


EFTA SURVEILLANCE AUTHORITY

PERSONS, SERVICES AND CAPITAL MOVEMENTS DIRECTORATE

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Brussels, 8 March 2001
Doc. No: 01-1711-DV
Ref. No: CFS.084.400.008

Dear Sir,

Subject: Law on acquisition of waterfalls in Norway

On 7 November 2000 the Authority requested the Norwegian authorities to communicate to its services relevant information concerning legislation on investment in Norway (Doc. No. 00-7887-D).

By letter received by the Authority on 15 January 2001 (Ref. 2000/4935 NR JU ABE), Norway transmitted, *inter alia*, a copy of the Act of 14 December 1917 No. 16 concerning the acquisition of waterfalls, mines and other real property (*Lov 14.12.1917 Nr. 16 om erverv av vannfall, bergverk og annen fast eiendom m.v.*).

According to the Norwegian Act, which was amended on several occasions, the acquisition of rights of ownership or use of a waterfall by others than the State requires a licence. The licence is normally granted for a limited duration of 60 years (cf. Section 2-17 of the Act).

Pursuant to Section 4 of the Norwegian Act, the concession may be granted for an unlimited period of time to enterprises organised according to the Law on State enterprises, Norwegian municipalities and counties (*kommuner* and *fylkeskommuner*). The same goes for limited companies, co-operative societies and other associations where minimum two thirds of the capital and the votes are owned by companies organised according to the Law on State enterprises, one or more local or regional authorities, in the case the expansion of the waterfall in question is mainly used for normal power supply.

It appears from official information in Norway (cf. St meld Nr. 29 (1998-99); Report to the Storting concerning the energy policy) that municipalities, counties and Statkraft SF own 87 per cent of the electricity generation capacity in Norway. The remaining 13 per cent are conceded to private undertakings.

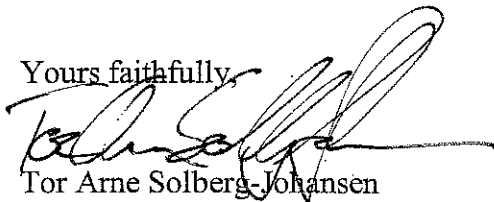
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Against this background, the Authority invites the Norwegian authorities to reply to following questions:

1. For which reasons are concessions to public undertakings, as defined in Section 4 of the Norwegian Act on the acquisition of waterfalls, granted for an unlimited period of time?
2. How do Norwegian authorities consider this provision to conform to the requirements of the EEA Agreement, in particular, to the provisions concerning the free movement of capital and the freedom of establishment? Please substantiate your answer.
3. Could the Norwegian authorities indicate how many private owners of other EEA States have been able to acquire concessions of waterfalls so far? Which proportion does this figure represent in comparison with Norwegian private licensees on the one hand, and in comparison with the overall number of licensees, i.e. including both public and private undertakings enjoying concessions, on the other hand?

May I ask the Norwegian authorities to submit their reply, as well as any other information deemed relevant to this subject, so that it reaches the Authority by *23 April 2001* at the latest.

Yours faithfully,



Tor Arne Solberg-Johansen
Acting Director