

Reykjavík, 12.04.2000

Samgöngunefnd Alþingis

150 Reykjavík

B.t. Björns Þorvaldssonar, ritara

Efni: Umsögn um frumvarp til laga um breytingu á lögum nr. 103/1996, um stofnun hlutafélags um rekstur Póst- og símamálastofnunar.
Breyting á umsjón með eignaraðild ríkissjóðs, frá samgönguráðherra til fjármálaráðherra.

Umsögn Tals hf. um ofangreint efni er stutt.

Augljóst er að það hlutskipti sem samgönguráðherra hefur, er hann þarf bæði að hafa umsjón með eignaraðild ríkissjóðs í Landssíma Íslands hf. og að gæta þess að samkeppni sé komið á í fjarskiptum á Íslandi, er mjög erfitt. Því ber að telja að betur færi að fjármálaráðherra hefði umsjón með eignaraðild ríkissjóðs.

Ekki eru hér eltar ólar við að nefna raunveruleg dæmi þessu til staðfestingar, úr tveggja ára sögu reksturs Tals hf., en af nógu er að taka.

Rétt er að geta þess að Tal hf. er ekki eitt um þessa skoðun og vísast því í hjálagt afrit af fréttatilkynningu ESA frá 14.12.1999 um álit sent norska ríkinu um að skv. tilvitnuðum ákvæðum tveggja tilskipana sé ákveðið að "the national regulatory authorities in the field of telecommunications shall be legally distinct from and functionally independent of all operators providing telecommunications networks and services". Enn fremur ef þannig stendur á "structural separation between ownership function and regulatory functions shall be ensured".

Virðingarfyllt,



Þórólfur Árnason
forstjóri

Hjálagt: Minnisblað frá Ragnari Aðalsteinssyni lögmanni, með fréttatilkynningu ESA og tilvitnunum.

RAGNAR AÐALSTEINSSON
Hæstaréttarlögmaður

Fax 570 6001

Til Þórólfs Árnasonar
Frá Ragnari Aðalsteinssyni hrl
Efni Umsögn um frumvarp um yfirstjórn fjarskipta
Dags. 5. apríl 2000
Bls 1+4

Hjálagt sendi ég fréttatilkynningu frá ESA hinn 14.12.1999 um álit sent norska ríkinu um að skv. tilvitnuðum ákvæðum tveggja tilskipana sé ákveðið að "the national regulatory authorities in the field of telecommunications shall be legally distinct from and functionally independent of all operators providing telecommunications networks and services." Ennfremur ef þannig stendur á "a structural separation between ownership function and regulatory functions shall be ensured."

Ennfremur fylgja þau ákvæði sem til er vitnað í römmum.

Einkum vek ég athygli á ONP Framework Directive gr. 5a, þ.e. síðara ákvæðinu nr. 2 í 2. mgr. Augljóst er að lagaskylda er að skilja að eigendarétt á fjarskiptafyrirtækjum og effirlitshlutverkið. Hér fer samgönguráðuneytið með hvorutveggja.

Kveðjru
RA

14 December 1999

PRESS RELEASE

PR(99)21

THE EFTA SURVEILLANCE AUTHORITY REQUESTS NORWAY TO ENSURE PROPER SEPARATION BETWEEN REGULATORY FUNCTIONS AND OWNERSHIP FUNCTIONS WITHIN ITS TELECOMMUNICATIONS SECTOR

The EFTA Surveillance Authority has on 8 December 1999 sent a reasoned opinion to Norway for failing to comply with EEA rules in the field of telecommunications, in particular the *Telecommunications Services Directive (90/388/EEC)* and the *ONP Framework Directive (90/387/EEC)* as amended by *Directive 97/51/EC*.

The present case originates from a complaint alleging that the Norwegian telecommunications regulatory system is not in compliance with the independence requirement in Article 7 of the *Telecommunications Services Directive*.

The Norwegian Ministry of Transport and Communications is presently the owner of the Norwegian telecommunications operator Telenor. The same Ministry is also the appeals body for certain decisions taken by the Norwegian Post- and Telecommunications Authority in individual cases, as well as being vested with certain regulatory functions.

The Authority sent on 24 March 1999 a letter of formal notice to Norway, stating that the present Norwegian regulatory regime was not in compliance with the independence requirement set out in two of the Directives in the telecommunications sector. Norway was invited to state its view on the matter, and replied to the Authority on 10 June. The Authority has reviewed the reply from the Norwegian Government, and concluded that its concerns have not yet been rectified. In the Authority's view the position of the Ministry of Transport and Communications is incompatible with the requirements of Article 7 of the *Telecommunications Services Directive* and Article 5a of the amended *ONP Framework Directive*. These provisions stipulate that national regulatory authorities in the field of telecommunications shall be legally distinct from and functionally independent of all operators providing telecommunications networks and services. If an EFTA State retains ownership of a telecommunications operator, a structural separation between ownership functions and regulatory functions shall be ensured. As regards decisions taken by the regulator in individual cases, the right of appeal to an independent appeals body shall also be ensured.

In the view of the Surveillance Authority, the merger between Telenor and Telia AB of Sweden, or the announced Initial Public Offering following the merger, does not remove the problems of the Ministry's role, as the Ministry of Transport and Communications will still have considerable influence over the merged company as well as continued interest in its financial well-being both before and after the merger and the IPO.

Norway has been invited to comply with the reasoned opinion within three months upon receipt. In the light of the response to the reasoned opinion from the Norwegian Government, the Surveillance Authority will consider whether to bring the matter before the EFTA Court.

For further information please contact Mr. Peter Dyrberg (Legal and Executive Affairs Directorate), telephone (+32)2 286 18 30.

pressreleasepresseaussendungpressemeldingfréttatilk

Fees, the criteria upon which they are based, and any changes thereto, shall be published in an appropriate and sufficiently detailed manner, so as to provide easy access to that information.

Member States shall notify to the Commission no later than nine months after publication of this Directive, and thereafter whenever changes occur, the manner in which the information is made available. The Commission shall regularly publish references to such notifications.]^w

Member States shall inform the Commission of the measures taken or draft measures introduced in order to comply with this Article by 31 December 1990 at the latest.

[Member States shall ensure that any regulatory prohibition or restrictions on the offer of space-segment capacity to any authorised satellite earth station network operator are abolished, and shall authorise within their territory any space-segment supplier to verify that the satellite earth station network for use in connection with the space segment of the supplier in question is in conformity with the published conditions for access to his space-segment capacity.]^x

Article 7

Member States shall ensure that from 1 July 1991 the grant of operating licences, the control of type approval and mandatory specifications, the allocation of frequencies and [numbers, as well as the] surveillance of usage conditions are carried out by a body independent of the telecommunications organisations. They shall inform the Commission of the measures taken or draft measures introduced to that end no later than 31 December 1990.

Article 8

[Member States shall, in the authorisation schemes for the provision of voice telephony and public telecommunications networks, at least ensure that where such authorisation is granted to undertakings to which they also grant special or exclusive rights in areas other than telecommunications, such undertakings keep separate financial accounts as concerns activities as providers of voice telephony and/or networks and other activities, as soon as they achieve a turnover of more than ECU 50 million in the relevant telecommunications market.]^y

Article 9

[By 1 January 1998, the Commission will carry out an overall assessment of the situation with regard to remaining restrictions on the use of public telecommunications networks for the provision of cable television capacity.]^z

w Inserted by Art 1.3(a) of Dir 94/46.

x Inserted by Art 1.3(b) of Dir 94/46.

y Inserted by Art 1.7 of Dir 96/19.

z Replaced by Art 1.8 of Dir 96/19.

aa Replaced by Art 1.9 of Dir 96/19.

– OR –

[Member States shall ensure that where the grant of special frequencies or which they grant special or exclusive rights for its public telecommunications networks, has a dominant special or exclusive rights for its public telecommunications networks.]^{aa}

In 1992, the Commission in the telecommunications Directive of 1994, the Commission shall amend Article 3 in order to see to the implementation of the provisions of that Article, and the development of telecommunications networks.

This Directive is addressed

Done at Brussels, 28 June

1 OJ No C 257, 4. 10. 1988, p. 1

2 OJ No L 109, 26. 4. 1983, p. 8

3 OJ No L 81, 26. 3. 1988, p. 75

1. Frequency bands allocated

(specifying the number of frequency bands and the review date of the allocation).

2. Frequency bands which are to be allocated in the next year.

3. Procedures envisaged for the allocation of operators.]^{bb}

bb Note that the "new" Art 9, as amended by Directive 90/388/EEC in order to ensure that the network is owned by a single operator or

cc Inserted by Art 1.3 and Annex

etermined, where appropriate, by
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to encourage the provision of
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laid down in Article 10, to the extent strictly necessary to ensure such interoperability and to improve freedom of choice for users, subject to Articles 85 and 86 of the Treaty.

Before the implementation of the standards and/or specifications is made compulsory in accordance with the first subparagraph, the Commission shall, by publishing a notice to that effect in the *Official Journal of the European Communities*, invite public comment by all parties concerned.

4. Where a Member State or the Commission considers that the harmonised standards and/or specifications referred to in paragraph 1 do not correspond to the objective of open and efficient access, interconnection and interoperability, in particular the basic principles and the essential requirements referred to in Article 3, it shall be decided whether or not it is necessary to withdraw references to those standards and/or specifications from the *Official Journal of the European Communities* in accordance with the procedure laid down in Article 10.

5. The Commission shall inform the Member States of any such decision and publish information on the withdrawal of those standards and/or specifications in the *Official Journal of the European Communities*.]'

[Article 5a

1. Where the tasks assigned to the national regulatory authority in Community legislation are undertaken by more than one body, Member States shall ensure that the tasks to be undertaken by each body are made public.

2. In order to guarantee the independence of national regulatory authorities:

- national regulatory authorities shall be legally distinct from and functionally independent of all organisations providing telecommunications networks, equipment or services,
- Member States that retain ownership or a significant degree of control of organisations providing telecommunications networks and/or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

3. Member States shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of the national regulatory authority has a right of appeal to a body independent of the parties involved.

4. Member States may take steps to ensure that national regulatory authorities are able to obtain from organisations providing telecommunications networks and/or services all the information necessary for them to apply Community legislation.]]

i Replaced by Art 1.5 of Dir 97/51.

j Inserted by Art 1.6 of Dir 97/51.