and more frequently the newspapers report cases where people have gambled away their homes and family lives from their PC at home or at work. When choosing strategies to deal with this situation, we must not forget that Norway's gaming policy aims for a moderate expansion of gambling opportunities. In the face of increasing gambling opportunities from abroad via the Internet and other channels, we must avoid meeting the new competition with services that are just as aggressive as those we wish to protect ourselves from. Several hundred years of history have shown us that gambling opportunities undergo periods of growth before being cut back as a result of the negative consequences that come to light. I believe that the international gaming services we see today will in the long term fall into more controlled forms, when people become more aware of the consequences of these developments. When that time comes, it is important that we in Norway do not find ourselves encumbered with games that are equally aggressive as the ones we wish to prohibit."

One of the consequences of insisting on moderate gambling opportunities in Norway at a time when competition in the international gaming market is growing sharper every year is that it may be more difficult to sustain an upward trend in Norsk Tipping's annual profits. This is regarded as a necessary consequence of the current principles for Norway's gaming and lottery legislation, as can be seen from the following extract from Minister Svarstad Haugland's speech at a county conference for Norwegian sports managers on 20 November 2003 (translated from Norwegian):

"The development of increasingly aggressive games is bound up with the increase in competition internationally and with the wish for steadily increasing revenues from gambling activities. For the past decades, Norsk Tipping's games and most of the lotteries have jointly provided for a real growth in income for sports and other voluntary organizations each year. A question we must dare to ask ourselves in the years to come is whether we should still expect the profits from gaming and lotteries to increase more each year than the price increases in the rest of society. I am afraid that we cannot take it for granted that this trend will continue for ever."

The Ministry believes that it has demonstrated clearly in the above that the consideration of responsible gambling opportunities is of overriding importance in relation to anticipated turnover and profit. In the Ministry's opinion, it is also clear than an increase in Norsk Tipping's

marketing budget will not necessarily mean an increase in the company's turnover and profit. More marketing can increase the visibility of moderate gaming opportunities at the expense of more aggressive money games. In the Ministry's view, Norsk Tipping's games have to date not been marketed in a way which puts the consideration of the company's earnings above the consideration of responsible marketing and moderate gaming services. This comes of the fact that the marketing of Norsk Tipping is essentially connected with brand building and the promotion of low risk games such as Lotto, VikingLotto, Extra, Joker and Flax, which do not expose the player at any great risk as regards addiction or other problematic gambling behaviour. Details of Norsk Tipping's actual marketing expenses can be found in the enclosed memo dated 12 February 2004 from Norsk Tipping (enclosure 1).

The current machines are not marketed at all, beyond their exposed presence on their places of location. Despite the lack of marketing, the gross turnover from machines has increased from NOK 9 000 million in 2001 via NOK 15 000 million in 2002 to an estimated NOK 20 million in 2003. It is the Ministry's assessment that marketing expenses are not necessarily a good indicator for the gaming offers that may create problems with regard to gambling addiction.

2. Potential addictive effects of games that are provided via the Internet, Professor Gøtestam's letter

It has become more and more common in most countries in recent years to provide money games via electronic channels. This applies in particular to games provided via the Internet.

In light of this, Norsk Tipping and Norsk Rikstoto were given permission for a trial period to distribute existing games via electronic channels, see account given in 1a). In addition to this, a trial licence was granted to a private operator owned by ten humanitarian organizations to test different games of chance on the Internet. Permission was also granted on a trial basis to hold lotteries via SMS. The trial licences are valid until the end of 2004. The purpose of these trial projects is to gain knowledge about how providing games electronically works on the Norwegian gambling market, for example in relation to gambling behaviour. In letter dated 11 November 2003, the Ministry commissioned the Gaming Board to report on the ongoing trial projects and we expect to have a complete evaluation of the existing projects on hand by the end of the first half of 2004.

The Ministry agrees with Professor Gøtesam's views in his letter of 14 May 2003 to the Cultural Committee of the Storting that there is a need for more research and for a collective approach to the problem of gambling addiction. It was therefore resolved in 2003 that 0.5% of the annual profits from Norsk Tipping's gaming activities would be set aside for, among other things, prevention and research in this field. Work has also started on the preparation of a national action plan to combat gambling addiction. This is expected to be completed in the course of this year.

With regard to Professor Gøtesam's views on the Ministry's draft amendment, the Ministry emphasizes that one of the main considerations behind the proposed gaming machine monopoly for Norsk Tipping is the need to be able to assimilate as quickly as possible new knowledge and new recognition in the field of problematic gambling behaviour on gaming machines. For more information about the Ministry's attitude to the question of the addictive

effects of games provided via the Internet, we refer to page 16 of Ot.prp. nr. 44 (2002-2003) and to our quote under 1a) above.

3. In its letter of 19 December 2002 to this Ministry, Norsk Tipping presupposes that it will be allowed to develop alternative games if the profits from Norsk Tipping to socially beneficial and humanitarian organizations are less than anticipated. How does this coincide with the aim to reduce and prevent gambling addiction?

As mentioned in our letter of 1 September 2003, Norsk Tipping is the key strategic instrument in the implementation of Norway's gaming policy. The company is subject to direct political control, in that the Ministry as owner of the company sets the regulatory framework (gaming rules) for the company's money games. The Minister of Culture and Church Affairs is the company's AGM. The Ministry is therefore neither formally nor in practice bound by the presuppositions in Norsk Tipping's letter of 19 December 2002 and will be able to approve the implementation of the said operating model for gaming machines independent of the presuppositions in the letter. In the Ministry's opinion, the presuppositions in Norsk Tipping's letter can only be regarded as presuppositions in relation to Norsk Tipping's economic calculations for a new operating model for gaming machines. The Ministry has given no formal response to Norsk Tipping AS' letter.

As regards the presupposition in the letter that Norsk Tipping must be allowed to develop other games if the income estimated in the monopoly model is not achieved, it is expressly stated in the letter that this is a purely economic assumption. Such an assessment of the overall profits from Norsk Tipping would be made by this Ministry as owner of Norsk Tipping, and it is also this Ministry which decides how the company's annual profits are to be distributed.

In this respect, the Ministry would like to emphasize that there is no conflict between the aim to prevent gambling addiction and gambling problems, and the launching of new games to replace other games that prove to be less popular than expected among the players. The fact that Norsk Tipping has a collective responsibility for the largest money games can ensure a stable and proportionate development in both total turnover and profit, for the very reason that the demand for and the profits from the different games can be seen in relation to one and another. Games with potentially addictive effects can therefore be developed in a moderate way (see above regarding Oddsen) or stopped completely, while launching moderate low-risk games at the same time. In this way we can maintain acceptable gaming opportunities, without optimizing the potential income in games with the greatest risk of gambling addiction. This approach is also discussed on page 30 of Ot.prp. nr. 44 (2002-2003).

The Ministry can therefore not rule out the possibility that new games will be launched in the future, if this is justified by the wish for a moderate, acceptable increase in available games.

4. How is the remuneration system of Norsk Tipping designed?

Norsk Tipping has a fixed salary system. There are no agreements or schemes for the management group or other persons who have a say in Norsk Tipping's strategies, which reflect any form of bonus or supplementary agreements. The managing director's salary is fixed by the board of directors. The management's salaries are fixed by the managing director in consultation with the board.

Like a number of other large and small companies, Norsk Tipping also has the possibility of remunerating people, after the fact, for extraordinary contributions which have underpinned the values and attitudes that the company stands for. To give an idea of the level of such rewards, we can quote the most recent example - a payment of NOK 10,000 to the person who, in his time, came up with the idea for the formulation of the company's present vision.

5. Provide the annual reports and accounts (as far as possible) for Norsk Tipping for the years 2001-2003. Amounts spent on marketing are of particular interest.

We refer here to the enclosed annual report and accounts for 2001 and 2002 (enclosure 2 and 3). The company's total revenues from games in 2003 are estimated to be NOK 9,743 million. Marketing figures for the period 2001-2003 can be seen in the enclosed memo, also referred to in 1 c).

6. What kind of social activities are the charities involved in, which receive the profits from the gaming machines?

As laid down in Section 5 of the Lottery Act etc., the profits from gaming machines shall be distributed to non-governmental organisations which are involved in socially beneficial and humanitarian activities. In 2002, approximately 42% of the profits was distributed to humanitarian organizations, while 32% went to sports activities for children and young people. It is furthermore estimated that about 16% was paid to voluntary health activities and 3% to cultural activities in the same year. We also refer to the enclosed list of the organizations registered by the Gaming Board as recipients of profits from gaming machines (enclosure 4).

7. What is the result so far of Norsk Tipping's enquiries into possible types of gaming machines and manufacturers and suppliers? Is any public procurement procedure foreseen?

Prior to the Storting's decision in June 2003, and in parallel with the work on a draft business plan, Norsk Tipping made preparations for the necessary purchases of machines in accordance with the guidelines in the company's purchasing programme at that time. Among other things, a so-called RFI (Request for Information) was drawn up to identify the possible products and suppliers in the market. An RFP (Request for Proposal) was then sent out to selected suppliers for reply by July 2003. In letter dated 12 June 2003 from the Ministry of Trade and Industry, Norsk Tipping was instructed to undertake the purchase of the new network of gaming machines in accordance with the public procurement procedure. As a result, the original purchasing process was stopped.

Ot.prp. nr. 44 (2002-2003) foresees a start-up of the new system and placement of the gaming machines on 1 August 2004. A new procurement process was therefore initiated immediately after the Storting's decision in June 2003. It was deemed important to carry out the process in accordance with relevant procedures.

The procurement process was linked up to the regulations for *selected tendering*. The table below shows the time schedule that was used for the procurement:

Timeline for the procurement of a new VLT system in 2003				
June	July	August	September	October
Prepare advert. and qual. criteria	Applic. for participation 37 days	Prequalification 14 days	Deadline for tenders 40 days	Evaluation of tenders 16 days
M1	M2	M3	M4	M5 M6

The following milestones require further explanation:

- M1 – 27 June 03: Norsk Tipping’s internal steering group approved the form of procurement, text of the advertisement and basis for prequalification
- M2 – 1 July 03: The purchase was published in the Norwegian Gazette (*Norsk Lysningsblad*) and TED. The pre-qualification criteria were available until 4 August 03. Thirty-nine requests were received for pre-qualification details.
- M3 – 8 Aug 03: Deadline for applications from suppliers wishing to submit tenders. Fifteen applications were received for pre-qualification.
- M4 – 22 Aug 03: Following comprehensive evaluations based on pre-defined criteria for selection, invitations to tender were sent to eight qualified suppliers. Refusals were also sent to applicants which did not meet Norsk Tipping’s criteria for pre-qualification.
- M5 – 1 Oct 03: Deadline for tenders from suppliers. When the time limit expired, Norsk Tipping had received six tenders. One supplier withdrew and two of the pre-qualified suppliers decided to submit a joint tender. Start of the evaluation of the individual tenders against 113 of the pre-defined criteria. During the evaluation period, verification visits were paid to all of the suppliers which had submitted tenders.
- M6 – 20 Oct 03: Norsk Tipping’s steering group and the company’s board of directors discussed and chose a supplier based on the procurement group’s recommendations. The chosen supplier is the Swedish EssNet Interactive AB. Notification of the contract award was sent to this supplier, while refusals with brief reasons and a deadline for appeals were sent to the unsuccessful suppliers. The award of the contract was published in the Norwegian Gazette on 23 October 2003.
- 25 Oct 03: Final contract signed between Norsk Tipping and EssNet Interactive AB.

The procurement process attracted considerable interest from several quarters. This was due to the size of the order, innovative technology and high speed linked with the establishment/location of a completely new market product. The procedure followed by the company and its relation to the regulations governing public procurement and the procedures described therein were also reviewed by the court. This was because one of the companies that was invited to tender filed a petition for a temporary injunction requesting access to the documents and postponement of signing of the contract. The parties appeared before the Hedmark District Court on 25 November 2003. The District Court did not find for petitioner on any of the counts and ordered the petitioner to pay costs (see enclosed copy of the District Court’s ruling, which is not appealed (enclosure 5)). The Ministry would add that a copy of the procurement protocol can be made available to the Authority at short notice, if desired.

For a more detailed description of the chosen technology, we refer you to point 9d) below.

8. Have final regulations been issued with regard to the location of the machines?

No regulations have been issued regarding criteria for the location of the gaming machines. This will be done very soon. A copy of the final draft of these regulations will be sent to the Authority within a short time.

9. Other questions

a) Breach of regulations

The Authority points on page 5 of its letter to the fact that the Gaming Board has found fewer breaches of the regulations for gaming machines than expected. According to preliminary statistics from the Gaming Board's annual report for 2003, the number of administrative reactions because of breaches was approximately 1300 during the last year.

As mentioned in our letter of 1 September 2003, inspections carried out by the Gaming Board have not uncovered many breaches of the regulations as regards non-type-approved software in type-approved gaming machines. The main problem in Norway is not that the machines contain software which is not type-approved. It appears, however, that the type approval process does not always reveal problematic elements in the machines, with the result that some machines that are legally released on to the market are later found to contain functions which increase the risk of gambling addiction in the player and which would not have been approved if this information had been known at the time of approval. This can be related to the fact that the manufacturers strive to exploit the regulations as far as possible in order to introduce aggressive elements into the machines and the negative effects of these elements do not become known until after the machines have been placed in the market.

b) Additional remuneration

The Ministry is also invited on page 5 of the Authority's letter to provide background information in support of the Ministry's statement on page 5 of its letter of 1 September 2003 that illegal use of charity revenues to secure and improve market shares is also a well known problem in today's market.

The problem of illegal use of additional remuneration to improve market positions and secure better access to attractive locations has been known since the local proprietor's legal share of the profits from gaming machines was limited to 20% in 1996. In 1998, one organization was convicted of paying illegal remuneration to the local proprietor. In 2001, it also transpired that in one case NOK 80 million had been paid to a chain of shopping centres for exclusive rights to the placement of gaming machines in nearly thirty shopping centres. This payment was made in addition to the 20% of the profit that was due to the shopping centres from each gaming machine.

This kind of illegal remuneration is difficult to uncover. It is therefore also difficult to estimate the scope of the problem. Since the establishment of the Gaming Board in 2001, its activities have provided it with a better insight into how this problem manifests itself in practice. A report on this problem is given in the enclosed memo dated 5 August 2003 from the Gaming Board (enclosure 6). The societies and companies named in the memo have been anonymised as required by the public administration's rules of confidentiality.

c) Directive 98/34/EC

On page 5, the Ministry is also asked for its view on the possibility of amending the regulations governing the functionality of the gaming machines quickly, with reference to Directive 98/34/EC.

According to Directive 98/34/EC, technical regulations must be sent to the Authority for notification. Technical regulations are understood to be technical specifications or other standards, including relevant administrative provisions on marketing or use of a product, which can be issued in laws, regulations or circular letters.

It has been assumed until now that the gaming rules for Norsk Tipping's games are not subject to notification. In connection with the ongoing harmonization of Norwegian law in relation to the obligations following from the Directive, the Ministry will consider whether it can be deemed correct to uphold the current practice of not giving notification of such rules. The Ministry would, however, point out that an obligation to give notification would not limit the possibility of controlling the functionality of gaming machines more efficiently by establishing a monopoly for Norsk Tipping. By virtue of its ownership of Norsk Tipping, the Ministry will still be able to impose the necessary measures, in that it must be possible to terminate immediately or moderate within the framework of the gaming rules any games that are regarded as undesirable with regard to problematic gambling behaviour. This is not possible with the current model for gaming machines because, once granted, licences cannot be revoked until the licence period has expired and because the functionality of the machines is fixed until a general amendment can be made in the type approval regulations. The same limitations will apply in a licence system with a non-state owned operator.

We would also refer to page 4 of our letter of 24 February 2003 which contains an extract from a description of these problems from the Norwegian Red Cross, which is one of the largest operators in the Norwegian gaming machine market today.

d) Software

On page 6 of the Authority's letter, the Ministry is invited to explain how new software is less likely to cause gambling addiction than the current machines.

One of the problems in Norway's current regulations on gaming machines is that software which is type-approved for machines that are to be installed in Norway cannot easily be withdrawn from the market, even if it is later concluded that machines with this software function in a way which is likely to cause an undesirable degree of gambling addiction.

It is now clear, with the technology chosen by Norsk Tipping in autumn 2003, that the company's new games will not be defined by the software in the individual machines, but will instead be based on a network system where the design of the games is controlled from a central electronic platform.

During the development of the new gaming opportunities, very serious consideration was given to the problems linked with gaming machines and gambling addiction. When legislation was passed making Norsk Tipping the sole operator of gaming machines in Norway from 1 January 2006, one of the conditions and objectives was the establishment of a new standard for gaming

machines, in which the question of helping to limit gambling addiction and exercising gambling responsibility has a central place.

The company then initiated a collaboration with Interactive Institute in Sweden, which was founded in 1998 by *Stiftelsen for Strategisk Forskning* (SSF). This is an innovative research institute which aims both to carry on research at world-class level and to generate ideas for new products in the field of digital media. A cooperation agreement was signed under which the parties would, within certain guidelines, describe ideas, thoughts and possibilities that could be used to limit gambling addiction. This cooperation has led to the investigation of a number of measures that can be used to limit gambling addiction in connection with the development of a new technological platform and new games for gaming machines.

As mentioned above, the overall technical solution will mean that all games and action will take place on a central server at Norsk Tipping's headquarters in Hamar. This means that the company will have control and operation of all 10,000 machines at any time and a realtime overview of all gaming activity (per game, per location, per machine, per gaming session, etc.).

The development of the software has been based entirely on the possibility of downloading it electronically to individual machines from the company's central systems. All outcome of games is settled centrally with complete control within secure computer systems. Communication between the units and the central system will take place over an IP-based VPN (Virtual Private Network).

The technical solution described above provides a flexible platform that allows quick alterations and implementation of desired measures. For example, it will be very easy to remove problematic games (in a matter of seconds with the help of a few keystrokes).

In putting together the individual games, great importance has been attached to removing and/or limiting the most common addictive factors. Emphasis has also been given to developing new games with different characteristics from those we know today, such as games of considerably longer duration in order to help to achieve the objective of a market shift from gambling to amusement.

This work has been carried out in collaboration with several partners who are familiar with the problems surrounding gambling behaviour on gaming machines. In addition to the expertise of Interactive Institute, Norsk Tipping is receiving advice from psychologist Thomas Nilsson at *Spelinstitutet* in Sweden. Mr. Nilsson is the founder and head of this institute, which has specialized in the negative consequences of gaming. For the past twelve years, his main focus has been on gambling addiction and he has been a member of the international research group which researched gambling addiction in Sweden. Norsk Tipping has been using Thomas Nilsson as its advisor in connection with its work on gambling addiction and gambling responsibility since August 2003 and this partnership will continue throughout 2004.

e) Allocation of profits to charity

On page 6, the Ministry is asked to comment on the degree to which allocations to charities through the new rules for the operation of gaming machines can be considered an incidental consequence of the new monopoly.

The introduction of the monopoly on gaming machines in 2005 and 2006 will mean a drop in the revenues for charities from such machines, compared with revenues in 2002 and 2003. Charities received about NOK 930 million of the net proceeds from gaming machines in 2001. The corresponding figures for 2002 and 2003 are estimated to be about NOK 1150 million and NOK 1500 million respectively. From 2005 onward, the organizations in question will have to anticipate a return to the 2001 level.

The Ministry takes a positive view of the fact that the level of income for the organizations can be maintained at the 2001 level from 2005 onwards. Ensuring a stable and positive income trend for charities is also one of the objectives of Norway's lottery and gaming policy. This consideration has therefore also been part of the basis on which the design of the new gaming machine model has been evaluated. As the above-mentioned figures will show, the Ministry has not found it justifiable, in a situation where the negative social consequences of today's gaming machine activities are seen to be unacceptable, to secure the organization's revenues at any price.

In addition to the obvious advantages in the area of supervision, control and flexibility which follow from a gaming machine monopoly and which are outlined in our letter of 1 September 2003, the Ministry takes a positive view of the fact that the monopoly model allows for a more efficient form of operation than the current model. This may mean, for example, that restrictions in the functionality of the machines towards providing more moderate games will have a less negative effect for the organizations concerned within a gaming machine monopoly than they would have had with the current model. Radical restrictions in functionality which considerably reduce turnover from the machines will not reduce the net profits from the machines to the same degree. Radical restrictions can thus meet with greater understanding from the recipients of the profits in a monopoly model, because they will be less affected by the restrictions. Consideration must also be given to the fact that the organizations' income in the approved monopoly model will not be linked with gaming machines or other games alone, but will be based on the net proceeds from the total gaming portfolio. However, the consideration of the non-profit organizations' income situation was not given decisive importance in the Ministry's choice of operating model.

f) Reducing crime

With regard to reducing crime, we refer to our letter of 1 September 2003. Although the statistics show no noticeable increase in recent years in crime linked with gaming machines, we have seen several indications that burglary and theft of these machines have again become an increasing problem. In order to throw some light on these problems, we enclose some recent Norwegian newspaper articles (enclosure 7). The crime statistics for 2003 are expected to be available in the course of the first quarter of 2004. If this impression of increasing crime is correct, the Ministry considers it an advantage to be able to initiate the necessary measures quickly and efficiently through a monopoly model. Further information on this subject can be found in our previous letters.

10. Summary and concluding remarks

The Ministry emphasizes that the Norwegian gaming and lottery market is not intended to be an ordinary competitive market. This is the consequence of the fact that gaming and lotteries are in principle forbidden. The regulation of gaming and lotteries has always been based on the need to protect citizens and prevent undesirable gambling behaviour on their part. With

reference to the regulations for the EEA's inner market, it is the Ministry's opinion that the negative aspects of the gaming machine market are largely a result of the intense and growing competition between the different actors – for example, when it comes to finding the most aggressive gaming machines and gaining access to the best locations. Even in a monopoly model with only one private licensee, this licensee would, in the Ministry's opinion, have a personal interest in the profits from the activities that would naturally conflict with the wish to prevent harmful effects to the country and community. Experience shows that it is often the interests of the general public in controlled, responsible gambling that suffer in a conflict of interest of this kind, regardless of whether the licensee is a commercial company or an amalgamation of non-profit organizations.

The state-owned games operated by Norsk Tipping are low risk games, in the sense that the danger of developing undesirable gambling behaviour is small. This has been well documented by a number of gambling behaviour studies. The Ministry has therefore not found it necessary to impose special restrictions on the scope of Norsk Tipping's marketing activities. The small risk of developing problematic gambling behaviour has also led the Ministry to agree to the state-owned games being made available on the Internet on a trial basis. However, as mentioned above, the Ministry is dubious about certain aspects of establishing money games on the Internet. The ongoing pilot projects (both state-owned and private games) will therefore be evaluated before the Ministry makes up its mind finally as to whether gambling/betting on the Internet can be accepted on a permanent basis.

Money games on gaming machines of the type that are operated on the Norwegian gaming market are, unlike the state-owned money games, high risk games. Gambling behaviour surveys show clearly that it is first and foremost the gaming machines which cause social problems. The Ministry has therefore been endeavouring for several years to impose restrictions on the gaming machines market, but for various reasons has not succeeded in practice. On the contrary, gaming machines have developed into increasingly aggressive, casino-like money games. As a result, turnover from gaming machines has risen dramatically in recent years, from a gross turnover of about NOK 9 bn in 2001 to NOK 15 bn in 2002 and an estimated NOK 20 bn in 2003. As we have already explained, this – from a social point of view – highly undesirable development of the gaming machine market is the main reason why the Ministry has found it necessary to impose a total ban on gaming machines in their present form.

From January 2006 onwards the Government will have the sole right through Norsk Tipping to operate gaming machines. As previously reported to the Authority, the Ministry is aiming to develop other types of machines than those currently on the Norwegian market. The new machines will be less aggressive (both the structure of winnings and speed of the games will be designed with a view to reducing problematic gambling behaviour). There will also be far fewer of them (the number will be reduced to about 10,000 and turnover will be more than halved). Moreover, the gaming machines will be placed where age restrictions, for example, can be effectively enforced. In addition, the fight against various forms of crime will be considerable easier.

In spite of this radical reorganization of the gaming machine system, the Ministry is aware of the potential danger of socially undesirable consequences that lies in the very fact of having gaming machines in public places. The Ministry will therefore watch developments closely and

intervene quickly and change the functionality, quantity and locations of the machines if this should prove to be necessary in order to prevent undesirable gambling behaviour. We have previously informed the Authority about the changes that have been made in the distribution key to ensure that the income allocated to the social and humanitarian organizations will be less dependent on the change in income from the gaming machines and how this will improve the real control exercised by the Ministry.

In the light of the ECJ's practice in, inter alia, the *Schindler case* (C-275/92) and the *Läära case* (C-124/97), the Ministry finds that the decision to give Norsk Tipping exclusive rights is included among the policy instruments that may be used to prevent socially harmful consequences which can result from the lack of supervision of money games. The Ministry cannot see that later rulings by the ECJ in the *Anomar case* and the *Gambelli case* change this practice. The Ministry would not omit to draw attention to the fact that a number of the current member states of the EU have a state monopoly on gaming machines. It is also the Ministry's view that the Storting's decision cannot be regarded as a disproportionate measure because, among other things, alternative models for the organization of this market would not give the authorities the required possibility of direct control and supervision. The Ministry can therefore not see that the decision is at variance with Norway's commitments under the EEA Agreement.

In conclusion, the Ministry wishes to draw attention to the fact that the Storting's enactment of the act establishing the monopoly was founded on the basis of a broad, all-party consensus (only Fremskrittspartiet voted against). This clearly underlines how gravely the Norwegian authorities look upon the negative development of the machine market, and that a monopoly with a state-owned operator is the only model that will enable complete control of gaming offered by gaming machines.

Please find enclosed copies of the documentation mentioned in this letter. The Ministry would emphasize that it is prepared at any time to provide further information in clarification of this matter, including giving a verbal presentation to the Authority in Oslo or in Brussels.

Yours sincerely,

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Director General

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