



**DET KONGELIGE
KULTUR- OG KIRKEDEPARTEMENT**

Royal Ministry of Culture and Church Affairs

EFTA Surveillance Authority
Rue de Trèves 74
B-1040 Brussels
Belgium

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**REPLY TO LETTER OF FORMAL NOTICE REGARDING THE
INTRODUCTION OF A GAMING MACHINE MONOPOLY FOR NORSK
TIPPING AS**

Reference is made to the EFTA Surveillance Authority's (hereinafter "the Authority") letter of formal notice of 23 April 2004 concerning the Storting's decision in June 2003 to introduce exclusive rights for Norsk Tipping for the operation of gaming machines. Reference is also made to previous correspondence concerning the case.

Postal address
PO Box 8030 Dep
NO-0030 Oslo, Norway

Office address
Akersg. 59

Tel., switchboard
+47 22 24 90 90
Org. no
972 417 866

Department of
Administrative Affairs
Fax
+47 22 24 78 16

Reference
Rolf Francis Sims
+47 22 24 78 25

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I INTRODUCTION

1. The complaints and the case before the Authority

The Authority has received complaints in response to the Storting's decision, in pursuance of applicable regulations, to grant no further new licences for the installation of gaming machines in Norway. Existing licences will thereby also expire in the course of 2004 and 2005. In its letter, the Authority enquires as to the reasons for that part of the decision that entails that while existing machines may not be retained, new ones may be installed under the auspices of Norsk Tipping AS.

Based on settled case law of the Court of Justice of the European Communities (hereinafter "the ECJ"), the Government regards as self-evident that "*the fact that the games in issue are not totally prohibited is not enough to show that the national legislation is not in reality intended to achieve the public interest objectives at which it is purportedly aimed*", cf. the *Läärä* case (paragraph 37). Nonetheless, a total prohibition would in practice more easily gain acceptance as an uncompromising attempt to achieve social policy and crime policy objectives, purely because such a solution would be unencumbered by any element of direct financial interest. The Authority also appears to take this approach in the letter of formal notice, in which it is assumed that a prohibition against gaming machines would constitute the most effective measure against gambling addiction, cf. Section IV3a). The Authority's remarks indicate that the part of the Storting's decision entailing the *discontinuation* of existing gaming machine is regarded as less problematical in respect of Norway's obligations under the EEA Agreement.

Thus, the Authority's questions are in the main concerned with the motive for granting Norsk Tipping AS exclusive rights to operate gaming machines. The Authority expresses doubt as to whether the primary motive is to prevent gambling addiction, since it appears to be under the impression that the Storting's decision is in fact motivated by the desire to secure the financial proceeds from such gaming activities.

2. The structure of the letter of reply and further presentation of the case

In its letter of reply, the Government has chosen a structure that differs from that used in the letter of formal notice. The purpose is primarily to present the case in a comprehensive and consistent fashion. Earlier in the process the Government concentrated on answering the specific questions raised by the Authority. The present reply seeks to provide a more coherent presentation of the *de jure* and *de facto* circumstances. The Government therefore finds it necessary in the present letter of

reply to devote substantial space to a review of ECJ case law and to how this has bearing on the *de facto* circumstances of the case at hand.

The review of ECJ case law is provided in Part III. The purpose of this approach is to show that the *Gambelli* case fits into the development of ECJ case law in this area, and that earlier case law continues to be of great importance in this particular area of law.

After the review of ECJ case law, the Government will, in Parts IV and V, seek to demonstrate that the bill relating to exclusive rights in Norway is in accordance with this case law. First, in Part IV, the Government addresses the concerns at which the exclusive rights are aimed, and then, in Part V, examine Norwegian gaming policy in a larger context.

The Government will begin by addressing, in more general terms, various aspects of money gaming and problem gambling – including the experience gained by Norway and other Member States in this area.

II ABOUT MONEY GAMING AND GAMING ADDICTION – INTRODUCTORY REMARKS

3. The nature of gaming

3.1 Introduction

Money gaming involves money being placed in a common pool, which is then distributed among the participants according to criteria that are based wholly or partly on chance. People have been intrigued by gambling and used it as a form of entertainment for millennia. The problems of gambling addiction have always led to various kinds of prohibition in the countries and cities where gaming opportunities have proliferated. Prohibition of gambling is also to be found in religious scriptures. These prohibitions have been connected with various kinds of game, depending on the local cause of the problems. The scope and substance of the prohibitions have therefore varied from place to place and country to country in the light of local history and experience. European history shows that periods of prohibition have been followed by periods of more liberal regulations, followed in turn by restrictions.

Over the last decade, the trend in Europe and the entire Western world has been towards an increase in proceeds from gaming activities. This trend has been linked, in particular, to the development of electronic games and the electronic distribution of games. Historically, such periods of increased gaming activities are followed by constraints and restrictions in order to prevent social problems, cf. Hans Olav Fekjær's book *Spillegalskap – vår nye landeplage* [Gaming frenzy – our new scourge] (2002) pages 26-27 (**Appendix 1**). This has to do with the fact that as gaming opportunities proliferate, many players tend to lose control of their gaming activities in a way that differs completely from that seen in relation to the purchase of other types of services.

While gambling was in the past organised by the players themselves, today it is generally organised by special gaming operators. The financial objective of such gaming opportunities is for the player to lose money and the gaming operator to make a profit. This differentiates the provision of gaming services from other trade in services, which is based on a more nuanced and balanced cost/benefit assessment on the part of both the service provider and the service user. A person who purchases airline tickets or a new mobile phone subscription is generally aware of the conditions and consequences of his purchase. When purchasing gaming services, on the other hand, it appears that the buyer has a tendency to delude himself about his chances of winning, and is thus compelled to keep on paying for more games, in spite of the fact that he does not actually want to play. This is also the reason why in most parts of the world, gaming services both have been and still are subject to more extensive restrictions than other services. Gambling appeals to something in human nature, so gaming operators who are only interested in a profit, design games with a view to the fastest possible

increase in turnover, which also often contributes to a dramatic rise in the incidence of gambling addiction.

3.2 Gambling addiction and national regulation of the money gaming market

There is no clear, consistent overview of the factors that cause gambling addiction. It has therefore often proved difficult to prohibit elements in games that may encourage people to delude themselves in cases where the gaming operator is deliberately seeking to increase his gaming turnover by encouraging such self-delusion. The result is often that aggressive operators are constantly seeking to keep ahead of the law in developing new elements that will produce such an effect. This is pointed out by, among others, Rachel A. Volberg, a gaming addiction researcher, in the book *When the Chips Are Down* (2001), page 93 (**Appendix 2**):

“As Nelson Rose has noted ‘the lawmakers of the land have much less incentive than the (gambling) entrepreneurs to keep their eyes open to the many ways ingenious individuals have of getting around the intent of the law.’ One difficulty is that few lawmakers understand the complexities of the gambling industries sufficiently to be able to predict the likely effects of specific legislation on gaming operators and consumers. Inconsistent interpretation of existing legislation is also common (...)” (emphasis added).

In order to prevent players from suffering because legislators are constantly lagging behind in relation to gaming operators and game developers, attempts have been made in many countries to curb such unfortunate trends. One means has been to eliminate or reduce the operator’s independent financial gain as an incentive for operating gaming machines. This has been achieved partly by imposing high taxes on gaming or by only permitting money gaming when the revenue goes to non-profit organisations. A number of countries have also chosen a system whereby the Government owns all or some of the money gaming services in order to ensure that it has direct control and can prevent games from being developed that are to the detriment of players. Countries like Austria, Belgium, Denmark, Finland, The Netherlands and Sweden all have gaming regulations whereby the national authorities have direct control over some of the major elements in their respective gaming markets, such as sports betting, the national lottery, horse racing, casinos or gaming machines. The reasons for national monopolies have also been discussed by, among others, the Swedish psychologist and addiction therapist Thomas Nilsson in his book *Jakten på Jackpot* [The Hunt for the Jackpot] (2002), page 22/23 (**Appendix 3**):

“There are a number of grounds that justify a monopoly on gaming. The most important of these are:

- That gaming is characterised by social risks and negative consequences. The monopoly should protect from and minimise gambling addiction/cravings.*
- To prevent crime and fraud in connection with lotteries*

- *To permit games only to raise money/funds for benevolent purposes or the public good.*

These grounds are considered to be so weighty that they even today justify a gaming monopoly not just in Sweden and throughout the entire EU, but also all over the world.
(unauthorised translation, emphasis added).

In the first paragraph of page 4 of the letter of formal notice, the Authority expresses concern that the motive for the Storting's decision is actually a desire to secure revenues for charities. In the Government's view, this is incorrect. The Storting's decision ensures that there will not be any private commercial interests linked to the development of gaming machines. It also ensures that neither private commercial interests nor non-profit organisations will have direct responsibility for the operation of such machines. Both of these changes are recognised means of ensuring a moderate increase in the number of gaming machines and protecting players from games that may lead to addiction. The Government also regards it as positive that this move would yield a certain amount of revenue, as an added bonus, for non-profit activities. But this can hardly be viewed as an overriding motivating factor for the decision.

The aim of the decision is, in practice, to reduce proceeds by more than half in relation to current levels (stabilising at the 2001 level) and to reduce the number of machines by almost half, to 10,000. The games that are offered shall be designed so as not to induce addiction, which are what current machine-based games do to a far too great extent. In Proposition No. 44 (2002-2003) to the Odelsting, page 27, it is also assumed that the decision will give "*political authorities a means of steering the overall game portfolio away from games that pose a risk of negative social consequences.*" In this context, the Government also refer to Section 10 below, which sets out, among other things, that the introduction of a total prohibition as a reaction to a market that has become too liberalised could create major problems involving similar money gaming activities that are illegal and totally unregulated. Such illegal gaming activity could also have negative impact in terms of inducing gambling addiction. The Government therefore maintains that it cannot be concluded that a total ban on gaming machines in Norway would, in the present situation, reduce the problems of addiction to a greater degree than the exclusive rights model that the Storting has adopted.

4. Money games today

4.1 Different types of money games

The various types of money games fall into two main categories: money games involving an element of skill, and pure games of chance based on a draw.

Typical money games involving an element of expertise in the Norwegian market are Oddsen, football pools and the Totalisator (horse race betting). What is common to

these games is that they are based on the outcome of sporting events in the sense that the player bets money on a specific result. Other countries also offer betting on events other than sporting events.

Games that are based on a random draw are generally referred to as games of chance. These are games where the result is determined by a draw that cannot be influenced by the player. Electronic games of chance are controlled by a random number generator, but in other, smaller games of chance mechanical drawing devices are often used.

Games of chance may be offered as individual games, e.g. machines or scratch cards. In these games, the player participates in an individual draw without competing with others. Games of chance can also be open to an unlimited number of participants, everyone takes part in the draw and several prizes are often offered, e.g. Lotto, Extra, Joker and Bingo.

A casino is not a game as such, but premises that are open to the adult part of the public and that offer a number of different types of money games. Games offered in casinos are generally high-stake games with high potential winnings. Because of the need both to protect players from uncontrolled betting and to protect the gaming operator against criminal activity, casino games are subject to strict regulations and supervision in premises that are screened off from free public access. Casino games fall into two main categories: table games and gaming machines. Casinos are, as previously noted, prohibited in Norway.

The definitions of the various categories of games and their parameters differ from country to country. Each country has its own regulations, which are laid down according to its own traditions. The only games where there are common rules applicable to several countries are those that are held in more than one country simultaneously, e.g. Vikinglotto and Euromillions. These are games where the betting, draw and payout of winnings take place over a longer period of time and where higher winnings are often involved. This is the case for example in national lotteries and numbers games with periodic drawings, such as Lotto, where, in many places, winnings typically run to millions. In games of shorter duration, it is generally possible to achieve small and frequent winnings, but without it being possible to accumulate large amounts of money over time. One exception to this general rule is table games and gaming machines in casinos, where the games are short and frequent, but where both stakes and winnings may be large.

4.2 The distinction between hard and soft games

Not all types of games appear to cause gambling addiction. In the research on gambling addiction, it is customary to distinguish between hard and soft games or high-risk and low-risk games, to describe the game types that, to a lesser or a greater degree, lead to

self-delusion and addiction. One and the same game type can however be designed and presented in many different ways and pose different risks in terms of gambling addiction. A particular type of game may therefore be either soft or hard depending on the playing conditions and the way the game actually works; see *Volberg/Chips*, page 91 (**Appendix 2**), which reads:

“In the 1980s, the differences between ‘soft’ forms of gambling (that is, lotteries and bingo) and ‘hard’ forms of gambling (that is, casino-style games and pari-mutual wagering) were clear. This boundary blurred as lotteries started to offer a multitude of games besides the traditional, large jackpot drawings, daily number games, the instant scratch tickets, and, finally electronic gaming devices offering keno, poker, blackjack, and line games such as those offered on slot machines at casinos.” (emphasis added).

Professor *Mark Griffiths* of Trent University in Nottingham has reached a similar conclusion in his article “Gaming Technologies: Prospects for Problem Gaming,” where he writes:

“ (...) it can be argued that games which offer a fast, arousing span of play, frequent wins and the opportunity for rapid replay are associated with problem gambling. These observations have been made in relation to slot machines by researchers all over the world (e.g., Australia, US, UK, Canada, Spain, Holland, Germany). There is no doubt that frequency of opportunities to gamble (i.e., event frequency) is a major contributory factor in the development of gaming problems (Griffiths, 1997a; 1997b). As argued above, slot machines have an event frequency of every few seconds whereas the football pools have an event frequency of once a week. The general rule is that the faster the event frequency, the more likely it is that the activity will cause gambling problems. Addictions are essentially about rewards and the speed of rewards. Therefore, the more potential rewards there are, the more addictive an activity is likely to be.” The article is published in the *Journal of Gaming Studies* Vol. 15 (3), Fall 1999, see page 269 (emphasis added, see **Appendix 4**).

In Norway, only soft games have traditionally been offered. The major new development involves electronic gaming machines. Such machines are, together with casino games, considered to be the most problematic types of games; cf. Hans Olav Fekjær’s book *Spillegalskap – vår nye landeplage* (2002), page 128 (**Appendix 5**). Fekjær divides the games and their regulation into three categories. The first comprises lotteries, lotto, scratch cards, pools and trotting, which are examples of games that are not particularly controversial and that create only minor problems. Both machines with a large turnover *and* casinos cause significant or major problems, and require management, research and prevention. The third category of gaming regulation is that which encompasses both large-turnover machines and casinos. This type of gaming market often leads to extremely serious problems. In section IV.2c) of the letter of formal notice, the Authority poses the question of whether money games can be categorised into different risk groups in respect of gambling addiction. It is the

Government's view that such categorisation is justified on the basis of both historical experience and contemporary studies of money gaming as demonstrated above. This is also precisely the reason why lotteries and certain moderate money games, such as scratch cards and bingo, may be offered in Norway by a number of operators competing with each other, while the larger money games are operated by a single operator owned by the Government. The Government finds it highly unlikely that the Storting would have allowed current gaming machines to be operated by several different operators in competition with each other if the situation that has evolved during the last decade had been foreseen when the current Lotteries Act was adopted in 1994.

4.3 Europe and the rest of the Western world

A common feature of European gaming legislation is that it restricts public access to and placement of gaming machines in accordance with the degree of aggressiveness of the game in question. In other respects, the regulation of gaming in the individual European countries varies according to local traditions and in response to problems that have emerged over the years. Even though no European countries can be said to have identical gaming policies, the countries that are based today on a so-called social welfare-state model (e.g. the Nordic countries), have given priority to protecting their citizens against addiction and other social problems caused by gambling. A strong public gaming policy has been an important instrument throughout the last part of the 20th century. Nonetheless, in all countries, irrespective of the form of government and political approach, the lesson learned over the centuries has been that the liberalisations of gaming opportunities leads to problems that provoke a general call for stricter regulations.

The extent to which the regulation of gaming in the various countries is dominated by commercial interests or social policy/crime policy considerations may vary somewhat from country to country, but it largely depends on whether the current trend in the country in question is towards a more liberal or a more restrictive gaming policy. As noted above, over the centuries, periods of prohibition have been followed by periods of more liberal regulations, only to be followed once more by restrictions in response to the social problems caused by gambling. In more liberal periods, economic considerations generally gain great acceptance, even where social policy considerations have traditionally been more predominate. When problems reoccur as a result of a liberal policy, the social policy considerations come to the fore again. A recent example from the USA of how rapidly such perceptions of what constitutes responsible money gaming can change is found in the article "From Mad Joy to Misfortune: The Merger of Law and Politics in the World of Gaming" in *Mississippi Law Journal*, Volume 72, Winter 2002. The example is taken from the state of South Carolina, where electronic gaming machines were permitted in 1993 and totally prohibited by 2001 because of problems with gambling addiction. The prohibition came after a protracted legal battle

in the courts between public interests and private gaming machine operators. The following is a quote from the end of the article (**Appendix 6**):

“When considering the measured pro-gaming statements of lobbyists and politicians today, it is interesting to note that the entire saga of gaming in South Carolina, from birth to death, involved the collection of enormous profits by an ‘industry’ that never spent a full day obeying the law. No one can read the mountain of factual evidence and the summary of Judge Anderson in his order of April 28, 1999, and fail to recognize the presence of a business dedicated to intentionally violating the law.” (page 727 et seq.).

Until the mid-1990s, the European gaming market was dominated by games that were offered within clearly defined geographical borders. The regulation of money gaming has traditionally been, and still is, regarded as a national matter and receives but scant mention in international agreements and conventions. Therefore, in Europe the rules governing money gaming vary from country to country and within different regions in the individual countries, with different parameters for how gaming may be organised and who may offer money games. Thus, there is no initiative or will to harmonise the market for money gaming within the EEA.

In recent years, the European money gaming market has been characterised to a greater extent by developments on the Internet, especially as regards electronic versions of traditional casino games and money games linked to sporting events. Major international bookmakers have set up games offerings on the Internet by locating servers in small island states in Europe (e.g. Malta) and in the Caribbean, where such international provision of money gaming is permitted. Most countries in Europe have responded to this situation by setting up their own national games on the Internet, which are offered within the country itself, but restricted to the country’s own citizens and other people who are resident in the country. The purpose of such national games is generally to maintain controlled and moderate gaming opportunities as an alternative to those offered in the international market. In most countries there is a strong reluctance to make national games accessible to players residing in other countries, as such internationalisation necessarily presupposes a commercial adjustment to the more aggressive gaming opportunities in the more competitive international market. In this respect it should be noted that as the Government understands the Commission’s press release regarding its opening letter to Denmark, that case is, unlike the present case, very closely related to cross-border sports betting.

4.4 Internet gaming

4.4.1 What is Internet gaming?

There are different ways of offering money gaming over the Internet. Firstly, the Internet can be used as a distribution channel for providing traditional money gaming

(as is done by Norsk Tipping AS). Thus, the Internet gives players the opportunity to participate in existing games without having to seek out an agent. The games are, however, the same as those that can be purchased over the counter, which in Norway include, for example, Lotto, football pools, Oddsen and trotting.

Secondly, more and more operators of traditional casinos and other gaming operators are offering interactive games over the Internet. Players can either participate directly in games being played on casino premises via a video link over the Internet, or in virtual casino games or gaming machines. Real-time participation in real or virtual money games has given rise to a number of new technological and legal challenges as regards the regulation of gaming. This type of online gaming opportunity has increased considerably in volume and distribution in the past two or three years alone. Estimates on the development of the global online gaming market provided by the River City Group indicates a rise in volume from \$ 3 004,5 billion in 2001 up to \$ 9 853,6 billion in 2005 and \$ 18 394,9 billion in 2010. Similar estimates were presented by Leisure Analyst Simon Larkin from ABN AMRO in 2002, see **Appendix 7**.

4.4.2 The Internet gaming in relation to gaming machines

In the Norwegian Government's view, the Internet gaming trend has led to rapid and aggressive money games becoming available in Norway, despite the fact that there is a prohibition against such games. The proliferation of such games is increasing rapidly and, in Norway's case, can only be compared to the uncontrolled increase in gaming on gaming machines over the last decade. Recently, Norwegian institutions that offer treatment for gaming addiction have recorded an increasing number of players who attribute their problems to Internet gaming, but most indicators still suggest that more than 80 per cent of those seeking help for gambling addiction regard gaming machines as their main problem. Today it is difficult to regulate the availability of such games over the Internet without comprehensive international rules and agreements.

The growth in domestic money gaming can only be regulated by the national authorities themselves. As long as the regulations implemented are necessary, suitable and proportional instruments with regard to the reduction of social problems related to gaming, the Government's view is that ECJ case law, including the judgment in the Gambelli case, does not prevent the implementation of such restrictions on gaming services.

III CASE LAW FROM THE ECJ IN CASES CONCERNING GAMING

5. Introduction

The Government does not agree with the Authority's approach to ECJ case law. On the one hand, the Government is of the opinion that judgments of the ECJ should be read in context as delineating the general source of law in this area. On the other hand, the Government holds that the individual judgments, and in *Gambelli* in particular, should be considered in the light of the actual circumstances in that case. Moreover, the Government questions the Authority's view that within the scope of any proceedings on failure to fulfil obligations under the Treaty, it is for the Government to demonstrate that other, less restrictive, measures would not achieve the same objectives as the introduction of exclusive rights.

To date, correspondence with the Authority has largely been concerned with elucidating the *de facto* circumstances. Thus, as stated above, the Government finds it necessary in the present letter of reply to devote substantial space to a review of ECJ case law and to how this has a bearing on the *de facto* circumstances of the present case.

In the following observations, the Government will first address the documentation requirements to which the Government and the Authority are subject (Section 6), before dealing with the substantive aspects in Section 7 et seq. The Government has found it appropriate to discuss the *Gambelli* case before addressing other relevant case law (Sections 7 and 8). The purpose of this approach is, as noted above, to show that the *Gambelli* case fits into the development of ECJ case law in this area, and that earlier case law –contrary to what seems to be the Authority's approach– is still of great importance.

6. General remarks regarding the documentation requirements

With reference to the *Gambelli* case, paragraph 65, the Authority states in Part IV.3 that it is for the Government to provide evidence that the desired results of the monopoly cannot be achieved by less restrictive means. Paragraph 65 reads:

"According to those decisions, the restrictions must be justified by imperative requirements in the general interest, be suitable for achieving the objective which they pursue and not go beyond what is necessary in order to attain it. They must in any event be applied without discrimination."

That exclusive rights must not go beyond what is necessary in order to meet the requirement of proportionality is not disputed. However, this does not mean that the Government should be required to prove or demonstrate in practice that all other models (open licence-based market, restricted licence-based market, sole licensee, etc.) would not achieve the intended objectives.

An infringement procedure requires the Authority to prove that the Government is in breach of the EEA Agreement, in the present case Articles 31 and 36. In Case C-194/01, the ECJ held:

*“According to settled case-law, in an action for failure to fulfil obligations it is for the Commission to prove the allegation that the obligation has not been fulfilled. It is the Commission which must provide the Court with the evidence necessary for the Court to establish that the obligation has not been fulfilled, and it may not rely on any presumption (see, *inter alia*, Case 96/81 *Commission v Netherlands* [1982] ECR 1791, paragraph 6; Case C-404/00 *Commission v Spain* [2003] ECR I-6695, paragraph 26; and Case C-434/01 *Commission v United Kingdom* [2003] ECR I-0000, paragraph 21) (paragraph 34, emphasis added)*

Although it is for the Authority to prove that a failure to fulfil an obligation exists, the Government must demonstrate *which concerns* exist that would justify such a restriction. However, as regards the proportionality assessment, the Government’s responsibility cannot be extended beyond what it is required to prove that all other, less restrictive measures would not achieve the intended aim. Reference is made to case C-159/94, *Commission v. French Republic*:

“(…) it is true that it is incumbent upon a Member State which invokes Article 90(2) to demonstrate that the conditions laid down by that provision are met. However, that burden of proof cannot be so extensive as to require the French Republic, which has set out in detail the reasons for which, in the event of elimination of the contested measures, the performance of the tasks of general economic interest, under economically acceptable conditions would, in its view, be jeopardized, to go even further and prove, positively, that no other conceivable measure, which by definition would be hypothetical, could enable those tasks to be performed under the same conditions.” (paragraph 101, emphasis added).

This is further elaborated in case C-55/99, *Commission v. France*, in which the ECJ held:

*“Moreover, in proceedings for failure to fulfil an obligation, it is for the Commission to prove the allegation that the obligation has not been fulfilled and to place before the Court the information needed to enable it to determine whether the obligation has not been fulfilled (see Case C-159/94 *Commission v France* [1997] ECR I-5815, paragraph 102).*

“In this respect, without there being any need to consider whether Directive 98/79 may usefully be referred to in ascertaining whether the contested decree is proportionate from the point of view of Community law, it must be stated that the Commission has done no more than repeat the distinction drawn in that directive, without supporting its criticism of the contested decree with detailed reasons or information to enable the Court to determine whether the application of the decree to all reagents means that it is disproportionate. It has merely adduced some examples, summarised in paragraph 24 above, which in its opinion show that there are reagents for which the requirement of prior registration as

prescribed by the contested decree is unnecessary." (paragraph 30 and 31, emphasis added).

7. The *Gambelli* case

7.1 The background – motivation for the licensing system

According to Italian law, no licence may be granted for the taking of bets, with the exception of bets on sporting contests where the taking of the bets is essential for the proper conduct of the competitive event. It is a precondition of the issue of licences for the taking of bets that such bets relate to the outcome of sporting events under the supervision of the Italian National Olympic Committee (CONI) or horse races organised through the Italian Horse Racing Authority (UNIRE).

Through a statutory amendment in 2000, certain restrictions were made to the legislation such that a licence to operate a business enterprise involving the taking of bets subsequent to this amendment may solely be granted to licensees or to those duly authorised by the Italian authorities.

In the preparatory work on the statutory amendment it appears that the last restrictions were primarily motivated by an interest in securing tax revenue for the Italian State. Thus, in connection with the amendment, around 1,000 new licences were granted (to domestic operators) for offering gaming and the taking of bets on sporting events.

In Italy, it is a criminal offence to organise, without due authorisation, lotteries, betting or pools reserved by law to the State or to entities operating under licence from the State, just as it is a criminal offence to participate in competitions, games or bets organised by unlicensed entities.

The case was brought before the ECJ in connection with criminal proceedings being brought *inter alia* against *Gambelli*, who, together with a number of other persons, had operated a betting agency in Italy without due authorisation. The Italian court submitted a single question to the ECJ:

"Is there incompatibility (with the repercussions that that has in Italian law) between Articles 43 et seq. and Article 49 et seq. of the EC Treaty regarding freedom of establishment and freedom to provide cross-border services, on the one hand, and on the other domestic legislation such as the provisions contained in Article 4(1) et seq., Article 4a and Article 4b of Italian Law No 401/89 (as most recently amended by Article 37(5) of Law No 388/00 of 23 December 2000) which prohibits on pain of criminal penalties the pursuit by any person anywhere of the activities of collecting, taking, booking and forwarding offers of bets, in particular bets on sporting events, unless the requirements concerning concessions and authorisations prescribed by domestic law have been complied with?"

7.2 *The ECJ's judgment*

7.2.1 Introduction

In the grounds for judgment, the ECJ holds by way of introduction that any legislative restrictions imposed on the type of business at issue constitute obstacles to the freedom of establishment and the freedom to provide services.

The ECJ then had to determine whether such restrictions could be justified because they come under exceptions set out in the Treaty, i.e., whether the restrictions were justified in the interests on grounds of public order, public security or public health or whether they were compatible with ECJ case law on grounds of imperative requirements in the general interest.

The ECJ begins by rejecting the argument raised by the Greek and Portuguese Governments that the diminution or reduction of tax revenue constitutes a matter of overriding general interest which may be relied on to justify a restriction on the freedom of establishment or the freedom to provide services (paragraph 61). The ECJ then notes that *“restrictions must in any event reflect a concern to bring about a genuine diminution of gaming opportunities, and the financing of social activities through a levy on the proceeds of authorised games must constitute only an incidental beneficial consequence and not the real justification for the restrictive policy.”*

7.2.2 The Member States' scope of discretion and the imperative requirements in the general interest that may be invoked

As regards such interests as may provide justification for restrictions in national gaming legislation, the ECJ refers to three previous judgments; *Schindler* (Case C-275/92), *Läärä* (Case C-124/97) and *Zenatti* (Case C-69/98).

The ECJ points out that in all three cases it stated that moral, religious and cultural factors, and the morally and financially harmful consequences for the individual and society associated with gaming and betting, could serve to justify the existence on the part of the national authorities of a margin of appreciation sufficient to enable them to determine what consumer protection and preservation of public order require.

On that basis, the ECJ observes that according to settled case law, such restrictions must be justified by imperative requirements in the general interest, be suitable for achieving the objective which they pursue and not go beyond what is necessary in order to attain it. The restrictions must in any event be applied without discrimination.

The ECJ leaves it to the Italian Court to decide whether the restriction on the freedom of establishment and on the freedom to provide services instituted by Italian gaming

legislation satisfy those conditions. To that end the ECJ rules that the Italian Court is to take account of the following:

(1) First, that restrictions based on interests such as consumer protection, the prevention of both fraud and incitement to squander on gaming must be suitable for achieving those objectives, inasmuch as they must serve to limit betting activities (paragraph 67).

The ECJ refers *in that regard* to the fact that the national court, referring to the preparatory papers for the 2000 statutory amendment, has pointed out that the Italian State is pursuing a policy of substantially expanding betting and gaming at national level *with a view to obtaining funds for the State*, while also protecting CONI licensees. The ECJ then goes on to observe in paragraph 69 that:

“In so far as the authorities of a Member State incite and encourage consumers to participate in lotteries, games of chance and betting to the financial benefit of the public purse, the authorities of that State cannot invoke public order concerns relating to the need to reduce opportunities for betting in order to justify measures such as those at issue in the main proceedings.” (emphasis added).

The Advocate General’s Opinion in the same case illustrate that the essentially financial nature and protectionist aims of the Italian scheme have influenced the ECJ’s guidelines for the national court in this case. He holds:

“With reference to the statutory amendment made in 2000 under Act no. 388/00, and the circumstances attendant upon the decision, and which entailed a tightening of the prevailing regulations – which had already been examined by the Court in Zenatti – it should be pointed out that, according to the documents concerning preparatory papers cited in written submissions, the statutory amendment was at least also effected in order to protect domestic licensees. Here we are dealing with plainly protectionist motives, that cannot serve to justify the statutory amendment, and which equally cast a doubtful light on the scheme as a whole. In so far as the opinion is that the original legislation can no longer be sustained by the objectives it was possibly intended to pursue because the de jure and de facto circumstances have changed, no restriction of this nature should in any event have been instituted.

(...)

“The fact also that the scheme was introduced through a Budget, would indicate that the Member State on financial grounds has a not inconsiderable vested interest in gaming.” (paragraphs 123 and 124, emphasis added)

(2) Second, in its judgment, the Italian court is to take into account that the restrictions imposed by Italian legislation must be applicable without distinction in the sense that

they must apply in the same way and under the same conditions to operators established in Italy and to those in other Member States. In that regard the ECJ observes that the conditions for submitting invitations to tender for licences must be laid down in such a manner that they cannot in practice be met more easily by Italian operators than by foreign operators. Moreover, the ECJ notes that if this is not the case, those conditions do not satisfy the requirement of non-discrimination (paragraphs 70-71).

(3) Third, the Italian Court is to take into account that the restrictions must not go beyond what is necessary.. In that regard the ECJ notes that subsequent to the Italian statutory amendment it is a criminal offence for an individual to place a bet over the Internet from his home in Italy with a bookmaker established in another Member State. The ECJ observes that the national court must consider whether this is not a disproportionate restriction.

(4) Finally the ECJ notes that any steps taken to prevent foreign capital companies from obtaining licences may be considered to be a measure which goes beyond what is necessary to check fraud because there are other means of checking the accounts and activities of such companies (paragraph 74).

The ECJ then concludes in paragraph 76:

“In the light of all those considerations the reply to the question referred must be that national legislation which prohibits on pain of criminal penalties the pursuit of the activities of collecting, taking, booking and forwarding offers of bets, in particular bets on sporting events, without a licence or authorisation from the Member State concerned constitutes a restriction on the freedom of establishment and the freedom to provide services provided for in Articles 43 and 49 EC respectively. It is for the national court to determine whether such legislation, taking account of the detailed rules for its application, actually serves the aims which might justify it, and whether the restrictions it imposes are disproportionate in the light of those aims.”

7.3 The ECJ upholds previous case law and rejects interests that are motivated by financial or protectionist concerns, which seem to form the basis for the Italian scheme

Thus, it follows from the foregoing that the ECJ in *Gambelli*:

- upholds previous case law relating to interests that may be invoked, and the scope of discretion associated with the choice of measures that may be applied;
- links the specific observations concerning systematic coherence in gaming policy, etc., to the interests that are motivated by financial or protectionist concerns, which seem to form the basis for the Italian scheme;

- leaves the assessment of proportionality to the national court.

8. Other ECJ case law

8.1 *The Schindler case*

Prior to the Gambelli case, the ECJ has in a number of cases, including the three judgments mentioned above in Schindler, Läärä and Zenatti, ruled on the question whether any national legislation that restricts a free gaming market is compatible with the provisions of the EC Treaty. All these cases involve preliminary requests by national courts, unlike the present case, which is a direct action case.

The ECJ discussed the issue for the first time in the judgment in Schindler, which concerned a prohibition under United Kingdom law against the importation of lottery advertisements and tickets. Under UK law all lotteries were prohibited, with the exception of small-scale lotteries for benevolent and public interest purposes.

The ECJ found that the provisions of the EC Treaty concerning the freedom to provide services did not constitute an obstacle to legislation such as that of the UK's on lotteries. In paragraph 60, the ECJ cites four lawful concerns that may be invoked by the Member States in the regulation of lotteries and other forms of gaming.

(1) First, a Member State may, in the light of its moral, religious or cultural concerns, take measures to prevent gaming from being a source of private profit.

(2) Secondly, a Member State may, given the size of the winnings, take into account the high risk of crime or fraud entailed by lotteries.

(3) Thirdly, a Member State may take account of the damaging individual and social consequences that may result from the temptation to gamble (i.e. gambling addiction).

(4) Fourthly, a Member State may emphasise that lotteries may make a contribution to benevolent or public interest activities such as social works, charitable works, sport or culture. In paragraph 61, the ECJ further notes in relation to the principle of proportionality that these particular factors justify the Member States having sufficient discretionary powers to determine how to regulate gaming. In this respect, the ECJ stated that:

“Those particular factors justify national authorities having a sufficient degree of latitude to determine what is required to protect the players and, more generally, in the light of the specific social and cultural features of each Member Government, to maintain order in society, as regards the manner in which lotteries are operated, the size of the stakes, and the allocation of the profits they yield. In those circumstances, it is for them to assess not only

whether it is necessary to restrict the activities of lotteries but also whether they should be prohibited, provided that those restrictions are not discriminatory.” (paragraph 61, emphasis added)

8.2 *The Läärä case and the Zenatti case*

The *Läärä* case and the *Zenatti* case concern the same issue.

The *Läärä* case concerns Finnish legislation on the operation of gaming machines, and is thus clearly analogous to the case at hand. In Finland a licence issued by the administrative authorities (valid for a specified period) is required to operate gaming machines. And only one such licence may be issued. In Finland the licence was issued to Raha-automaattiyhdistys (RAY), a public association for the management of slot machines.

The appellants in the main proceedings were charged with having operated the machines without a licence from the administrative authorities. The appellants maintained that the judgment in *Schindler* was not applicable, on the one hand because the gaming machines were quite different from the lotteries with which the judgment in *Schindler* was concerned and, on the other hand, because the public interest objectives relied on in granting exclusive rights to RAY were not pursued in practice, or could be attained by less restrictive measures.

The *Zenatti* case concerned Italian legislation on betting prior to the statutory amendment in 2000, which in the *Gambelli* case led the Italian court once more to submit a request for a preliminary ruling to the ECJ.

The appellant in the main proceedings was charged with having operated an agency in Italy for a British firm of bookmakers without a licence from the administrative authorities. The appellant contended that the *Schindler* case was not applicable, on the one hand because taking bets on the outcome of sporting events cannot be equated with the running of lotteries, which was the issue in *Schindler*, and, on the other hand, because the social-policy concerns and the concern to prevent fraud on which the Italian legislation was founded were not sufficient to justify that legislation.

The ECJ's grounds for judgment in these two cases follow the same approach and are largely identical.

(1) The ECJ first reiterates paragraphs 60 and 61 of the *Schindler* case concerning the factors that may justify restrictions. The ECJ then emphasises that the same aspects apply to other money games of a kind comparable to those presented in *Schindler*. On this basis, the ECJ establishes that money games, slot machines and bets on sporting

events are comparable to the lotteries at issue in *Schindler* (the *Läärä* case, paragraphs 13-16 and the *Zenatti* case, paragraphs 14-17).

(2) Secondly, it follows from the judgments that the differences invoked could not have any other outcome. In both the *Läärä* case and the *Zenatti* case, the national legislation was less far-reaching than in the *Schindler* case because there was no question of a *total prohibition* against the games in issue, but of schemes which accorded designated entities, on the authorisation of the administrative authorities, the right to operate the activities. In *Läärä*, paragraph 37, the ECJ commented on this matter as follows:

“Contrary to the arguments advanced by the appellants in the main proceedings, the fact that the games in issue are not totally prohibited is not enough to show that the national legislation is not in reality intended to achieve the public interest objectives at which it is purportedly aimed, which must be considered as a whole. Limited authorisation of such games on an exclusive basis, which has the advantage of confining the desire to gamble and the exploitation of gaming within controlled channels, of preventing the risk of fraud or crime in the context of such exploitation, and of using the resulting profits for public interest purposes, likewise falls within the ambit of those objectives.” (emphasis added).

The ECJ also refers to this fundamental starting point in its ruling in the *Zenatti* case, paragraph 35.

In the light of these observations, it is noteworthy that the Authority states in Part IV.3a), first paragraph, that if the Government’s concerns are genuine, and not (which is obviously not the case, cf. Section 11 below) financially motivated, a total ban on this particular kind of gaming would appear to be the most efficient measure. As demonstrated above, according to ECJ case law this is not a tenable legal argument. The fact that this is untenable *de facto* as well will be demonstrated by the Government in Section 10 below.

(3) Thirdly, the ECJ notes that neither Finnish nor Italian legislation is discriminatory in respect of nationality (*Läärä*, paragraph 28 and *Zenatti*, paragraph 26).

(4) Fourthly, the ECJ notes that in both cases the obstacles to the freedom to provide services constituted by the Finnish and Italian legislation are justified. In the *Läärä* case, the legislation at issue in the main proceedings responds to the concern to limit exploitation of the human passion for gambling, to avoid the risk of crime and fraud to which the activities concerned give rise and to authorise those activities only with a view to the collection of funds for charity or for other benevolent purposes (*Läärä*, paragraph 32).

(5) Fifthly, the ECJ notes that these objectives cannot be attained by less restrictive measures.

With respect to the assessment of proportionality, the ECJ holds that determination of the scope of the protection which a Member State seeks to secure falls within the discretionary powers accorded to the Member States by paragraph 61 of the *Schindler* case (*Läärä*, paragraph 35 and *Zenatti*, paragraph 33). This implies that if a Member State has chosen a system of protection that differs from that of another Member State, the system in the former Member State is not as such disproportionate.

Moreover, in the *Läärä* case, the ECJ, in the context of a very concrete assessment of whether the Finnish legislation is to be regarded as proportionate, sets out the scope of discretion accorded to national authorities in determining which measures are necessary for safeguarding the concerns that are being pursued and worthy of protection precisely at the level intended by each Member State.

In paragraphs 39-42, the ECJ rules that:

“The question whether, in order to achieve those objectives, it would be preferable, rather than granting an exclusive operating right to the licensed public body, to adopt regulations imposing the necessary code of conduct on the operators concerned is a matter to be assessed by the Member States, subject however to the proviso that the choice made in that regard must not be disproportionate to the aim pursued.

On that point, it is apparent, particularly from the rules on slot machines, that the RAY, which is the sole body holding a licence to run the operation of those machines, is a public-law association the activities of which are carried on under the control of the State and which is required, as noted in paragraph 5 of this judgment, to pay over to the State the amount of the net distributable proceeds received from the operation of the slot machines.

It is true that the sums thus received by the State for public interest purposes could equally be obtained by other means, such as taxation of the activities of the various operators authorised to pursue them within the framework of rules of a non-exclusive nature; however, the obligation imposed on the licensed public body, requiring it to pay over the proceeds of its operations, constitutes a measure which, given the risk of crime and fraud, is certainly more effective in ensuring that strict limits are set to the lucrative nature of such activities.

In those circumstances, in conferring exclusive rights on a single public body, the provisions of the Finnish legislation on the operation of slot machines do not appear to be disproportionate, in so far as they affect freedom to provide services, to the objectives they pursue.” (emphasis added).

Thus, the ECJ concluded:

“The Treaty provisions relating to freedom to provide services do not preclude national legislation such as the Finnish legislation which grants to a single public body exclusive rights to operate slot machines, in view of the public interest objectives which justify it.”

In the Government’s view, these opinions are also reflected in the *Gambelli* case, which is the one on which the Authority primarily – and in keeping with what the complainants have contended in extensive arguments submitted to the Authority – bases its letter of formal notice. In the Government’s view, these cases should be considered *together* so that the ruling in the *Läärä* case remain of great importance, but that the scope of action of the Member States is restricted where financial and/or protectionist concerns are observed, as predicated by the Advocate General in the *Gambelli* case. And as was established in the *Läärä* case, a licensed public body (in the present case Norsk Tipping AS), “*the activities of which are carried on under the control of the State*” constitutes “*a measure which, given the risk of crime and fraud, is certainly more effective in ensuring that strict limits are set to the lucrative nature of such activities.*”

The Government maintains that the *Läärä* case is clearly analogous to the case at hand. The only major difference would appear to be that Finland has maintained an exclusive-rights system all along, while Norway is now introducing this model in a liberal market open to competition. In the Government’s view, the Authority’s assessment must necessarily be the same whether addressing an exclusive-rights model in a market (a) where there was not previously any free competition or (b) where there was previously free competition. The fact that a Member State has, like Norway and unlike Finland, chosen to maintain a liberal market for a period in which – after considerable problems – an exclusive rights model is being introduced does not in itself imply that the exclusive rights model is unlawful. This must be the case even if the existing operators are eliminated by the exclusive rights model.

The assessment to which the Authority subjects the exclusive rights model, including the question as to whether it is disproportionate, must therefore be the same whether it is made of a free market with existing operators, or a market subject to a total prohibition until the exclusive rights model is introduced. The Authority makes no mention of the *Läärä* case in this context. In that respect, the Government notes that the Authority on 19 December 2002 closed a case (complaint) concerning the Lottery Act of 1995. The Authority held:

*“After an assessment of the information submitted by Norway and the complainants, and taking into account developments in case law of the Court of Justice of the European Communities (i.e. judgements in case C-67/98 *Questore di Verona v. Diego Zenatti* (1999) ECR 1999, p. I-07289, case C 124/97 *Markku Juhani Läärä, Cotswold Microsystems Ltd and Oy Transatlantic Software Ltd v. Kihlakunnansyyttäjä (Jyväskylä) and Suomen valtio (Finnish State)* (1999) ECR 1999, p. I06067), the Authority decided to close the case.”* (emphasis added).

8.3 *The Anomar case*

Besides the *Läärä* case and the *Zenatti* case, the last judgment in this area prior to the Gambelli case, i.e. the ECJ's judgment of 11 September 2003 in Case C-6/01, *Anomar*, should be mentioned here. This case concerned Portuguese legislation on games of chance, which provides that the operation and playing of games of chance are to be restricted to the game rooms of casinos located in permanent or temporary gaming areas created by decree-law.

In its judgment (paragraph 72), the ECJ noted that, according to the information provided by the national court, the provisions of Portuguese law are designed to attain objectives of public interest and legitimate social purposes such as "fair play" and the possibility of "obtaining some benefit for the public sector". The ECJ then states (in paragraph 73) that the various considerations leading to the adoption of such legislation must be taken together, in accordance with the judgment in *Schindler*.

The ECJ further states that these considerations in that particular case concern the protection of consumers and the maintenance of order in society, and that the ECJ has already established that these objectives are among those that may justify restrictions on the freedom to provide services. In paragraphs 86 and 87, the ECJ states that:

"As the Portuguese Government points out, the Court has held that national measures which restrict the freedom to provide services, which are applicable without distinction and are justified by overriding reasons relating to the public interest - as is the case here, as is evident from paragraphs 68 and 72 to 75 of this judgment - must, nevertheless, be such as to guarantee the achievement of the intended aim and must not go beyond what is necessary in order to achieve it (Case C-288/89 Collectieve Antennevoorziening Gouda [1991] ECR I-4007, paragraphs 13 to 15, and Läärä and Others, cited above, paragraph 31).

None the less, it is a matter for the national authorities alone, in the context of their power of assessment, to define the objectives which they intend to protect, to determine the means which they consider most suited to achieve them and to establish rules for the operation and playing of games, which may be more or less strict (see, to that effect, Schindler, cited above, paragraph 61; Läärä and Others, cited above, paragraph 35, and Zenatti, cited above, paragraph 33) and which have been deemed compatible with the Treaty. (emphasis added).

9. Summary - the *Schindler, Läärä, Zenatti* and *Gambelli* line

As established by the ECJ in all of the judgments in this area, the decisive factor in any assessment of whether a national scheme is compatible with EEA law is whether the

restrictions can be regarded as justified by imperative requirements in the general interest.

Restrictions on gaming activities may, according to settled ECJ case law (cf. paragraph 67 of *Gambelli*, which is the most recent of these case) may be justified by imperative requirements in the general interest such as (1) consumer protection, (2) the prevention of fraud and other crime, (3) the prevention of incitement to squander on gaming (i.e., in order to prevent gaming addiction) and (4) the preservation of public order.

In so far as Norwegian legislation is justified by these interests, it follows from ECJ case law (most recently, paragraph 63 of the *Gambelli* case) that the Norwegian authorities should be accorded a wide scope of discretion in their choice of measures for achieving these objectives. When exercising this scope of discretion, the Member States may choose to grant exclusive rights for the provision of gaming facilities or for certain forms of games, in the present case for the operation of gaming machines. In the *Läärä* case and the *Zenatti* case (paragraphs 37 and 35, respectively) the ECJ expressly recognised that “*Limited authorisation of gambling on the basis of special or exclusive rights granted or assigned to certain bodies, which has the advantage of confining the desire to gamble and the exploitation of gaming within controlled channels, of preventing the risk of fraud or crime in the context of such exploitation, and of using the resulting profits for public-interest purposes, likewise falls within the ambit of those objectives,*” is comprised by the efforts to attain those objectives underlying the imperative general interest requirements mentioned above.

The *Gambelli* case does not depart from the ECJ’s case law on this point. The judgment does not therefore entail that the ECJ now would regard exclusive rights for gaming as incompatible with EEA law. Therefore, in line with the *Läärä* case and the *Zenatti* case, there is still justification for asserting that such exclusive rights provide a means of ensuring that the revenue (from the enterprise to which exclusive gaming rights are assigned) is used for public interest purposes if this policy constitutes an incidental benefit of the monopoly, rather than being its primary objective.

However, in the *Gambelli* case the ECJ finds cause, on the basis of information presented in the case concerning the background to the most recent amendment to Italian gaming legislation, to stress that the restrictions “*must serve to limit betting activities in a consistent and systematic manner*” (paragraph 67). The ECJ then notes that the national court “*in that regard (...) has pointed out that the Italian Government is pursuing a policy of substantially expanding betting and gaming at national level with a view to obtaining funds, while also protecting CONI licensees*” (paragraph 68). This leads the ECJ to add that “*In so far as the authorities of a Member State incite and encourage consumers to participate in lotteries, games of chance and betting to the financial benefit of the public purse, the authorities of that State cannot invoke public order concerns relating*

to the need to reduce opportunities for betting in order to justify” restrictions on the free movement of services (paragraph 69).

Paragraphs 67-69 of the *Gambelli* case should thus be taken in context and construed to mean that the Member States may not invoke the concerns recognised by the ECJ as justifying restrictions on gaming legislation if such concerns are just *pretexts* for legislation that in reality pursues the interests of the public purse and protectionism. These paragraphs should also be considered in the context of paragraph 62 of the judgment, in which the ECJ emphasised that the *“financing of social activities through a levy on the proceeds of authorised games must constitute only an incidental beneficial consequence and not the real justification for the restrictive policy.”*

Following this review of ECJ case law, the Government will discuss whether Norwegian legislation is compatible with EEA law. First, the Government will address the legislative history of the bill and the objectives of the exclusive rights for gaming machines (Part IV), and then discuss whether this bill is consistent with Norwegian gaming policy (Part V).

IV THE LEGISLATIVE HISTORY OF THE BILL AND THE OBJECTIVES OF THE EXCLUSIVE RIGHT TO OPERATE GAMING MACHINES

10. Introduction

The reasons for the Storting's decision to assign exclusive rights to Norsk Tipping for the operation of gaming machines are set out in Proposition No. 44 (2002-2003) to the Odelsting, which reads as follows on page 5:

"The chief reason underlying the Government's bill on regulating the gaming machine market is the intention to combat gambling addiction and crime more effectively, to achieve greater control over irregularities in the gaming sector, and to be able to enforce the minimum 18-year age limit more stringently." (unauthorised translation)

For almost a century, Norwegian gaming policy has been based on the very reason that the moderate and well regulated provision of gaming opportunities would provide better protection against problem gambling than a total prohibition would. One potential problem entailed by a total prohibition is the growth of covert gambling milieu where there are no rules or supervision, which in turn leads to increased and uncontrolled addiction and crime. As stressed above, research on gambling shows that casino games and gaming machines traditionally pose the greatest risk in terms of gambling addiction. The Norwegian ban on casinos has led to the establishment of a number of illegal gambling dens offering precisely the types of games that are prohibited. In Sweden a ban on gaming machines was introduced in 1979 in response to the increasing number of people becoming addicted. For the duration of that ban, which was in force until the state-owned company Svenska Spel was granted exclusive rights to operate money gaming activities, a black market in gaming machines prevailed, which also led to gambling addiction, cf. the Swedish Government's bill 2001/02:47 (**Appendix 8**) which reads at page 12:

"Gaming on so-called one-armed bandits and similar machines was prohibited in Sweden as early as in 1979. The reasons for the prohibition were that these slot machines, which offered cash winnings, did not, from a social perspective, have an acceptable format and it was essentially unsatisfactory and offensive that the people's predisposition to gambling and the social problems this form of gambling caused should be exploited for purposes of private gain. Under the current conditions, certain money gaming operators are now taking advantage of the opportunity to install so-called wheels of fortune, which are in many ways similar to one-armed bandits.

(...)

The situation in the gaming machine market is at present completely untenable. In the interests of private financial gain, there has been a marked increase in the incidence of gaming machines of the kind prohibited under the Swedish Lottery Act. Games are

organised with high stakes and there is every indication that large amounts change hands. The police and the municipal authorities express concern that children and young people are coming into contact with the games. Thus, we are seeing a trend that is in no way compatible with the fundamental principles on which the Swedish lotteries legislation is based." (unauthorised translation, emphasis added).

Therefore, it is not necessarily true, as stated by the Authority in Section IV.3a) of its letter, that a complete ban on gaming machines would be the most efficient measure for preventing addiction to such gaming. The Government's approach is also supported by lessons learned from alcohol policy, in which attempts at total prohibition failed in a number of countries in the first half of the previous century. This corresponds with the conclusions of the book *Alcohol: no ordinary commodity*, Babor et al., Oxford (2003). In this book, a number of researchers review various alcohol policy strategies, and conclude, among other things, that a Government monopoly on retail sales of alcohol is among the most effective instruments (cf. page 264, **Appendix 9**). Total prohibition as a strategy is placed in the same category as regards effectiveness, but is regarded as having considerable negative side effects in the form of illegal markets. Experience of gaming policy suggests that such analogies with alcohol policy may be relevant. This supports the view that the impact of a total ban on gaming machines should be regarded as especially uncertain given that there is already a considerable demand for such gaming activities, and there are at present some 20,000 such machines in Norway. In such a situation, the introduction of a total prohibition would entail risk of the emergence of an illegal market for slot machine gaming. This is, indeed, not the intention.

In Norway, importance is attached to ensuring that the proceeds from such games as the Government considers to be authorised are to go to worthy causes, precisely with the aim of preventing profit *per se* from being the dominant motive for offering such gaming services. However, this does not mean that the Government cannot take into account the financial consequences of a bill on the money gaming market.

On the basis of this, in Norway importance is attached to ensuring that the revenue from moderate and authorised games goes to charitable causes, with the aim of preventing financial profit becoming the dominant motive for developing gaming services. As mentioned in section 3.2, this has a partial connection to private commercial interests being regarded as a contributor to gaming opportunities developing in an unwanted and unjustifiable direction. This principle is also based on the recognition that gaming will, to a certain extent, always create winners and notably losers. In this context it is regarded as more ethically and morally acceptable that common public interests or charities receive the economic benefits from gaming, rather than private business interests systematically earning profits as a result of players systematically losing. This initial starting point implies that a justifiable distribution of revenues from gaming in itself has a moderate effect on game development. Thus, it is important also to consider the financial consequences of a proposal on changes in the

gaming market. Such an approach is also in accordance with settled ECJ case law in the area of gaming, cf. a more detailed account in Section 11.1 below.

The Storting's decision to introduce exclusive rights for the operation of gaming machines in Norway presupposes that charitable causes will have to tolerate a substantial fall in revenue, precisely in order to reduce the problems of gambling addiction. At the same time the charities' future revenues will only be indirectly linked to machines as one of several gaming opportunities. As charities' direct economic interests in machine activities are impaired, and private business interests removed from the market accordingly, these recognised instruments will secure better control and justifiable development of such gaming. Thus, it is difficult to see that this means that commercial considerations are the driving factor behind the bill, as is the Authority implies in Section IV.1 of its letter of formal notice. The introduction of exclusive rights is not based on financial interests.

11. The introduction of exclusive rights is not based on financial interests

11.1 Introduction – the term “incidental beneficial consequence”

In relation to the case at issue, it should be emphasised that the Storting's decision is not based on fiscal interests. According to section 10 of the Norwegian Act on Money Gaming (as per 1 January 2006), the proceeds of Norsk Tipping's gaming amenities shall go to sport, culture and charitable causes. Thus, the proceeds cannot be used to finance core areas of government activity. In fact, most of the proceeds of this gaming enterprise will be allocated quite independently of the Storting's budget proceedings. This scheme also corresponds with the many current national monopolistic systems in the field of gaming, which are based precisely on the finding that exclusive rights and incidental financial interests in themselves lead to less gambling addiction and crime in that they permit better control over and more stable development of gaming. This is also in keeping with the general recognition that monopolistic systems are less suited than other, more competition-based systems to achieving strong growth and the dynamism that promotes the best possible sales strategies and maximises profits. Most countries consider that, unlike other service-providing undertakings, money gaming is an area where the aim is stable and moderate development, which monopolistic systems are presumed to ensure. Therefore, given the way that Norwegian gaming services are organised, it is clear that the Storting's decision concerning new rules for gaming machines is not based on financial interests, since such interests would obviously be better served by upholding the existing market.

With respect to ECJ case law, the Authority contends on page 3 of the letter of formal notice that financial interests must constitute only an incidental benefit, and not the real justification for restrictions on the freedom to provide services. In the Government's

environment. The Ministry therefore calls for the installation of such gaming machines to be confined to designated premises to which minors are denied access.

Of the some 18,000 machines currently installed, there are grounds for assuming that a most of them are located in premises where no access restrictions are in force. The Ministry proposes the institution of requirements whereby gaming machines are to be installed in groups in designated and restricted premises subject to constant supervision and to which persons under the age of 18 are denied access.

It must be expected that the proposed on where the machines may be installed will reduce the turnover generated by the machines to some extent, and that access to the installation sites will be reduced. It is difficult to estimate the amount of any reduction in turnover in advance.” (unofficial translation).

However, during preparation of this bill for improved regulation of installation sites and enforcement of the minimum age limit during the first half of 2002, the Government was made aware of extensive problems in relation to enforcement of the existing regulations. These included problems concerning compliance with and enforcement of the technical requirements applying to the functionality of the machines. This only increased the uncertainty as to whether it would be possible to establish acceptable practices among operators in a gaming machine market based on competition. In the spring of 2002, Norsk Tipping was therefore asked to assess the consequences of taking over the operation of gaming machines because this was regarded as necessary if it did not prove possible to establish a dialogue with existing market operators on moderation and accountability in the money gaming services on offer.

The responses of all of the market operators to the first consultation document were negative. The trade association NOAF replied that it was “*surprised that the Ministry would propose changes to the current installation scheme before there were studies that supported the necessity of such a move,*” and asserted that the bill would entail a reduction in turnover of approximately of 75 per cent and a reduction in proceeds for charitable works of between 80 and 90 per cent (**Appendix 11**, page 5). The operator Norsk Lotteridrift ASA based its opinion on similar financial estimates, concluding that the company would not “*be able to continue as a nationwide operator*” (**Appendix 12**, page 4).

Based on the comments received, the Government concluded that it would be difficult to gain acceptance for this bill. One of the main problems was the lack of formal documentation on the problem of addiction to gaming machines, which was increasing. Market operators were therefore calling for further studies and more documentation before any significant amendments in their view could be justifiably made to the regulations. In the meantime, the Government decided that it could not wait for several years until better documentation was available to introduce effective measures, as this would just allow the problem to continue to grow. Thus, in October 2002 a new

view, this does not imply that account cannot be taken of the financial consequences of the restrictions to be introduced provided that the financial interests do not have an inhibitory effect on the concerns the restrictions are intended to address. In this regard, it should be noted that a State that, motivated in part by fiscal interests, introduces an exclusive rights model for money gaming services can generally expect to experience fewer social problems than if the gaming were permitted on the same terms in a commercial and competition-based system. If a money game does not lead to social problems within an exclusive rights model, but would lead to such problems in a competition-based model, it is difficult to see how the exclusive rights model could be in conflict with EEA law solely because the exclusive rights model also happens to involve some financial benefit. The Government also fails to see that this could be construed from the ECJ's references to its previous statements in the *Zenatti* case, as cited in paragraph 62 of the *Gambelli* case. In that context, the Government would like to draw attention to the fact that the expression "*incidental beneficial consequence*" in the English versions of the ECJ's rulings can have more connotations than for example the phrase "*conséquence bénéfique accessoire*"; in the French translation, the phrase "*ekstra fordel*" in the Danish translation, and the phrase "*eine erfreuliche Nebenfolge*" in the German translation. This means that the phrase *incidental beneficial consequence* in this context should be construed in the sense of *benefits that are subordinate in nature*, and cannot be taken to mean that only *accidental* beneficial consequences are acceptable.

11.2 The reasons underlying the consultation documents

In its assessment of the financial motives underlying the bill, the Authority attaches importance on page 4 of its letter to the fact that the bill on exclusive rights for Norsk Tipping was not issued until October 2002, i.e. after a consultation document containing a proposal for further restrictions on existing regulations pertaining to installation sites and enforcement of the minimum-age limit had been issued in June 2002. The Authority appears to hold that no new scientific studies were published in the period June-October 2002 that would indicate the need for a totally new consultation document and a totally new model for the organisation of the gaming machine market, the implication being that the second consultation document was based primarily on financial interests.

The Government would like to emphasise that the first consultation document was based on the original objective, which was to achieve more responsible operating conditions for gaming machines within the existing model; see page 3 of the document (**Appendix 10**):

"The Ministry maintains that the current system of installing money gaming machines in shops, service stations and shopping arcades exposes minors and persons with problematic gambling behaviour to money gaming. Machines of this type also affect the aesthetic quality of public spaces in a way that may be detrimental to general well-being and the

consultation document was issued, which proposed the dissolution of the existing market. At the same time it was proposed that Norsk Tipping should establish new, more moderate money services subject to more stringent restrictions on access to installation premises than those applied in the current market.

The bill for an entirely new organisation of the gaming machine market was not based on the new studies made in the period June to October 2002, but on the fact that there was no sign that existing market operators had any appreciation of the need for changes in the direction of more responsible operation of gaming machines. This negative attitude clearly indicated that achieving the necessary degree of accountability in respect of money gaming services would not be possible within the existing model. Our impression is that the existing operators in the money gaming market have been having problems acknowledging the social consequences of their operations ever since the new Lottery Act came into force in 1995. This impression was confirmed as recently as in a letter dated 16 February 2004 from the gaming machine operator Norsk Lotteridrift ASA to the Government stating that the company does not consider that retaining the current machines would have any *“negative consequences”*; see enclosed copy of the letter in **Appendix 13**.

In this situation, the Government decided that it would not be suitable to implement further measures to regulate the existing market, since such measures would in all probability fail, with the consequence that citizens would continue to be without proper protection against gambling addiction. Instead, the Government found that the only way of sufficiently ensuring the effective control and proper operation of gaming machines in Norway would be to designate Norsk Tipping as the gaming operator. Norsk Tipping has had exclusive rights in other areas, which has ensured moderate and sound gaming development in Norway for more than half a century. As stated above, all historical tradition and past experience indicates that, even as early as 1994, when the existing Lottery Act was passed, the Storting would have chosen Norsk Tipping as the sole operator of machines had the developments in electronic gaming machines over the past decade been foreseeable.

11.3 The role of Norsk Tipping

Norsk Tipping is a state-owned limited company established in accordance with the Act of 28 August 1992 No. 103 on Money Gaming. The Government as represented by the Ministry of Culture and Church Affairs is the sole shareholder. The profits of Norsk Tipping are distributed in their entirety to sports and cultural beneficiaries according to detailed rules laid down by the Storting and the King, cf. section 10 of the Act on Money Gaming. Section 1 of Norsk Tipping’s ethical guidelines (**Appendix 14**) reads:

“We will operate our enterprise in a manner that meets or surpasses the environmental, ethical, commercial and social expectations society has of us.”

On page 4 of the letter of formal notice, the Authority contends that the second consultation document supports the impression that the chief motive is to secure revenue from gaming machines, and that Norsk Tipping appears to have played a key role in drafting the bill. The Government would like to emphasise in that connection that for half a century Norsk Tipping has demonstrated its ability within the given framework to supply moderate and acceptable gaming services in Norway. The company is wholly owned by the state and operated on a non-profit basis, whereby all the profits from 2006 go to sport, culture and voluntary works. It was therefore natural for the Government, on having requested the opinion of its designated body for the operation of gaming, to attach importance to such opinions as those submitted by the enterprise. The Government would emphasise that it has the last word as regards the rules governing gaming services offered on Norsk Tipping's machines, and that these rules will entail substantial restrictions in relation to the technical requirements applicable to existing machines, as regards speed, win rate and size of prizes. The aim is to reduce turnover by more than half in relation to the current level.

As regards the Authority's reference to the fact that Norsk Tipping has pledged to generate maximum proceeds from a smaller number of machines, this reflects the fact that the revenue of the non-profit organisations in 2001, in the assessment of Norsk Tipping, could have been sustained even had there been fewer and more moderate machines if the design of the games and operation of the machines had been changed in relation to existing gaming machines. Thus, the Government fails to see how Norsk Tipping's role in the drafting of the bill to the Storting could imply that the financial interests are not subordinate to the social policy concerns at issue. On the contrary, a continuation of current gaming machine activities as an alternative to the Storting's decision, would have resulted in substantial financial gains for the recipients of the machine proceeds and the machine owners at the expense of the social policy concerns linked with gambling addiction and crime. It is important to note that the turnover from such machines has increased substantially from approximately NOK 8.5 billion in 2001 to approximately NOK 22 billion in 2003.

As previously conveyed to the Authority, the Storting's decision also entails that revenue from all Norsk Tipping's games, including gaming machine revenue, is to be distributed from pooled funds to sport, culture and voluntary activities. Ultimately this means that any reduction in gaming machine services that may be considered necessary in the future could be achieved as part of a co-ordinated restructuring of all money gaming services provided by Norsk Tipping.

As regards the Authority's observations on page 4 concerning the fact that, according to the second consultation document, Norsk Tipping's machines are to be permitted to be installed at a larger number of different sites than was required for the existing machines in the first consultation document, the Government would call attention to the account in under Section 17 where it is stated that the regulatory requirements applying

to Norsk Tipping's gaming machines ensure far more moderate gaming services than were specified in the restrictions on the existing market that were proposed in the first consultation document.

As regards the emphasis placed on financial aspects in the two consultation documents, the Government stresses that this cannot be cited in support any contention that financial interests are *not* subordinate to the social policy concerns. Most of the addressees of the consultation documents were operators in the existing market, who would be particularly interested in the financial consequences of the various proposals. In response to the second consultation document, a number of the non-profit organisations affected by the proposals supported the Government's bill in spite of the fact that they stand to lose out financially when the current market is dismantled. The fact that these financial interests are given special emphasis in the consultation documents, while the bill presented to the Storting focuses more on social policy and matters of principle, is therefore, in the Government's view, quite natural, and without significance for the Authority's assessments in respect of EEA legislation. The Government emphasises that the proposals were, of course, thoroughly assessed to ensure that they were in accordance with EEA law before they were submitted in the second consultation document. Comments concerning EEA law submitted in the consultative statements did therefore not give grounds for any amendments to the Government's bill before the Storting, but they of course warranted mention in the bill as a necessary part of the preparations for the Storting's hearing of the bill.

12. The nature of gaming addiction

12.1 Research into gaming addiction

A gambler who is addicted to money gaming is unable to tailor his consumption to his finances. Problem gambling as a medical diagnosis is often referred to as a condition involving frequent, repeated episodes of gaming that dominate a person's life, at the expense of social, work-related and family values and obligations, thus also affecting others than the addict himself. Although gaming has been causing such problems for centuries, it is very difficult to get a full picture of which factors in gaming and human nature trigger this disorder. Initially at least, gaming is an amusing and stimulating pastime. And for the majority of gamblers this is also how it will always be, whereas for a number of players, engaging in gaming can lead to serious negative consequences.

Research into gaming addiction is a relatively new discipline and has grown particularly over the last 10-15 years. One result has been the various diagnostic methods for identifying gambling addicts. These methods are however often flawed in various ways, so that it is not possible to arrive at a conclusive opinion as to whether a person is to be regarded as a gaming addict. Practical experience from treating gambling addicts often indicates that the addict himself is the last to own up to his problem. Family members

who watch as the household's shared income is gambled away month after month tend to regard this as the addict's own problem because the gambler, often as a symptom of his addiction and delusions, is convinced that it is only a matter of time before the family's finances are healthier than they have ever been. Even when the gravity of the financial problem begins to dawn on the addict, awareness of the gaming addiction itself is more deeply suppressed. Many gambling addicts themselves regard this type of addiction as one of the most shameful and stigmatised. Gambling addicts asked to take part in surveys on addiction therefore often tend to decline. Many of those with gambling problems who do choose to take part in a survey also tend to give false information, cf. Fekjær, *Spillegalskap*, pp. 72-73, which refers to an Australian survey of 401 patients receiving therapy for gambling addiction, in which 33 per cent of the respondents stated that prior to receiving therapy they would have trivialised their problems in any interview-based survey (see **Appendix 15**). Error factors of this kind mean that surveys to identify the extent of gaming addiction do not reflect the real situation.

12.2 The SIRUS survey and other empirical material

The most comprehensive survey of gaming addiction undertaken in Norway, the SIRUS survey, conducted by the Norwegian Institute for Alcohol and Drug Research, is discussed on page 7 of the Authority's letter. One problem in drawing conclusions on the basis of this survey is that the response rate was approximately 55 per cent. As mentioned above, the fact that addicts seem to have a tendency to decline to participate or provide false information more frequently than other people makes this survey less suitable as a basis for drawing conclusions in relation to future gaming policy; cf. also page 38 of the survey, where SIRUS stresses that "*when such a large number of those selected decline to participate, this then naturally gives rise to greater uncertainty. This uncertainty is primarily related to the lack of information about those who did not participate.*" (unauthorised translation, see **Appendix 16**).

The Authority holds that quantitative data from the survey appear to indicate that money gaming over the Internet is more likely to cause addiction than gaming machines. This is an interesting observation, but not necessarily a correct one. To begin with, the tables from the survey, which the Authority refers to, cannot be taken in isolation, as is done on page 7 of the letter. Firstly it should be emphasised that the extent of problem gambling cannot be assessed solely on the basis of the percentage share of problem gamblers using the various gaming opportunities. A game involving a large number of players can in this type of survey indicate a low percentage of problem gamblers even if the number of problem gamblers seen in isolation is sufficiently large to constitute a problem for society. In addition, it is well known that problem gamblers often play several games. A survey that shows problem gamblers broken down by the various games will thus not necessarily provide reliable indicators as to which games create the most severe problems in general until it can be established which of the

problem gambler's games is at the root of the problem for the individual gambler. In relation to the SIRUS survey, the Government would also note that a comparison of tables 4.1 and 4.2 of the report reveals that the game played most often by problem gamblers is the gaming machine, at 66.7 per cent, while the Internet is the gaming channel used most rarely by problem gamblers, at 5.7 per cent. However, no major significance can be attributed to these comparative figures either, in view of the flaws mentioned above.

Although the Authority chooses to highlight tables in the SIRUS survey as an indication that international money gaming over the Internet is the main problem, other indicators suggest that it is neither international online gaming, Norsk Tipping's gaming opportunities or horse-race betting that are the primary cause of addiction in Norway at present. The survey entitled *Underholdning med bismak* [Entertainment with an Aftertaste] from the Norwegian Social Research institute, NOVA, was published in February 2003 and based on interviews of young people aged 13-19. The response rate for the survey was 97 per cent (as against 55 per cent for SIRUS). The survey indicated that betting money in gaming machines was the commonest type of gaming among young people in Norway, and concluded that the figures revealed "a total of 11,000 teenagers in Norway with clear symptoms of gambling problems.", see **Appendix 17**.

In the Government's opinion, findings from population surveys and quantitative reports such as those cited above nonetheless reveal that it is often difficult through scientific studies to determine which games cause the greatest financial and social problems for the gamblers. Until better survey methods are developed, simply requesting such scientific documentation is often an effective strategy if one wants to delay necessary measures and changes to limit gambling problems. In order to avoid the 'hands-tied' situation that such requests for more information may lead to, the Government holds that emphasis should be placed on existing concrete indications as to the main reason why the demand for treatment programmes for gambling addicts is steadily increasing in addition to surveys.

As mentioned on page 18 of Proposition No. 44 (2002-2003) to the Odelsting in connection with the decision to accord the state exclusive rights to operate gaming machines, the emphasis is on figures from treatment institutions for gambling addicts which indicate that around 90 per cent of those who sought treatment had problems with gaming machine gambling. In the last couple of years the Government has received an increasing amount of inquires from problem gamblers, next of kin and personnel treating problem gamblers, with calls to reverse the negative trend being caused by machines. This impression is also confirmed by recent statistics from the help line for gambling addicts that was set up in April 2003, and which during its first year of service provided 3,000 telephone counselling sessions with gambling addicts or their relatives. Approximately 80 per cent of these sessions involved addiction to gaming machines. A survey carried out in January-February 2002 similarly revealed that 86 per cent of those who called the help line for the first time cited machine gaming as

their main problem. The second-largest and third-largest problem gambling category was the Norwegian Odds game, at 3.3 per cent, and horse-race betting, at 2.7 per cent. Out of 961 serious sessions conducted in 2004, 876 of these concerned the situation of individual gamblers. Seventy-four per cent of callers were men, and 16 per cent of the counselling sessions were with problem gamblers under the age of 25. These figures support previous indications that gaming machines constitute the main problem when it comes to current gambling addiction, and also reveal that this is not a problem confined solely to the young, see **Appendix 21**.

Findings from treatment programmes and the help line correspond with other, international research. Money gaming machines can delude players about their prospects of winning (instant) prizes. Such delusions can lead players to develop a chronic compulsion to gamble on gaming machines, with the attendant negative consequences for the player's personal finances and social life. The tendency for money gaming machines together with other typical casino games to cause especially severe addiction is also borne out by the fact that in Norway, until the mid-1990s, gaming addiction was not regarded as a problem of any significance whatsoever. From the mid-1990s up to the present, however, the demand for treatment for gaming addiction has increased year by year. The above-mentioned population survey by from SIRUS estimates that there are approximately 49,000 persons in Norway who have or have had gambling problems or are pathologically addicted to gambling. In view of the flaws of the survey referred to above, there is reason to believe that these estimates are lower than the actual figures.

In terms of gambling addiction, gaming machines are often put in the same category as traditional casino games; cf. Fekjær page, 128, which holds that countries with casinos and gaming machines are regarded as having severe problems with gambling addiction, see **Appendix 5**. In many casinos, gaming machines have become more prevalent than the traditional table games, and account for the largest share of gambling turnover. Like a number of the games traditionally offered in casinos, modern gaming machines are characterised, among other things, by the fact that they permit the operator to offer numerous rapid games in succession in which the player can often win a prize. Many relatively small prizes are designed to give the player a sense of being on a "winning streak" despite the fact that he is losing money overall. The repetitive nature of these money games with their many short-duration games also increases the risk of the player failing to distance himself from the game.

Researchers indicate that players with a gambling problem have a greater tendency than other players to view the draw as predictable, even though it is objectively speaking random. Delusions about gaming machines are very common among gambling addicts and often entail their believing that the outcome can be influenced by handling the machine in a particular way. Such delusions can be created deliberately by the addition of small details and features in the games offered by the machine. Many gambling addicts develop delusions during losing periods when they believe that the

chances of a win are steadily increasing. Once the loss has occurred, the compulsion to “chase losses” and win the money back also become a distinct motivation for staying in front of the gaming machine, cf. Griffith, M.D. (1999), “*Gaming Technologies: Prospects for problem gaming*”, *Journal of Gaming Studies*, 15, pp. 256-283 (Appendix 4). <

12.3 Market trends have made it necessary for the Government to introduce exclusive rights in order to limit gambling addiction and other negative aspects of a commercial market

Surveys and experience indicate that gaming machines are currently causing more social problems than other legal forms of money gaming in Norway. In spite of more detailed regulations on type approval and improved supervision of the functionality of gaming machines, the machines have become steadily more aggressive and casino-like. As a result, the turnover from gaming machines has risen dramatically in recent years, from a gross turnover of about NOK 9 billion in 2001 to around NOK 15 billion in 2002 and an estimated NOK 22 billion in 2003. This – from a social perspective – highly problematic trend in the gaming machine market is the main reason why a unanimous Storting, with the exception of a minority from Fremskrittspartiet (the Progressive Party), agreed to introduce an exclusive rights model, which was assigned to Norsk Tipping AS.

As of 1 January 2006, the Government, through Norsk Tipping, will have the sole right to operate gaming machines. Other types of gaming machine services than those on the current market are to be developed. 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 problem gambling). There will be far fewer machines (the number will be reduced to around 10,000 and turnover will be more than halved). Moreover, the gaming machines will be situated in places where age restrictions, for example, can be effectively enforced. This will also facilitate efforts to combat various forms of crime considerably. The Government (the Ministry of Culture and Church Affairs) will follow the situation closely and will through its supervisory authority over Norsk Tipping be in a position to take rapid action to change the functionality of the machines, their numbers and installation sites if this should prove necessary to prevent problem gambling behaviour.

The prevention of gambling addiction is to a large extent a question of protecting those citizens who are least able to look after their own interests, in the same way as efforts are made to prevent the negative consequences of traffic, alcohol or drugs. The extent of the problem often depends on personal/psychological factors. The best approach that will yield optimum prevention will however be largely dependent on national factors such as tradition, existing gaming opportunities, etc. The question is therefore who is best able to make the continual assessments that are needed to provide the best possible protection: commercial operators, national authorities or international bodies? Among experts it is a common view that national monopolies with direct Government

control are best suited to protecting the interests of citizens with the greatest need for such protection. As noted above, experience and research on alcohol policy, for example, indicate that monopolies are among the most effective instruments for preventing financial interests from prevailing over concern for negative social policy consequences. In response to the Authority's question as to what extent such experience can be substantiated scientifically, the Government would refer to the above observations and the historical experience of a number of countries in Europe. On the basis of this experience, the Norwegian authorities do not believe it would be appropriate to dismantle the monopoly until new experience has been gained that supports the view that a private-sector licensing scheme would not cause further negative social policy consequences. In fact, gaming machine operation in Norway over the last decade indicates the opposite, and in the Government's view proves that the knowledge obtained so far remain valid. The Norwegian authorities maintain that citizens/gamblers would not have suffered from problem gambling to the current extent if the electronic gaming machines had from the outset (in 1995) been organised under Norsk Tipping.

13. Possibilities for amending legislation, monitoring and sanctions in the existing gaming machine model

Past experience and the last decade's trend in gaming machine services in Norway indicate that continuous updates to technical requirements in a competition or profit-based licensing model would normally result in the regulatory authorities consistently lagging behind in relation to the risk of gaming addiction; cf. Volberg, page 93, as cited above in Section 3.2. This suggests that the failed attempts in recent years to impose restrictions on the Norwegian gaming machine market are not due to inefficiency on the part of the Norwegian authorities, but rather to the fact that the development of a profit-based sector for such money games carries a greater risk of irregularities than money games regulated by a state-controlled exclusive rights holder. When the new requirements for type approval of 1th October 2000, as referred to by the Authority on page 12, did not succeed, it was not because it allowed 10 times higher prizes, from NOK 200 to NOK 2000. The crucial problem with both current and former regulations on prizes is that respectively irregular serial winnings and bonus prizes have been bending the regulation so that the *de facto* top prizes have reached up to NOK 10 000 and more in the scope of both sets of type approval requirements. These kinds of irregularities are hard to define and detect. According to Volberg this is typical problems in the line of regulating electronic gaming machines.

The Authority claims in Section IV3b) of its letter that no evidence has been presented to indicate that a control broadly similar to the one provided by an exclusive rights model could not also be introduced in a licence-based model. In the Government's view, the Authority is underestimating the actual problems associated with the regulation of money gaming. As indicated by Volberg, in the regulation of money gaming (and

electronic money gaming in particular) there is never any guarantee that a given form of regulation will provide sufficient protection against problem gambling. This may be partly due to the fact that the regulations are not from the outset sufficiently precise, or that market operators are adept at finding new ways of developing their games that are not directly covered by existing regulations. Therefore, new forms of control are continually necessary. In a licence-based market, such regulatory interventions are usually met with resistance and demands for scientific evidence. In a state-controlled exclusive rights market, a non-profit operator tends to accept that the prevention of social problems should take precedence over commercial interest and good financial results. This permits new requirements in the interests of preventing gambling addiction to be imposed on an exclusive rights operator with a non-profit motive. The difference between a state-controlled exclusive rights operator and a licence-based market is therefore that new, preventive regulations are consistently implemented later in a licence-based market. This is not only an administrative concern, since in practice it means that players who are predisposed to problem gambling will tend to have weaker protection in a licence-based model.

The same applies to the possibility of supervising and enforcing existing requirements. Although supervision is essentially a question of resources, the fact is that it would not be possible to assign resources to comprehensive monitoring of compliance with the requirements in a licence-based market. The possibilities of monitoring an exclusive rights operator are far greater. As regards enforcement, the fact is also that when a breach of licence has been detected in a licence-based model, this does not necessarily mean that the offender can be required to remedy the breach immediately, which is the case in a state-controlled exclusive rights model. As opposed to what the Authority seems to believe on page 12 and 13, the ordinary mechanisms of public law cannot be summarily dispensed with in a rights-based licensing model in the same way as when the Government holds those rights for itself, as a private licensee is free to dispute any governmental actions according to a license through the court system. In a governmental exclusive rights model, on the other hand, the dispute will not occur since the Ministry has competence to instruct the board directly.

The Government therefore maintains that, in line with national and international experience, the negative aspects of the gaming machine market are largely attributable to the opportunities provided by modern technology combined with the various actors' desire to make the optimum profit, among other things as regards developing the most aggressive gaming machines and gaining access to the best installation sites. Even in an exclusive rights model with a single private licensee, such an operator will also have an interest in the enterprise making a profit, which will of course consistently be in conflict with the interest in preventing negative individual and social consequences. Experience indicating that the general interest in closely monitored and acceptable gaming opportunities thus often falls by the wayside in any such conflict of interest, irrespective of whether the licensee in receipt of the proceeds is a commercial or non-profit operator, should therefore be emphasised as a genuine and pertinent concern in

the organisation of a national gaming machine market. This was also a key factor in the Storting's decision to introduce exclusive rights for Norsk Tipping, cf. the following excerpt taken from Proposition No. 44 (2002-2003) to the Odelsting, pp. 25-26:

"The Ministry has also concluded that a model involving a single, large private licensee would not provide the necessary means for managing and supervising the market. Based on experience in recent years of the gaming machine market in both Norway and other countries, direct control of gaming-services is considered a necessary precondition for avoiding any misapprehensions surrounding the requirements for operating gaming machines, both in terms of the machines' functionality and other conditions applying to their installation. Even in an exclusive rights model with a single private licensee, such an operator will have an interest in making a profit from the enterprise, which will of course be in conflict with the interest in preventing negative individual and social consequences. Experience indicates that the general interest in closely monitored and acceptable gaming opportunities often fall by the wayside in any such conflict of interest.

There is also reason to believe that such a conflict of interest could arise irrespective of whether the licensee is driven by commercial or by non-profit interests. Experience in recent years has at any rate shown that even non-profit organisations feel obliged to instigate countermeasures and work proactively to influence the decision-making process if the organisation's funding source appears threatened as a result of more stringent gaming legislation.

The Ministry is of the view that the above-mentioned factors suggest that neither adjustments to the current framework nor a licence-based model involving one or more operators would guarantee a socially acceptable scheme for gaming machine operation in Norway. The Ministry concludes that the only model that would offer full control over the gaming opportunities offered through gaming machines, is a model with a single, wholly state-owned operator that is directly managed and controlled by the Government.

In the Ministry's opinion, a state-owned exclusive rights operator can best be organised under Norsk Tipping, both in view of the company's general experience as a gaming operator and in order to ensure maximum direct and manageable control of state gaming activities. This form of organisation will also facilitate the coherent distribution of the proceeds from the gaming enterprise." (unauthorised translation, emphasis added).

Thus, the factors entailed by swifter implementation of new rules more effective monitoring and expeditious enforcement within licence or concession-based models do not just mean administrative benefits, through a Government monopoly, but also that the actual implementation, monitoring and enforcement in such a model will clearly provide citizens with better protection against games that carry the risk of gaming addiction and crime. A key question will therefore be precisely whether private financial interests in relation to any tightening of the rules on game design, monitoring and enforcement have a stronger incentive for lobbying for the best possible financial

operating conditions than a non-profit state-owned gaming enterprise. As noted above, this is the assumption in the international literature on gambling addiction, and is illustrated, among other things by the extensive lobbying and numerous legal proceedings which the Government, the Storting and the Authority have sustained in connection with the attempts to impose more stringent restrictions on the existing gaming machine market in the past five years. The result is, in fact, that the interests of those citizens who have special need for protection against problem gaming suffer in favour of the interests of private market forces. (Commercial interest prevails.) It has proved possible to counter an imbalance of this kind between strong market forces and the citizens' need for protection through direct state control of gaming in many countries such as Austria, the Netherlands, Sweden, Finland and Denmark along with several states and provinces in Canada, the USA and Australia. By eliminating private operators from high-risk gaming opportunities, one may also remove the financial basis for making the question of amendments to regulations, as the Government has experienced several times, a judicial issue. Such amendments can thereby focus exclusively on the social policy consequences and be implemented more quickly.

This premise is submitted by the Norwegian authorities and by the ECJ in its case law on gaming; cf., for example, page 29 of Proposition No 44 (2002-2003) to the Odelsting, which refers to paragraph 35 of the *Läärä* case, which reads as follows: *“However, the power to determine the extent of the protection to be afforded by a Member State on its territory with regard to lotteries and other forms of gaming forms part of the national authorities' power of assessment, recognised by the Court in paragraph 61 of the Schindler judgment. It is for those authorities to assess whether it is necessary, in the context of the aim pursued, totally or partially to prohibit activities of that kind or merely to restrict them and, to that end, to establish control mechanisms, which may be more or less strict.”* This also forms the premise for paragraph 65 of the judgment in *Gambelli*.

In the light of this it is difficult to see that the extracts from the Ministry's letter of 1 September 2003 reproduced on page 12 of the Authority's letter can be used to *support* the contention that the Storting's decision does not fall within the national authorities' scope of discretion. In its letter of 1 September 2003 to the Authority, the Government points out that the current gaming machines are not suited to the type of premises currently permitted. This indicates a problem that cannot be resolved within the framework of Norwegian gaming tradition save by taking the existing machines out of operation. In that context, the Government would emphasise that the dramatic increase in turnover from the gaming machines indicates that the proposals submitted for consultation in June 2002 cannot be regarded as adequate. As stated earlier, many of the current gaming machines in Norway are, in terms of their actual functionality, in practice equivalent to casino games. Therefore, they should perhaps have been installed in the type of gaming premises that would be in conflict with Norwegian tradition. The question of considering the establishment of casino's in Norway was also, in keeping with the Government's recommendation, rejected by the Storting in its hearing of Proposition No. 44 (2002-2003) to the Odelsting.

The Government therefore finds it clear that restrictions to the regulations, supervisory mechanisms or enforcement within the existing model would not be able to offer citizens the security and protection they are entitled to in relation to problem gambling because the processes involved at any given time lag behind the actual needs. As regards the question of prohibition as an alternative to the introduction of exclusive rights, reference is made to the discussion above in Section 10.

The Government would also refer the Authority to the Ministry's regulations for money gaming machines, a translation of which is enclosed as **Appendix 18**. As regards the Authority's questions concerning Directive 98/34/EC, most recently in Section VI3c) of the letter of 23 April 2004, the Government holds that this type of gaming regulation cannot be regarded as comprised by the Directive. This is firstly because the regulations contain no technical requirements or other types of requirement as mentioned in the Directive, but solely specify the specifications for the games that may be offered, such as game speed, size of payouts and the like. The gaming regulations thus have no bearing on the actual design of the machines and the appurtenant operating systems. Therefore, because the gaming regulations are geared to Norsk Tipping as the gaming operator, they do not have any direct or indirect bearing on other operators in the Internal Market either. Norsk Tipping is subject to the rules on public procurement. Thus, when inviting tenders, Norsk Tipping will specify the requirements that are applicable to operators in the Internal Market in the tendering documents. The Government will however be able to notify the rules if the Authority is of a different opinion. Irrespective of the view of the duty to notify, the Norwegian authorities must be at liberty, as dictated by social policy concerns, to withdraw gaming services in whole or in part from the market without having to make changes to the gaming regulations as notified. The notification of such regulations cannot in this context carry an obligation for the Government to retain the specific gaming opportunities.

14. Crime

Various types of crime are linked to the current gaming machines. On page 14, the Authority questions whether crime related to gaming machines is at serious problem in Norway. In the opinion of the Government, the fact that every sixth gaming machine is subject to burglary or theft every year in itself is an alarming figure. In addition, the Government notes crime like embezzlement, fraud, bribes from licensee/operator, as well as money laundering is either known or supposed to be at unwanted but significant part of the current market. These kinds of crime are however hard to detect or monitor in the same way as theft and burglary. With an exclusive rights operator the majority of these problems will be reduced or eliminated altogether.

14.1 Burglary/theft from gaming machines and installation premises

Every year some 3,000-4,000 burglaries/thefts as linked to gaming machines are reported in Norway. This trend seems to be on the rise. The adopted model will provide better protection against such crime because the prizes will be paid out over the counter and because the proprietor of the premises will have greater motivation for securing the premises against burglary (he might be personally liable to the operator for losses, if he does not secure the premises properly). With the new exclusive rights model all data on burglary/theft can be compiled in a single place. This offers a better basis for preventing burglary and theft.

14.2 Embezzlement/fraud

In the new exclusive rights model, all the takings of the machine will be recorded as they are made, together with information about the cash held in the machine at any given time. It will thereby be possible to rapidly detect and track down any attempted embezzlement. Moreover, the proprietor of the premises will be financially liable to the operator for all takings in the gaming machine.

14.3 Bribes from the licensee/operator

In connection with the installation of the current gaming machines, there have been several cases of attempted bribery by licensees/operators with a view to gaining access to attractive installation sites. Additional remuneration of this kind is illegal and a criminal offence, but is difficult to detect; cf. the account in the Government's letter of 16 February 2004. This problem will be eliminated with the new exclusive rights model because there will be no competition for the installation sites.

14.4 Money laundering

As mentioned on pp. 23-24 of Proposition No. 44 (2002-2003) to the Odelsting, , according to the OECD's Financial Action Task Force, money laundering poses a special problem in relation to gaming. It is expected that this problem will be gradually exacerbated as other channels for money laundering are blocked by the authorities. The present model of gaming machines potentially allows the proprietor of premises, who is also an authorised operator, to recoup up to 65 per cent of the value as legal business earnings by putting black money in the gaming machine. With the new exclusive rights model, the potential for money laundering will in reality be eliminated because the proprietor will only be able to recoup 20 per cent of the amount put into the machine.

14.5 Crime committed by gaming addicts

Gaming addicts who have financial problems will in many cases try to resolve them through criminal acts, e.g. burglary, robbery, theft, embezzlement or fraud. The exclusive rights model aims to combat the problem of gambling addiction through the provision of much more moderate gaming opportunities. This will reduce the number of gambling addicts and hence the problem of this type of crime.

14.6 Rectification orders issued by the Norwegian Gaming Board

When it comes to detected contravention of the applicable rules regarding gaming machine operation, the Government would also refer the Authority to the Norwegian Gaming Authority's annual report for 2003, which states that 1,242 rectification orders were issued for contraventions of the regulations regarding authorisation to install gaming machines, see **Appendix 19**. This is a considerable increase in relation to corresponding figures for 2002, which the Authority refers to in Section IV3d of its letter.

V THE CONSISTENCY OF THE NORWEGIAN GAMING POLICY

15. Introduction

In Section IV2a) of its letter, the Authority maintains, with reference to the *Gambelli* case, that restrictions in the area of gaming must be founded on a wish for a genuine reduction in gaming opportunities and that the means employed must be appropriate. The Government has set out its interpretation of the *Gambelli* case in Section 7 above.

The motives behind Norwegian gaming policy are discussed in Proposition No. 44 (2002-2003) to the Odelsting, which states on page 9:

“Money games are prohibited under Norwegian law. This prohibition of gaming has been a principle of Norwegian legislation for several centuries and is based on a desire to protect citizens from ‘the depravity induced by games of chance.’ Nonetheless, limited permission has been sanctioned, partly with the rationale that it is not possible to prevent gaming and partly to raise funds for public-interest purposes.”

The same bill also refers, on page 11, to the Brundtland Government’s revised national budget bill for 1991, which reads:

“State gaming and private lotteries have always been subject to different conditions. Ever since the Act concerning Lotteries and other Games of Chance of 14 June 1851, and subsequent acts on gaming, including the Lottery Act of 12 May 1939, were passed, moral considerations have been a guiding principle in the legislation of gaming and lotteries. There has been broad political consensus that access to gaming be explicit regulated, i.e. that that which is not expressly permitted is prohibited. At the same time, the political authorities have recognised through the years that there is a certain interest in gaming in society. Channelling that interest through a public company has been regarded as the most appropriate means of organising gaming, because this is done using satisfactory mechanisms, under full public supervision and with transparent operating conditions governed by legislation.”

16. The significance of financial proceeds

With the introduction of new lotteries or money games through public-law regulation, emphasis has always been placed on such games having a revenue potential. This is positive in the sense that lotteries and money games can provide financial revenue to the state, worthy causes or private commercial interests. On the other hand, the interests of revenue provision involve a risk that gaming is offered out of financial motives to an extent that is detrimental to the health of the citizens.

In Norway, as in many other countries, the solution of this dilemma has for the last two centuries been to regulate moderate lotteries without a potential risk of problem gambling through a separate Lottery Act and to operate them by non-profit organisations in competition with each other to provide revenue for the organisations' own purposes. The assumption has been that the lotteries on offer are of a such kind that considerations of security and control, including in relation to problem gambling, can be observed by the Government through a licence-based system. However, it has not been appropriate to allow the holding of lotteries to become an ordinary commercial enterprise. To the extent that commercial interests are involved in the holding of lotteries, this takes the form of service provision to the non-profit organisations that have been granted permission to offer lottery activities.

There is no unequivocal definition of gaming or money gaming, either in Norwegian law or in international law. In the Norwegian context, the term 'lottery' is most often used in relation to a proposition whereby the participant's reason for purchasing a lottery ticket is largely linked to a wish to support the lottery's organiser, while money gaming is more commonly associated with a gaming proposition where the player's wishes or hopes for his own financial gain are more prominent. As mentioned in the foregoing, experience and research show that gaming propositions with this increased focus on the player's own financial situation and potential gains may more readily give players delusions and problems of addiction relating to the game.

The Act on Money Gaming provides that money gaming may only be offered by a state-owned company. This is based on the experience and view that this is the best means of ensuring reasonable control of the development of such gaming. This is also expressed in the objects clause of the Money Gaming Act section 1, subsection 3, which reads:

"The Act shall ensure that money gaming is provided by satisfactory mechanisms under public supervision, with a view to preventing the negative consequences of money gaming, while at the same time allowing for the proceeds from the gaming activities to go to such purposes are set out in section 10."

The proceeds from the money gaming that the state-owned company is allowed to operate are thus to be allocated to a number of public-interest, and will not be revenue to the state. It is nonetheless the state that will at all times determine which games are to be permitted and how they should be operated. The objective of this Government supervision is, as mentioned above, to prevent considerations of financial proceeds being at the cost of an acceptable development of money gaming. Even though such a model also implies that the political authorities may be subject to pressure from and the wishes of the charitable causes receiving the proceeds, the last 50 years show that gambling addiction has not been a problem in Norway, in spite of a gradually increasing number of gaming propositions. It is clear that the Government's direct management of and responsibility for the potentially problematical games has been a significant factor in this favourable trend. This is also illustrated by the fact that the increased incidence

of gaming addiction since the end of the 1990s is due to the growth of money gaming machines, which, to a lesser degree than other contemporary money games, have been subject to direct Government control.

On this basis, the Government considers that the Authority is basing itself on false premises when, in Section IV2a) of its letter, it assumes that ECJ case law only allows for restrictions in this area when the objective is to achieve a genuine reduction in gaming opportunities. Even though the Storting's decision in relation to exclusive rights for the operation of gaming machines involves such a genuine reduction in supply (through, among other things, reducing the number of machines and the turnover by half), it is difficult to see why restrictions should not, in principle, be allowed to change money gaming from sheer gambling for the few into a more innocent form of entertainment for the many, as long as the objective is to reduce the problems of addiction or crime linked to gambling. The ECJ's statements on this in paragraph 67 of the *Gambelli* case must therefore be seen in the light of the specific trend in Italy, where the ECJ appears to have established that there was an extensive *increase* in money gaming opportunities driven by purely fiscal motives. The ECJ's statement should not however imply that national authorities cannot advertise the money games and lotteries that are not considered to lead to social problems in terms of crime and gaming addiction, at the same time as restrictions or prohibitions are introduced in respect of games that are considered to have such negative consequences. The Government nonetheless concurs that the measures that are implemented must be appropriate and proportionate for achieving the objective they pursue.

17. The aim of Norsk Tipping's gaming machines

One of the chief aims of introducing exclusive rights is to ensure that opportunities for money gaming on gaming machines are developed in line with a moderate Norwegian money gaming tradition. The primary objective is to avoid games that induce compulsive and pathological gambling.

Concerning Norsk Tipping's statements regarding an increase in machine players from 500,000 to one million, as pointed out on page 8 in the Authority's letter, the Government has previously stressed that this is *not* considered to be a goal. This was clearly stated by State Secretary Berit Gjerløw Øksnes of the Ministry of Culture and Church Affairs in a radio debate on P4 as early as 16 May 2003. Nor are Norsk Tipping's statements on this matter supported in the documentation and the decisions on which the new machines are based.

However, with regard to the main objective, which is to reduce the number of problem gamblers, among others things through a reduction in machine turnover, it must be emphasised that the current machines induce players to play too much and for too long. Such high play consumption may over time result in addiction for many players. The regulations for Norsk Tipping's new machines will lead to a reduction in game speed as

well as the availability of such games, precisely in order to prevent players from playing too much. If the new machines contain games that e.g. result in three different players using the machine for ten minutes each, instead of one player playing on the machine for one hour, this will in practice lead to a genuine reduction in turnover and presumably a reduction in the risk of developing problem gambling behaviour. Such a reduction in turnover and the risk for problem gambling behaviour will be in accordance with the Government's intentions with the new machines, which is independent of whether there is an increase or a decrease in the total number of machine players.

Playing gaming machines traditionally involves rapidly repeated games with frequent payouts. Because of this, such machines are generally regarded purely as being money games in which the main interest is a matter of financial gain or loss. One of the aims of the new money games being developed by Norsk Tipping is to shift the focus over to games with longer play sequences where the emphasis is more on entertainment. These games are being developed in collaboration with recognised gambling addiction researchers, with the aim of ensuring that players do not develop self-delusions that impair their ability to determine when to end the game. For a detailed account, see the enclosed copy of the Ministry's letter of 26 May 2004 to Norsk Tipping, which states that:

"The Ministry stipulates that the average return rate must not be less than 75 per cent, and that the gaming machines may pay out prizes of up to NOK 1,500. This constitutes a reduction in relation to current machines, which offer a return rate of at least 78 per cent and payouts of up to NOK 2,000. The Norwegian Gaming Board's statement indicates that it is uncertain whether less frequent and higher prizes would pose a greater risk of gambling addiction than more frequent and smaller prizes. The Gaming Board also emphasises that large prizes early on in the game may influence gambling behaviour. Based on comparisons with other Nordic countries and with regard for the existing level in the gaming machine market, the Gaming Board recommends that the maximum payout be reduced to NOK 750.

The Ministry is of the view that prizes of up to NOK 1,500 would pave the way for the development of games of longer duration and higher entertainment value than those offered by current machines. The fact that the maximum payout from other countries' more gaming-oriented machines is lower than this should not impede efforts to develop the machines from being pure money games to offering greater entertainment value. The effect of retaining the maximum prize at a relatively high level will, however, have to be continually assessed as regards problem gaming behaviour. Among other things, the requirements for the technical platform and the surveillance network will ensure that gaming behaviours can be surveyed effectively on an ongoing basis. Such monitoring will provide a basis for adjustments to the design of all requirements applying to the games.

In addition to this, as stated, the Ministry will request the Norwegian Gaming Board to draw up, by 1 August 2007, a separate report evaluating the new money gaming machines in respect of any negative consequences, especially with regard to gambling addiction.” (unauthorised translation, see **Appendix 20**).

The Government is of the view that the development of money gaming machines away from pure gaming to machines with higher entertainment value should be undertaken through continuous assessment of findings and in dialogue with experts on gaming addiction. It is regarded as being very important that, during this process, the gaming operator does not focus solely on financial gain, but also on ensuring a moderate development of the gaming market. In the Government's opinion, experience of money gaming in Norway confirms the traditional view that it is difficult to achieve moderation in the expansion of gaming opportunities with a model in which financial proceeds and profits constitute the overriding motive for the operator(s) offering such gaming opportunities.

Through Norsk Tipping's operating activities, the Government has found that money gaming, under given conditions represents a popular entertainment for large sectors of the population without the games giving rise to negative social consequences. In answer to the Authority's questions in Section IV2d), the Government therefore maintains that gaming machines can be developed as an acceptable service provided that this process is subject to continual monitoring and can be regulated as and when required. However, the repeatable nature of machine games character make them especially demanding with regard to ensuring that their design and functionality lie within the parameters of what may be regarded as a socially acceptable gaming activity.

However, it is an absolute precondition on the part of the Government as regards Norsk Tipping's provision of gaming in the form of gaming machines that the services provided significantly reduce the current problems of addiction linked to gaming machines. If combating the problems of addiction is incompatible with games involving more than one player, then there are no grounds for extending such gaming opportunities. What is certain knowledge today is that there are a large number of players who, in terms of their personal health and finances, should not be engaging in gaming on current gaming machines and in the current market. This situation is not regarded as acceptable by the Norwegian authorities. Restriction and moderation through the agency of Norsk Tipping is regarded as the most rapid and effective means of combating the current problems. As regards Norsk Tipping's forthcoming gaming machines, the Government would also refute the notion that the two video screens mentioned in Section IV2d) of the Authority's letter will make it possible for two players to play at the same time on a gaming machine.

18. Norsk Tipping as an instrument of Norwegian gaming policy

18.1 Introduction – the identification of Norsk Tipping with the Government

The Ministry of Culture and Church Affairs has administrative responsibility in respect of the Money Gaming Act and the Lottery Act. This means that the Ministry exercise the state's ownership of Norsk Tipping AS. The Ministry is also responsible for drawing up the regulations for the games offered by Norsk Tipping AS. The Ministry's administrative and ownership remit vis-à-vis Norsk Tipping AS does not however deprive the company of its autonomy in the sense that, like other companies, it takes independent decisions and measures within the regulations and guidelines in force at any given time. Thus, the Authority's assertion in Section IV2 a) of its letter that the Norsk Tipping enterprise can simply be identified with the Norwegian Government is incorrect. The Authority cites letters and media statements by Norsk Tipping, but these are the company's own opinions, the substance of which is not the Government's responsibility.

However, in terms of assessing the company's role as an instrument in gaming policy, it should be stressed that the company's decisions can be overridden directly by the Government in its capacity as owner through instructions from the Ministry to the company's Board of Directors. This entails that the Ministry as owner and sole shareholder has the total right of instruction concerning the company's activities. Therefore there are no grounds for any doubt that the Ministry's and the political authorities' current gaming policy objectives will be carried out, even in cases where there is disagreement between the Ministry and Norsk Tipping as to how these objectives may be achieved.

18.2 Marketing

In Section IV2b) of its letter, the Authority concerns itself with Norsk Tipping's publicity and marketing of the company and its products. By way of introduction, the Government notes that the Authority bases its assessment on a false premise in asserting that only Norsk Tipping may market its gaming and lottery propositions in Norway. The Lottery Act and Money Gaming Act allow for all those who are authorised to offer money gaming or lotteries in Norway to promote these within the normal marketing framework. It should also be underlined that the effect of marketing is hard to predict and to monitor. In general it is reason to believe that marketing efforts have incidental effect on the popularity of the single games. More important is the way in which the games are regulated and developed. This is illustrated by the fact that the rise in gaming machine turnover during the last years has developed totally without marketing efforts apart from each machines sole existence on the premise.

In its letter to the Authority of 16 February 2004, the Ministry gave an account of the principles behind Norsk Tipping's marketing and brand building. Firstly, the Government does not find it to be a problem that, in view of its more than 2 million customers and more than 3,000 sales outlets, the company should employ considerable sums in order to advertise its proposition. Thus, it is not surprising that this publicity and marketing activity makes the company one of the country's largest advertisers. As long as the marketing of Norsk Tipping's gaming propositions do not affect gaming addiction in a negative sense, it is difficult to see that the marketing can be considered inconsistent with Norwegian gaming policy. The objective is precisely to offer a stable and moderate gaming proposition. In so far as the marketing of Norwegian money gaming were to prove a problem in relation to the incidence of gaming addiction, however, the Government would be able to issue direct and binding guidelines to Norsk Tipping for the company's policy on this area.

As stated in the Ministry's letter of 16 February 2004, "*(m)ore 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 from 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 to any great risk as regards addiction or other problematic gaming behaviour.*"

In a period in which the availability of money gaming is increasing internationally and also becoming more readily accessible to Norwegian citizens through the Internet and other electronic media, the Government considers it a responsible aspect of Norwegian gaming policy to increase the visibility of the Norwegian gaming opportunities, at the expense of more aggressive international gaming propositions. Pure casino games have always been prohibited in Norway. Norwegian players have therefore little experience of such games. The Government has a well-founded concern that increased access to such casino offerings is now in the process of increasing the problems of gambling addiction among consumers in Norway. This concern is shared by the gambling addiction treatment apparatus that has grown up in parallel with the emergence of the current electronic gaming machines. Such treatment institutions are also registering increasing demand from players who are addicted to playing on gambling websites. In this situation, it is considered responsible to increase the visibility of more traditional and moderate gaming through Norsk Tipping's sales channels.

It is not therefore "*highly unlikely*" that Norsk Tipping's marketing activities do not have as their primary aim to increase gaming turnover, as the Authority implies in Section IV.2b) of its letter. In the anticipation of more regulated and acceptable international opportunities for Internet-based gaming, the objective is for Norsk Tipping to largely maintain its current gaming opportunities, so that Norwegian players do not, through the agency of unregulated international gaming opportunities, change their gaming

habits in a way that leads to more problems over time. The Government therefore maintains that the trend in the increasing international availability of electronic money gaming will exacerbate social problems in all countries, and that Norwegian citizens are particularly susceptible in this respect, because Norwegian tradition, with a consciously moderate attitude to money gaming, will make Norwegian players especially vulnerable to a purely competitive electronic gaming market. In response to this situation, in a memorandum of 15 May 2003 from the Nordic Ministers of Government to their counterpart in the UK Government, Norway, in conjunction with the other Nordic countries, expressed concern over the British bill to liberalise UK regulations on cross-border gaming over the Internet:

"In our Nordic countries, gaming has traditionally been thoroughly regulated in order to uphold legitimate interests of public policy and order. The aim and the first ground for these restrictions and prohibitions is to avoid damaging social consequences such as problem gaming and fraud.

A second ground, which is not without relevance, is that lotteries may make a significant contribution to the financing of benevolent or public interest activities such as social and charitable works, sport or culture.

As we understand it, these concerns are not unique for the Nordic countries. Literally all European countries share this view in one way or another. The European Court of Justice has accepted these concerns as legitimate in several rulings. Consequently, it is acknowledged that the Member States of the European Union have legitimate reasons for regulating the gaming market in order to protect society from the negative aspects of gaming.

Internationally, there are clear signs amongst an overwhelming and growing majority of OECD countries, towards a formulation of a norm of respect meaning that states cannot accept that gaming providers established in their territory provide games to citizens of other countries, unless special agreements exist. Thus, we believe that many countries with us share the view that regulation of the gaming market primarily is a concern for the state in question.

In the light of this, we are seriously worried about the policy proposals that will permit British providers of interactive gaming and betting to compete globally on the new Internet market.

While we acknowledge the need to confront the problem of offshore based Internet operations that target British citizens we are deeply concerned about the negative cross-border consequences of such a globalisation policy in the absence of agreements in the European Union or/and other international organisations.

If implemented, such a policy would seriously limit the liberty of the neighbouring countries of Great Britain to pursue an independent national gaming policy, including a policy of liberalisation restricted to national territory, with respect to the protection of consumers and measures against crime and pathological gaming.

Taking into account the widely practised policy of respect for national regulation in the international community, we urge the British government to take into consideration the legitimate interests of the Nordic countries as it goes on to deliberate further on a reform of the British gaming legislation.” (emphasis added, see Appendix 20).

Such a change of direction as proposed by the British authorities involves a break with tradition in this area in Europe and will have major consequences for other European countries. The negative consequences will be especially great in those countries that have traditionally opted for a moderate approach to gaming.

In this connection, Norsk Tipping’s marketing strategy is not primarily a means of retaining revenues for worthy causes in Norway but, to a large extent, a means of making clear to Norwegian players the advantage of the Norwegian gaming tradition as an alternative to more aggressive international gaming opportunities. As stated in the Government’s letter of 16 February 2004, the Minister of Culture and Church Affairs, Valgerd Svarstad Haugland, pointed out in her address to Norsk Tipping’s annual meeting that the Norwegian authorities in this challenging situation emphasised that “(...) *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 gaming 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 consequence of upholding a moderate Norwegian gaming proposition at a time when competition in the international gaming market is increasing year by year will be to make it more difficult to maintain a positive trend in the annual gaming profit from Norsk Tipping. This is considered to be a necessary consequence of the relevant premises in Norwegian money gaming and lottery legislation; cf. the extract below from Ms Svarstad Haugland’s speech of 20 November 2003 to a regional congress for Norwegian sports administrators:

“The development of increasingly aggressive games is bound up with the increase in competition internationally and with the wish for steadily increasing revenues from gaming 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 organisations 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.”

As is indicated in the extract from the Minister’s address cited above, Norsk Tipping may not develop games or market games in a way that breaks with gaming policy traditions. The development of gaming is managed directly through regulations laid down by the Ministry. Access to marketing is not regulated by the Ministry, but, as stated in the Government’s letter of 16 February 2004, it is the Government’s assessment that Norsk Tipping has not carried out its marketing in a way that is at variance with the moderate tradition upon which Norwegian gaming policy is founded. If such breaches were to occur, the Government would, as stated, be able to provide Norsk Tipping with more precise guidelines for the company’s marketing.

The Government finds reason to stress that the Norsk Tipping slogans referred to by the Authority on page 6 do not break with national traditions in this area, possibly with exception for the “very high maximum bets”-slogan, which is no longer valid as the maximum bets on *Oddsens* have been reduced from NOK 30 000 to NOK 5000. Being a “mouse click” (or, more traditionally, a ticket) away from the possibility of becoming a millionaire is part of the concept of national lotteries in all countries. This concept has never caused general gaming problems in Norway. For the entire period in which moderate money gaming has been permitted, the potential for winning large prizes in relation to the stake has been a central aspect of the marketing. Such marketing entails that players are not encouraged to spend a lot of money. The average stake in Norsk Tipping’s games in 2003, apart from *Oddsens*, was between NOK 24 and NOK 65. The large prizes that can be won are also deliberately held at a low level in international terms. This type of marketing of large prizes has not, to the Norwegian authorities’ knowledge, led to problem gambling. The fact that Norsk Tipping’s gaming turnover in recent years has not shown a growth that corresponds with the growth in marketing costs is therefore not a question of success or lack thereof (as the Authority appears to believe on page 6 of its letter), but a result of a socio-political aim for Norwegian gamblers who want to participate in money games to select moderate offerings that do not increase the incidence of problem gambling. The Government is still quite aware of that in a period of change and liberalisation in the international gaming market the trends on marketing in the national market have to be monitored even closer. The Authority has no reason to doubt that any steps from Norsk Tipping towards aggressive marketing similar to the examples referred to in section 18.3 below will be stopped by direct and unconditional intervention from the Ministry.

Even if the risks of gaming addiction must first and foremost be prevented through the deliberate choice of which games to make available and their development, it is considered evident that marketing may increase the risk of the problems arising. In this regard, it is an advantage that Norsk Tipping is a non-profit organisation, because the company thus does not have a vested interest in focusing on the players’ potential

winnings, but can also achieve benefits and success by focusing on player's losses. The fact that players systematically are losing money on money games is something private operators, contrary to Norsk Tipping, has an economic interest to be silent about. By way of example, the international gaming operator Oddsalive in October 2001 placed advertisements in Norwegian magazines asserting:

"The Norwegian Government wants to force Norwegian odds players to conduct their pastime with Government monopolies. We have seen that the odds that Norsk Tipping offers are so low that, as a player, you almost feel conned. (...) Norsk Tipping has a theoretical payback rate of 51 per cent of the stake, while bookmakers such as us operate with a 90 per cent payback." (unauthorised translation).

What such information does not make clear is that the more moderate Norwegian gaming propositions are deliberately designed with a lower pay-back than competitors to ensure that players do not believe that they can enter into sound 'business-like' contracts with the gaming company unless they are prepared to lose money. This is, for example, shown in the information that Norsk Tipping itself provides on gambling addiction on its website:

"Norsk Tipping takes gaming addiction seriously and takes account of it through what we offer and what we communicate. We aim, through our conduct, information and social commitment to limit the number of people with gambling problems. We offer games as entertainment and innocent fun. As a customer, we therefore encourage you not to play for more than you can afford to lose!" (unauthorised translation).

18.3 Gaming trends

Another question is the degree to which international gaming propositions that are made available to Norwegian gamblers should also be met with a corresponding Norwegian offering in a more moderate version. Norwegian Odds betting is an example of a new type of gaming that builds to some extent on an international gaming proposition that was not previously available in Norway. The reason for such games not having been permitted is that odds betting is in part a game of skill that opens up for professional gaming. This has not been considered desirable in Norway, because games that promote professional gaming and other large-scale gaming increase the risk of the player losing control of his gaming activities. Norsk Tipping's odds betting includes moderate odds, for the reason, among others, that there is very limited possibility of betting on individual events. Because the players of Norsk Tipping's offering must normally bet on the outcome of several events simultaneously, the element of chance is increased at the expense of skill. This makes the game less attractive to professional gamblers. Norsk Tipping's odds betting also systematically pays back players at a lower rate than commercial offerings, which is also a moderating aspect of such games.

Professional gamblers who are exclusively interested in games of skill, and view them as an investment, will therefore seek foreign gaming propositions over the Internet or telephone. In order to further reduce the tendencies towards large stakes on Norsk Tipping's odds betting proposition, the maximum amount for playing on one combination on Oddsen was reduced from NOK 30,000 to NOK 5,000 during 2002-2003; cf. the account in the letter of 16 February 2004. This means that players who want to gamble large amounts are obliged to bet through several of Norsk Tipping's agents. In practice, this restriction means that so-called 'high rollers' use international gaming propositions over the Internet, although there are still examples of Norwegian high rollers getting around the maximum-stake restriction. This has led Norsk Tipping, as of January 2004, to implement more effective monitoring routines to prevent large-scale betting and to improve the opportunities for monitoring the company's agents. As opposed to the Authority on page 8, the Government find this to be significant corrections and believes that current Norwegian odds betting lies within the bounds of what is justifiable in terms of Norwegian gaming policy and tradition. It must however be constantly evaluated in the light, for example, of how players' gaming patterns develop and other signs of gambling addiction.

In respect of Norsk Tipping's turnover from Internet gaming, it is worth stressing that, in 2003, this amounted to just 1.75 per cent of the company's total gaming turnover. This is far below comparable figures from other countries. The reason for this low proportion of Internet gaming is that the games arranged in this fashion are precisely not designed with a view to competing with similar games in the international market. Any high rollers in odds betting will therefore prefer international gaming websites. At the same time, the Norwegian authorities have not permitted Norsk Tipping to offer interactive gaming especially adapted to the Internet as a channel, such as virtual scratch cards, gaming machines or Internet casino games. Norsk Tipping thus uses the Internet only as an alternative to players handing in their betting coupons at a local agency.

As for the testing of other types of games developed by Norsk Tipping recently, these are only trial offerings available to a few hundred players on a pilot basis. The games are based on existing offerings in Norsk Tipping's portfolio. Thus they are based on the traditions of Norwegian gaming policy, but adapted to a greater extent to the possibilities inherent in modern electronic technology. That Norsk Tipping, as a modern service provider, should test out such new forms of games via mobile phone, digital television and the Internet is entirely natural, viewed in the light of trends in electronic technology. Meanwhile, as mentioned in the Government's letter of 16 February 2004, the experience of interactive electronic gaming so far will be evaluated in the course of the present year. Such gaming will not be permitted in Norway insofar as it presupposes the acceptance of gaming addiction as a permanent and inevitable social problem. It is precisely because the Norwegian authorities do not intend to accept such a situation that gaming machines are being phased out in their current

form. For the same reason, it has been decided that Norsk Tipping's scratch card lottery (Flax) should not be made available in an electronic version, because it is considered that such a proposition will provide quick draws with frequent pay-outs of small winnings, in the same way as existing gaming machines. For the same reason, privately operated trial games, via the Internet or mobile phones, are also being given restrictive operating conditions, so that they cannot compete on the same terms as international electronic offerings. In respect of the Government's evaluation of these trial offerings, it will not be appropriate to amend the operating conditions towards harder and more aggressive gaming, if this can be expected to produce a negative consequence with regard to gambling addiction. This is also in keeping with the Storting's evaluation in connection with the hearing of Proposition No. 44 (2002-2003) to the Odelsting.

The obvious difference between Norwegian offerings from Norsk Tipping and international gaming offerings can also be illustrated by the difference between Norsk Tipping's website, www.norsk-tipping.no, and the most visited of the many hundreds of gaming facilities found by the Google search engine if the word 'casino' is entered. The international website www.888casino.com provides the following information on gambling addiction: *"It is not possible to predict who will develop a gambling problem, but once identified, the problem can be successfully treated."* This way of thinking differs greatly from the Norwegian welfare-state model, in which the thinking is that gaming problems should be prevented, and not cured through treatment after the fact. Most websites do not appear to have any information on gaming addiction at all. Instead, many of them advertise that new players can receive several hundred dollars in introductory bonuses; cf., for example, www.clubdicecasino.com and www.32red.com, which advertise introductory bonuses of USD 350 and USD 500, respectively.

Even though Norsk Tipping's more comprehensive information to on-line players about responsible gaming behaviour and gambling addiction and social responsibility are not necessarily considered by everyone to be the difference between black and white, there are grounds for asserting that this controlled and regulated approach to money gaming on which the Norwegian exclusive rights model is based provides players with a guarantee that the interests of the gaming company's finances are not the overriding factors in the design of the games and the information provided. We would also point out that the recent introduction of 'gambling addiction' as a diagnosis in the Norwegian health service was not due to any trends in the gaming propositions for which the Government is directly responsible through Norsk Tipping. As shown above, there is every reason to believe that current gambling problems are exclusively due to the unfortunate and to some extent uncontrolled development of machine gaming.

As mentioned in the Government's letter of 16 February 2004, experience with the current electronic games will be evaluated during the course of this year. Such games will not be allowed in Norway to such a degree that they presuppose an increase in problem gambling. The private pilot projects via the Internet and mobile phone have

been given the same restrictive operational conditions for the same reasons, which means that they are not able to compete at the same level as international electronic gaming offers. In connection with the Ministry's evaluation of these test projects, an adjustment of the operational conditions towards harder and more aggressive games will not be considered if negative effects with relation to problem gaming are established. This is also in keeping with the Storting's assessment in connection with the consideration of Proposition No. 44 (2002-2003) to the Odelsting.

It is evident from the above that there is a consistent connection between Norsk Tipping's current gaming opportunities, and the careful approach to the further development of these opportunities through new technological channels. The decision not to make Norsk Tipping's scratch card lottery Flax available in electronic form was based on the grounds that such an opportunity would lead to quick draws with frequent pay-outs of small prizes directly on a personal computer. As a consequence of the Norwegian authorities' wish to prevent problem gambling through new electronic channels, emphasis will be placed on the moderate development of gaming activities, which is clearly not in line with international gaming opportunities.

The same thought is reflected in the assessment that the current machines are regarded to be aggressive, uncontrolled and available in their present form. In order to gain control of the further development of gaming machines, it is necessary to build upon the elements that have resulted in the intended development of other forms of gaming in Norway. In order to accomplish such a controlled development, the current machines must be dismantled and removed from the market.

VI CONCLUDING OBSERVATIONS

Money games on machines of the type operated on the Norwegian gaming market are high-risk games, unlike the state-owned money games. Surveys of gaming behaviour demonstrate clearly that so far it is first and foremost the gaming machines and casino games that give rise to social problems. For a number of years, the Government has endeavoured to impose restrictions on the gaming machine market; for various reasons, this has not succeeded in practice. On the contrary, the machines have evolved into increasingly aggressive and casino-style games. As a result, the turnover from gaming machines has increased dramatically in recent years, from a gross turnover of about NOK 9 billion in 2001 to NOK 15 billion in 2002 and an estimated NOK 20 billion in 2003. This – from a social perspective – highly unfortunate trend in the gaming machine market is the main reason why the Government has found it necessary to impose a total ban on gaming machines in their present format, as explained in the foregoing.

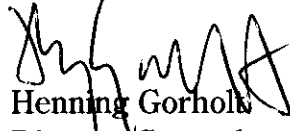
As of 1 January 2006, the Government will hold exclusive rights through Norsk Tipping to operate gaming machines. The new machines will be less aggressive (both the structure of winnings and speed of the games will be designed with a view to reducing problem gambling) and there will be far fewer of them (the number will be reduced to around 10,000 and turnover will be more than halved). Moreover, the machines will be placed where age restrictions, *inter alia*, can be effectively enforced. This will also considerably facilitate efforts to combat various forms of crime.

In the light of settled ECJ case law in, the Government finds that the decision to assign exclusive rights to Norsk Tipping is clearly comprised by the policy instruments that may be employed to prevent socially damaging consequences ensuing from lack of control over gaming. The Government cannot see that the ruling in the *Gambelli case* have bearing on earlier case law from the ECJ. The Government notes in that respect that a number of the current EU Member States have a state monopoly on gaming machines. It is further the Government's view that the Storting's decision cannot be regarded as a disproportionate measure in that, among other things, alternative models for the organisation of this market would not give the authorities the requisite mechanisms for direct control and supervision. The Government can therefore not see that the decision is in breach of Norway's obligations under the EEA Agreement.

Consequently, the Government respectfully requests the Authority to close the case.

The Government appreciates that the background for regulation of gaming in the various European countries is not something the Authority has first-hand knowledge of. Should further information be required on the basis of the foregoing, the Government would be pleased to invite the Authority to receive a more detailed presentation, either in the form of visits to gaming premises in Norway or to operators, researchers or institutions that provide treatment for problem gambling.

Yours sincerely,



Henning Gørholt
Director General



Eivind Tesaker
Deputy Director General

Appendixes:

1. Hans Olav Fekjær, *"Spilleavhengighet" – vår nye landeplage* (Gyldendal 2002) page 26-28
2. Rachel A. Volberg, *"When the Chips Are Down"* (The Century Foundation Press 2001) page 85-95
3. Thomas Nilsson, *"Jakten på Jackpot"* (Fri Forlag 2002) page 21-24
4. Mark Griffith, *"Gambling Technologies"* (Journal of Gambling Studies Vol. 15 (3), Fall 1999)
5. Hans Olav Fekjær, *"Spilleavhengighet" – vår nye landeplage* (Gyldendal 2002) page 127-131
6. R. Randall Bridwell/Dr. Frank L. Quinn, *"From Mad Joy to Misfortune: The Merger of Law and Politics in the World of Gaming"* (Mississippi Law Journal, Volume 72, Winter 2002, Number 2), page 719 – 729
7. Estimates on online gaming turnover
8. The Swedish Governments proposal 2001/02:47 *Förnyad riksdagsbehandling av vissa ändringar i lotterilagen (1994:1000)*
9. Babor et al., *alcohol: no ordinary commodity – research and public policy*, Oxford University Press, page 263 – 276
10. Letter 21.06.2002 from The Ministry of Culture and Church Affairs
11. Letter 20.09.2002 from Norsk lotteri- og automatbransjeforbund (NOAF)
12. Letter 20.09.2002 from Norsk Lotteridrift (NLD)
13. Letter 16.02.2004 from Norsk Lotteridrift (NLD)
14. Ethical guidelines from Norsk Tipping
15. Hans Olav Fekjær, *"Spilleavhengighet" – vår nye landeplage* (Gyldendal 2002) page 72-75
16. Ingeborg Lund/Sturla Nordlund, *Pengespill og pengespillproblemer i Norge* (SIRUS rapport nr 2/2003), page 37-45
17. Ingeborg Rossow/Marianne Hansen, *Underholdning med bismak – Ungdom og pengespill* (Norsk Institutt for forskning om oppvekst, velferd og aldring rapport 1/03), page 7-8
18. Letter 26.5.04 to Norsk Tipping
19. Lotteritilsynet, Annual Report 2003
20. Letter 15.05.2003 to The Department of Media, Culture and Sport in UK
21. Hjelpelinjen for spilleavhengige - presentasjon