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### Law on acquisition of waterfalls in Norway

Reference is made to your letter dated 8 March 2001. We would like to submit our answer to the three questions raised in the letter.

#### 1. Concessions to public undertakings

The waterfall resources are one of the most important natural resources in Norway. Nearly 100 percent of the Norwegian electricity is generated from hydro. (Hydro electricity has been a condition for Norwegian growth and welfare.) Regulation and control concerning the exploitation of the waterfalls is therefore a national concern subject to legal regulations from the authorities. These regulations are based on the Act of 14 December 1917 No. 16 on the acquisition of waterfalls, mines and other real property. This Act requires concession for acquisitions of waterfalls, which exceeds a certain size. The concession system prevents mismanagement of the waterfalls in Norway and takes care of environmental considerations and the situation for the district involved.

Pursuant to the Act of 1917, only the State may acquire waterfalls without concession. The reason why certain legal persons are defined as public and according to the Act Section 4 can be given concessions for an unlimited time, is that these legal persons manage and take care of the waterfalls on behalf of the State. Such public management can not be required from private legal persons. It is necessary for the authorities to have the opportunity to make a further consideration of the non-public concessionaire as to whether or not the entity shall be allowed to continue to manage the waterfalls. Since a concession to a non-public concessionaire is granted for a certain period of time (normally it will be given for 60 years the first time), the concessionaire is provided with

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certain knowledge as to when the concession will be considered renewed. Such a system gives the concessionaire more predictability concerning the ownership than a provision, which gives the authorities the power to do random examinations of the concessionaires management of the waterfalls and an authority to withdraw the concession in case the management of the waterfall resources had not been performed to the best of the community.

It should also be noted that according to the Act's provisions, there are different thresholds in wording for obtaining concessions by the legal persons who are defined as public and those who are not. Pursuant to the Act Section 2 – 1 non-public entities may "under special circumstances" obtain concessions, while according to Section 4 public entities can achieve concessions "unless the public interest indicates otherwise". In accordance with long-lasting governmental practice, the threshold here is similar towards "public" and "non-public" entities.

## **2. EEA Agreement's provisions concerning the free movement of capital and the freedom of establishment**

Norwegian authorities do not find the provision in Section 4 of the Norwegian Act of 14. December 1917 No. 16 to be in conflict with the EEA Agreement, in particular EEA Agreements Articles 31 and 40.

Article 31 of the EEA Agreement lays down the provision concerning the freedom of establishment. It states the right for any EEA participant to take up and pursue activities as a self employed person and to set up and manage undertakings without discrimination based on nationality.

Norwegian authorities do not find Section 4 of the Norwegian act to be in conflict with Article 31. Firstly, as described in section 1 above, the conditions for achieving concession for both public and private entities are equal. There is no difference in treatment between private and public establishments. Secondly, article 31 of the EEA Agreement affects discrimination based on nationality. In accordance with the Norwegian Act every participant from other EEA countries is granted a concession under the same conditions as private Norwegian nationals or legal persons.

According to section 4 of the Norwegian Act, concession to public entities may be granted for an unlimited period of time. This provision does not restrict the actual movement of capital between the Member States. Thus the Norwegian authorities consider this provision to be beyond the scope of the EEA Agreement Article 40 concerning free movement of capital.

## **3. Private owners ability to acquire concessions – comparison of overall number of concessions**

For your information, about 15 percent of the waterfalls used for production of hydro electricity in Norway are today owned by private legal persons. Public legal persons own 85 percent of the waterfalls (measured in proportion of the hydro production

capacity). About 160 entities have ownership to hydro production facilities; most of the companies are small. In the early years of electrification and up to World War II, several non-Norwegian companies acquired waterfalls to build power plants for energy intensive industries.

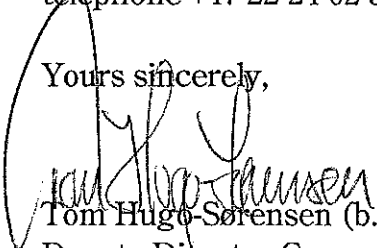
Since there are given a considerable amount of concessions after the EEA agreement went into force and till today, it is difficult to give an exact answer to the number of concessions that are granted and to the proportion between the different kinds of licensees. In the first years after the EEA Agreement went into force there was only a limited degree of restructuring of the power market within the EEA countries, and to our knowledge there were no applications for concessions from non-Norwegian entities.


In the period from 1999 until today there has been given at least 13 concessions to non-Norwegian entities for acquisition of waterfalls. Among these there are 4 from EEA States; Espoon Sahko OYJ's acquisitions in Kobbholm Kraft AS, Vattenfall Norge AS's acquisitions in Hafslund ASA, Outokumpu OYJ's acquisitions in Norzink AS and Sydkraft AB's acquisitions in Hafslund ASA. In the same period of time approximately 10 non-public Norwegian entities have been granted such concessions. Public entities have obtained approximately 69 concessions from 1999 until today. Most of these concessions are based on the restructuring of the power market.

The number of applications for concessions from non-Norwegian entities is expected to increase in the years to come, due to the internationalisation of the energy market. It should be noted that the applications for concession from non-Norwegian entities until today never have been refused.

If you have any questions to this letter, please do not hesitate to contact Anders Berg on telephone +47 22 24 02 59

Yours sincerely,

  
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