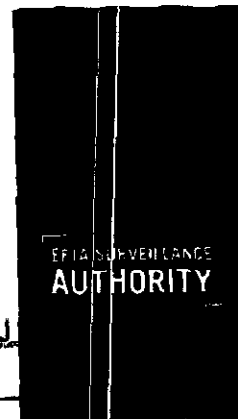


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Vedlegg nr. 1 av 1	

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Brussels, 17 July 2003
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EU-DEL. Brussel	
Ref.: 200300159-5	
18-07-2003	
Arkivkode	5464

Dear Madam/Sir,

Subject: Amendments to the gaming and lottery legislation – the granting of exclusive rights to Norsk Tipping A/S

I. Introduction

Reference is made to the Authority's services letters' of 22 January 2003 (doc.no 03-383-D) and of 5 March 2003 (doc.no 03-1322-D) informing Norway about two complaints concerning the proposal to grant the state owned company Norsk Tipping A/S exclusive rights to operate slot machines in Norway. In these letters, the Norwegian Government was invited to provide some preliminary clarifications and explanations concerning the aims behind the introduction of the monopoly for Norsk Tipping A/S and the necessity and proportionality of this measure.

In a letter dated 24 February 2003, the Norwegian Government replied to this letter. As far as the second complaint was concerned, the Norwegian Government informed the Authority's services in a letter dated 4 April 2003, that it had no further comments in light of the additional complaint.

The Act amending the gaming and lottery legislation was recently adopted by the Norwegian Parliament. The Norwegian authorities are invited to indicate when the amendments will enter into force.

As the Authority's services have already indicated to the Norwegian authorities, the new regime raises several questions as to its compatibility with EEA law. Hence, the Authority's services consider it necessary to ask for clarification with regard to several aspects of the new legislation and would therefore appreciate extensive replies to the questions below. Further, the Authority's services would appreciate any additional information the Norwegian government considers to be of relevance for the case.

II. The stated aims of the new legislation

The Norwegian Government maintains that the monopoly is justified by legitimate aims in the general interest that could not be achieved by less restrictive means. According to the preparatory works, Ot.prp. nr. 44 (2002-2003), and Innst.O. nr. 124 (2002-2003) the main

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purposes of the introduction of the monopoly for Norsk Tipping are 1) prevention of gambling addiction 2) prevention of crime 3) improved business control and 4) improved enforcement of the 18-year age limit.

In the Norwegian Government's letter dated 24 February 2003, it appears that structural market changes are an additional decisive aim for the new regime. It is maintained that the current competitive structure of the gaming machine market and machine functionality has been a catalyst for the increase of gambling problems. Reportedly, private market operators install increasingly aggressive machines in order to increase their own profits. In addition, it is pointed out that statistics do not show any clear reduction of thefts from gaming machines during recent years. Moreover, a positive side effect of the new regime would be the increase of profits for the charity organisations.

Furthermore, in that letter, the Norwegian authorities refer explicitly to the case law of the European Court of Justice (hereinafter the Court of Justice) and argue that the objective of the proposed monopoly is to prevent socially damaging consequences and the risk of crime and embezzlement in connection with gaming activities.

Considering the statements of the Culture Committee of the Norwegian Parliament in relation to the adoption of the legislative amendments, it appears that the Committee put emphasis on ensuring that the State should be able to exercise direct influence on the operation of slot machines. This would facilitate a quick intervention by the State, if deemed necessary.

III. The role of Norsk Tipping A/S – access to documents

According to one of the complainants, two documents prepared by Norsk Tipping during the legislative process were released only after a decision from the Ombudsman dated 11 April 2003. These documents are a Report by Norsk Tipping of 1 July 2002 and a Presentation by Norsk Tipping of 19 September 2002. Reportedly, the complainant and the Ministry had a dispute as to whether the Ministry's decision to grant the complainants only partly access to these documents were in compliance with the Ombudsman's decision.

In order to be able to carry out its duties under the EEA Agreement, the Authority's services hereby requests, in accordance with Article 6 of the Surveillance and Court Agreement, a full copy of the mentioned documents and copies of any other documents exchanged between the Ministry and Norsk Tipping during the legislative process, including also correspondence from the Ministry to Norsk Tipping.

IV. Proportionality of the new regime

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

As mentioned above, the wish to prevent gambling addiction and under-age gambling are two decisive aims behind the new regime.

It is unclear to the Authority's services why players would become less addicted to gambling by using slot machines operated by Norsk Tipping A/S by comparison to the use

of machines run by private operators. Similarly, the direct link between the granting of exclusive rights and the more efficient enforcement of the age limit remains unclear.

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

According to the information received, the operation of slot machines is today subjected to a licence/concession system. It follows from the Ot.prp paragraph 4.3.1 and the Ministry's letter of 24 February 2003, page 2, that the introduction of new and *less* strict concession requirements was followed by a considerable rise in revenues from slot machines (emphasis added). These measures included an increase of the permitted maximum prices from NOK 200 to NOK 2000 and the speeding up of the game sequences.

Taking into account that gambling, as a starting point, is a prohibited activity in Norway, the Authority's services would assume that Norway could introduce a stricter concession system than the current one. As shown in the previous paragraph, it appears that the concession system can be used to increase the amount of gambling activities. Hence, the Authority's services question why the concession system cannot, in combination with administrative control, also be used to reverse the negative development initiated by the Norwegian state's earlier more liberal regulatory approach? Could not the same stricter rules have been introduced within the framework of the existing concession system?

The Norwegian Government is invited to comment on this issue.

IV.1.2. *The location of slot machines*

The location of slot machines appears to be a decisive factor in the struggle against gaming addiction and under age gambling.

In this context, Ot.prp. paragraph 4.5.1 admits that positive effects resulting from new types of machines, price vouchers and network connection could be achieved also with private companies. However, in Ot.prp. paragraph 4.4.4, it is indicated that the undesired effects on the market are caused, to a large extent, by competition between the market participants. It is mentioned that operators and charities try to obtain the best machines and get access to the most profitable locations, such as shopping malls and grocery stores. Further, it is stated that the new act will prohibit the current frequent locations in shopping malls and grocery stores. However, the new act will still allow machines in "storkiosker". The general guidelines on location will be developed later in co-operation between Norsk Tipping and the authorities.

Assuming that all operators were regulated by provisions on how many machines to operate and where to place the machines, the Authority's services question to what extent competition for achieving the best (legal) spots would have more negative consequences compared to the situation where a sole operator, regulated by similar provisions, is free to place the machines in the most attractive places?

Hence, would the Norwegian Government assume that Norsk Tipping, when operating according to the general guidelines on location would choose other spots than the most attractive (legal) ones?

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In a letter to the Ministry dated 19 December 2002, Norsk Tipping states that it considers the right to choose the location of the machines to be a precondition for accepting the role as the sole operator. Further, Norsk Tipping proposes to place machines in four different kind of places, of which the category "*stjernekiostk (kiostk, bensinstasjoner og lignende som er den lokale sosiale møteplassen*" will be one of the preferred spots.

The Authority's services would like the Ministry's confirmation on whether this precondition from Norsk Tipping was accepted by the Ministry.

If that is the case, how does allowing machines in "*kiostker, bensinstasjoner og lignende som er den lokale møteplassen*"- apart from arguably providing better possibilities to enforce the 18-years age limit - contribute to the main aim of the legislation, i.e. to prevent gambling addiction?

In addition, please clarify why, from the perspective of preventing gambling addiction, placement e.g. inside grocery shops are worse than placement in *inter alia* kiosks, gas stations and public transportation waiting rooms.

Furthermore, please indicate whether placement in kiosks, etc. in shopping malls will be allowed.

Finally, the Authority's services would be interested to know whether the Ministry replied to Norsk Tipping's letter, and if this is the case, to receive a copy of this reply.

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

According to the Ministry's proposal dated 21 June 2002, machines should only be placed in areas with access control, in order to improve the enforcement of the 18-years age limit. This gave rise to strong objections from the market participants. In Ot.prp. paragraph 4.5.3 this massive resistance is used as an argument in favour of granting exclusive rights to a state controlled non-profit company, in the sense that it illustrates the difficulties of gaining acceptance from the market players for decisions that the Ministry considers necessary to secure a proper development of the gaming market. However, the new act granting sole rights to Norsk Tipping does not contain the strict limitations on placement (access control) proposed by the Ministry in the letter of 21 June 2002.

Does this indicate that the Ministry has changed its view on what is necessary to secure a proper development of the gaming market?

Or, does it indicate that Norsk Tipping also had strong objections to the idea of location of slot machines only in areas with access control? (Cf. Norsk Tipping's letter of 19 December 2002, mentioned above).

IV.2. Prevention of crime

According to the Ot. prp. paragraph 4.5.1, Norway currently faces considerable problems related to thefts from slot machines. It is however unclear to the Authority's services why slot machines would be less vulnerable to theft only because they are operated by a State owned company.



From the preparatory works, it appears that it is not the fact that Norsk Tipping operates the machines that will eliminate this problem, but rather the introduction of a computerised network giving the operator the possibility to follow the flow of money in each machine. In the same paragraph, it is explicitly stated that the positive effects related to different kinds of machines, premium vouchers and network connection also can be achieved by private operators.

In light of this statement, the Norwegian Government is invited to explain in detail the kind of crimes that constitute the main problems today and whether the introduction of a monopoly will have any crime preventing effect itself, compared to a system with private machine operators, whose activities would be regulated by equally strict provisions on placement of the machines, technical type requirements, network connection, premium vouchers etc.

IV.3. Improved business control

As regards the administrative control of the market, it is stated in the Ot.prp. paragraph 4.3.2 and the Innst.O. page 6 that it appears clear ("det synes klart") that the producers of slot machines will use or exploit the limitations in the regulations to largest possible extent.

The Authority's services would assume that it would be possible to define the functionality of the machines in a regulation, and that the different types of machines thereafter would be either legal or illegal. Will Norsk Tipping, as long as it purchases legal machines, be free to choose supplier itself?

The Ot.prp. further states that the entrepreneurs have hitherto put up considerable resistance to any proposed changes with regard to the functionality of the slot machines. As far as this issue is concerned, the Authority's services question how resistance from the entrepreneurs - based on concern for reduced revenues - would prevent the legislative bodies from the introduction of necessary measures. Does this indicate that securing revenues for charity is considered more important than the prevention of gambling addiction?

Furthermore, the preparatory works state that the control of the functionality of the machines has proven difficult, and that there has been a number of violations of the different requirements. However, with reference to the 2002 Annual report of the Gaming Board, the Authority's services note that the Board, in 2002, controlled more than 16000 machines and found less than 100 to be in breach of the regulations. Further, the Board takes the view that the increased control have had positive effects and that the industry itself has taken the requirements seriously.

The Norwegian Government is invited to comment on these issues.

IV.4. Additional considerations

Provided that the Authority's services' understanding is correct, the intention is to introduce a new type of centrally connected, computerised slot machines. In this context, the Norwegian Government is invited to provide information on the foreseen production of these new machines. Will concessions or exclusive rights be granted as far as the



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production of the new slot machines is concerned? If this is the case, please explain the envisaged regime in light of the principle of free movement of goods in Articles 8 et seq. of the EEA Agreement.

Moreover, the Authority's services would be interested to know whether Norsk Tipping would use any subcontractors for the operating of the slot machines? If this is the case, by which means does the Government intend to exercise the necessary control over these subcontractors?

May I invite the Norwegian Government to submit the above information, together with any additional comments or observations it wishes to present, so that it reaches the Authority's services by *1 September 2003* at the latest.

Yours faithfully,

A handwritten signature in dark ink, appearing to read "Jónas Fr. Jónsson".

Jónas Fr. Jónsson
Director

Internal Market Affairs Directorate