

Name of company	Type of company	Sector	Share owned by State (%)	Ministry responsible
Statnett SF	Statutory enterprise	Electricity transmission and systems operation	100	Oil and Energy
Statoil ASA	Limited company with state ownership	Oil and gas	62.5	Table III.10 (cont'd) Oil and Energy
Store Norske Spitsbergen Kulkompani AS	Limited company with state ownership	Mining	99.9	Trade and Industry
Telenor ASA	Limited company with state ownership	Telecommunications	54	Trade and Industry
Veterinarmedisinsk AS	Limited company with state ownership	Veterinary research and services	51	Ministry of Agriculture
Vinmonopolet AS	State owned limited company	Retail distribution of alcohol	100	Social Affairs
Yara International ASA	State owned limited company	Production, distribution, and sale of fertilizers	100	Trade and Industry

Source: Ministry of Trade and Industry (various issues), *Annual Report on State Ownership*, online information. Viewed at: <http://www.eierberetningen.nhd.no/>.

128. Reflecting a policy change, the Government aims to maintain the State's ownership of business and industry at approximately the 2006 level.¹¹⁹ Thus, during 2003-07, the State carried out only one full privatization and five ownership reductions, including a further reduction of its shareholding in Statoil ASA (see Chapter IV). This represents a considerable slowdown in the privatization process compared with the previous review period.

129. The OECD suggests that continued reduction of state ownership in market-based production firms would increase their exposure to competition and consequently increase the innovatory activity in Norway's industrial sector.¹²⁰ In consonance, the IMF argues that the perception of state-owned enterprises as having advantageous access to the Government's "deep pockets" could dissuade expansion and entry by private competitors.¹²¹ In this respect, the authorities note that the Government can only provide financial aid to a state-owned enterprise with the Parliament's consent.

130. During the period under review, Norway's EEA membership has influenced two government decisions with respect to state-owned enterprises. In 2005, the EFTA Surveillance Authority ruled that Entra Eeindom AS had received unlawful state support in the form of exemption of establishment duties, a decision the Government decided to comply fully without appealing. In 2007, the EFTA Court ruled in favour of the Norwegian Government in a case regarding the establishment of a State monopoly in the lottery machine market.¹²²

(v) Government procurement

131. Norway is party to the Government Procurement Agreement (GPA). Its public procurement regime is open to foreigners although, in practice, it appears that only a small portion of contracts have been awarded to foreigner suppliers.

¹¹⁹ Ministry of Trade and Industry online information, White Paper No. 13, "An Active and Long-Term State Ownership", December 2006. Viewed at: <http://www.regjeringen.no/en/dep/nhd/Documents/Government-propositions-and-reports/Reports-to-the-Storting-white-papers/2006-2007/Report-No-13-2006-2007-to-the-Storting.html?id=472648>.

¹²⁰ OECD (2007c).

¹²¹ IMF (2007a).

¹²² Ministry of Trade and Industry (2006).

✓ 132. The Ministry of Government Administration and Reform is responsible for implementation of the GPA and of domestic rules on government procurement.

✓ 133. Total public sector purchases of goods and services was Nkr 314.9 billion (equivalent to 15% of GDP) in 2006, of which 74% corresponded to the general government (including local government) and 26% corresponded to state-owned enterprises.¹²³ Norway notified the WTO that government procurement under the GPA covered 410 contract awards with a total value of Nkr 9.3 billion in 2005, up from Nkr 7.5 billion in 2001. The majority of the 410 contracts appear to have been awarded to Norwegian suppliers.¹²⁴ However, the authorities consider that these figures underestimate the participation of foreign suppliers since they are based on incomplete data, and because some Norwegian suppliers are subsidiaries of foreign companies or agents for foreign suppliers.¹²⁵

134. Norway's public procurement regime provides for non-discrimination and national treatment in the purchase of goods, services and works contracts for suppliers from all countries, irrespective of the monetary size of the contracts. Norway also has international obligations for public procurement under the EEA, EFTA, and EFTA free-trade agreements with third countries. These include purchases of products and services (including construction services) by railway operators, entities in the energy sector other than electricity, and private utilities in the subsectors of drinking water, electricity, urban transport, ports, and airports.¹²⁶ Firms established in countries with which EFTA has a free-trade agreement are granted unrestricted market access to the sectors specified in the respective agreement; appeals are covered by the dispute settlement chapter of the agreement. Firms from GPA/EEA/EFTA countries have the right to appeal procedures under Norwegian procurement legislation (see below).

135. Norway's minimum threshold for the application of GPA/EEA/EFTA and EFTA FTA specific rules during 2008 and 2009 are: Nkr 41,000,000 for all construction services contracts, Nkr 1,050,000 for the supply of goods, Nkr 1,650,000 for services and Nkr 3,300,000 for works contracts.¹²⁷ These thresholds are slightly lower than the ones applied in 2006-07.¹²⁸ For contracts between Nkr 500,000 (about US\$85,000) and the GPA/EEA/EFTA thresholds, the new legislation establishes a less rigorous set of rules. The Norwegian legislation does not require the publication of contracts below Nkr 500,000 (see below).

136. Public procurement in Norway is regulated by the Public Procurement Act No. 69 of 16 June 1999, amended by Act No. 41 of 30 June 2006 (in force 1 January 2007), and Act No. 121 of

¹²³ Statistics Norway online information. Viewed at: http://www.ssb.no/english/subjects/12/01/offinnkj_en/tab-2007-11-20-01-en.html.

¹²⁴ Based on Norway's notification to the WTO (document GPA/88/Add.1, 12 March 2007), some 96.3% of the Nkr 9.3 billion in government procurement would have been awarded to domestic suppliers, and the rest to foreign suppliers. The breakdown of total value by type of procedure would be: open, 65.2%; restricted, 22.7%; and negotiated, 12.1%. The break down of the total value by type of contract would be; supply, 27.3%; service, 41.3%; works, 20.0%; and utilities contracts, 11.4%.

¹²⁵ The authorities note that their statistical reporting for 2005 was based on a research method giving a misleading number for contracts and contract values covered by the GPA. This occurred because the statistics were based on 410 notices of awarded contracts under the EEA Agreement (which has approximately the same coverage as the GPA), whereas roughly 2,700 calls for tenders were published. Moreover, the obligation to publish a notice of an award covers also contracts where there is no obligation to publish a call for tender. As a result, the GPA coverage could be underestimated by a factor of ten.

¹²⁶ EFTA Secretariat online information. Viewed at: <http://secretariat.efta.int/Web/Publications/FactSheets/>.

¹²⁷ The thresholds are equivalent to US\$7,893,950, US\$206,570, US\$317,800, and US\$635,600, respectively. Information provided by the Norwegian authorities.

¹²⁸ WTO document GPA/W/295/Add.7, 10 October 2006.

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21 December 2007.¹²⁹ Regulation on Public Procurement No. 402 of 1 April 2006 and Regulation of Procurement Procedures of Entities in the Utilities Sector (Water, Energy, Transport and Postal Services) No. 403 of 1 April 2006 (both in force as of 1 January 2007) have replaced previous regulations.¹³⁰ These rules apply to procurement by the central government, counties, municipalities, bodies governed by public law, public supply enterprises, and private enterprises that have been granted concessions in specific utilities sectors (e.g. oil companies operating in the Norwegian continental shelf).

✓ 137. Regulations Nos. 402 and 403 of 2006 were introduced to implement new EC directives, particularly Directives 2004/18/EC and 2004/17/EC. The main objectives of these EC directives were to simplify the legal framework, making it more flexible, and adjusting for the use of electronic technology. The new regulations provide for non-discriminatory treatment to suppliers from a party to the GPA, EFTA or EEA agreements. However, to guarantee employment opportunities for handicapped workers, Norway may, in a non-discriminatory way, reserve certain contracts to businesses in which the majority of employees are handicapped.

138. The new regulations provide for an exhaustive list of cases where the use of the negotiated procedure is allowed with or without prior public notice. To address concerns relative to the transparency of the negotiated procedure, the "competitive dialogue procedure" was introduced for contracts that are particularly complex. A contract is deemed "particularly complex" where the procuring entities cannot objectively define the technical means capable of satisfying their needs or are not objectively able to specify the legal and financial make-up of the project. The regulations also introduced a "dynamic purchasing system", which allows the contracting authority to set up a non-exclusive list of suppliers for a period of four years.¹³¹

139. For utility markets deemed to be competitive, procurement contracts may be exempted from the procedures set out in Regulation No. 403 of 2006. Exposure to competition is assessed on the basis of defined criteria, taking into account the specific characteristics of the sector concerned.¹³² Various types of contract are excluded from the scope of Regulation No. 403, such as defence, security, and provision of public telecommunication networks.¹³³

✓ 140. In addition, the new legislation provides for the introduction of a fully electronic process for the invoicing and handling of public contracts. The Norwegian e-Procurement Secretariat, which reports directly to the Ministry of Government Administration and Reform, is responsible for furthering developments in e-procurement.¹³⁴

141. The authorities note that, regardless of the procurement procedure, the criteria on which contracting authorities base the award of contract must be either the lowest price or the most economically advantageous tender. The following criteria may be taken into consideration when determining the most economically advantageous tender: price, delivery date, running costs, cost effectiveness, and quality. All criteria must be listed in the contract notice or in the contract documents. Discriminatory technical specifications may not be used to tailor contracts for any supplier.

¹²⁹ Act No. 121 of 21 December 2007 and regulation No. 112 of 8 January 2008 implement the ILO Convention No. 94 concerning labour clauses in public contracts.

¹³⁰ The regulations replaced were, respectively: Regulation on Public Procurement No. 616 of June 2001, and Regulation on Public Procurement Procedures of Entities Operating in the Water, Energy, Transport and Telecommunication Sectors of 5 December 2003.

¹³¹ In line with Article 33 of the Directive 2004/18/EC.

¹³² In line with European Commission Decision 2005/15/EC of 7 January 2005.

¹³³ For a full list of the exceptions, in English, refer to Directives 2004/17/EC and 2004/18/EC.

¹³⁴ Information provided by the authorities.

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- ✓ 142. The contracting authority can choose between open and selective tender procedures. In selective tender procedures, the number of potential suppliers may be limited to a minimum of five. Any firm can request to be invited to tender, but only the candidates selected are sent the tender documents and invited to bid. Suppliers must be selected on a contract-by-contract basis. Permanent lists of suppliers, as such, are not allowed, except for utilities.¹³⁵
- ✓ 143. The authorities also note that procurement under the GPA/EEA/EFTA or EFTA's FTAs must be published internationally, except for selective tendering. Tenders are advertised in the *Official Journal of the EC* (a database also known as Tenders Electronic Daily).¹³⁶ Awards must be advertised no later than two months after taking place, through a published notice in an official EC/WTO language. Contracting authorities in the utilities sector are not obliged to state the contract value in post-contract award notices; authorities in the rest of the public sector may postpone publication of the contract value only to guard commercial interest.
144. Procuring entities in the utilities sector may advertise their qualification requirements for all tenders through a single annual notice; procurement within these qualification requirements is not announced individually. With some minor exceptions, all procurement above Nkr 500,000 excluding VAT (about US\$85,000) has to be published in the national TED.
- ✓ 145. Appeal procedures are only available and legally binding on members of the GPA/EEA/EFTA and EFTA free trade agreements. At the national level, the supplier is generally expected to take up the matter directly with the entity concerned, but may bring the issue before a district court of justice. The court has the power to investigate and intervene in procurement cases and to suspend or set aside a decision made by the contracting entity; it also has the power to award damages.
- ✓ 146. The Public Procurement Complaint Board (KOFA) is an independent advisory body comprising ten highly qualified lawyers. Although its decisions are not legally binding, the authorities note that due to the high quality of KOFA's recommendations the Board's opinions are followed by the parties in nearly all cases. KOFA has handled approximately 1,000 cases since its creation in 2003, and in 2007 the average time for the advisory decisions was about three months. On 1 January 2007, KOFA was given authority to impose an administrative fine on contracting authorities who have not published a mandatory tender notice; the fine can be up to 15% of the procurement value. KOFA's decision can be appealed to the national courts.¹³⁷

(vi) **Intellectual property rights**

(a) Overview

147. Since Norway's last Review, minor technical amendments have been made to the Trademarks Act and the Designs Act, while more substantial changes were introduced to the Patents Act and to the Copyright Act. Norway notified its main IP laws to the WTO in 1996¹³⁸; such legislation was reviewed in the TRIPS Council.¹³⁹

¹³⁵ Information provided by the authorities.

¹³⁶ TED online information. Viewed at: <http://www.doffin.no/>.

¹³⁷ Information provided by the Norwegian authorities.

¹³⁸ WTO document IP/N/1/NOR/1, 18 June 1996.

¹³⁹ WTO documents IP/Q/NOR/1, 13 September 1996, IP/Q2/NOR/1, 24 September 1997, IP/Q3/NOR/1, 22 January 1998, and IP/Q4/NOR/1, 26 February 1999.