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## **OWNERSHIP FUNCTION OF THE NORWEGIAN STATE**

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## 1. Introductory remarks

Norway has been developing a policy for State-owned commercial companies since the middle 60-ies, centered on a separate Entity of Ownership established within the Ministry of Industry. Here, I've been employed for the last 27 years! In my presentation, I will

- Give you a short history of the Norwegian State-owned commercial sector;
- Mention some facts and figures;
- Talk about concentrating the Ownership functions;
- Sum up the main legal framework of our companies and the main principles according to which the State exercises its ownership rights;
- Go in more detail into board nominations and board remuneration;
- And discuss reporting systems and accountability to Parliament.

Let me start by stating: The fact that a company is State-owned does not in itself make it a better company than its competitors from the private sector, or indicates that it should be managed according to other principles than its competitors. Our aim is therefore that a State-owned company should be run according to the same principles as a well-run private company. The State should be an active and informed shareholder, but should let the Board of Directors and the Management deal with the daily business according to the company's Articles of Association and the ordinary rules of Joint-Stock Company Law.

## 2. A short history

To many countries, the State-owned commercial sector has been vital to economic life and progress. This was also so in Norway in the old days. Much industrial activity originated with the King, who by divine right possessed the country's mineral assets and financed silver and copper mines and glass factories, and other activities. Two factories for producing weapons and ammunitions were set up, and a naval shipyard was established.

After the Second World War, formerly German-owned shareholdings were taken over by the Norwegian State. This period was also marked by a strong emphasis upon the exploitation of natural resources, especially hydro-electric power, where the State participated for financial and regional reasons. The State also built its Iron Works in Northern Norway, and refinanced the Coal Mines at Spitsbergen. The State-owned aluminium interests were also expanded in this period. Norway participated in the exploration for oil and gas when this was discovered on the Norwegian Continental Shelf in the late 70-ies, and the State Petroleum Company "Statoil" was established in 1972. The State also participates in the petroleum industry through the State's Direct Financial Participation.

In later years, new joint-stock companies have been established based on the State's Telegraph Company, the Grain-importing Company, the State Railways, the Post Office, the Directorate of Public Construction and Property and the Road Directorate's units for construction and maintenance. There has also been times of crisis, for instance in the banking sector, where the Government has been forced to intervene. We now retain a strong minority interest in the largest Norwegian banking corporation.

As you see, the manner in which the Government has acquired its share-holdings varies. It is important to note, however, that none of the State's holdings are consequences of a political will to nationalize certain segments of our industry and keep it under government control. In later years, private investors have been invited into many of the former State-owned companies, and this is a continuing development.

The long term national interest of keeping these companies as centres of research and development in Norway, of retaining them as a "Norwegian" company in a globalized environment, has however led to the State maintaining a majority share-holding in most of them, or at least to retain more than 1/3 of the shares to be able to block developments seen as unfavourable to the national interest. Considerations related to national security have also been important in this respect. The practice of "A golden share" has however not been used; it has been felt that where the State wants to influence the direction and development of a company, it must as a shareholder also have a substantial economic interest in the activities.

### 3. Facts and figures

The Kingdom of Norway today owns shares in about 80 different companies. Many of these serve purely non-profit purposes for the community; hospitals, culture, research etc.

47 companies have mainly commercial activities. The State owns shares in 7 of more than 200 companies listed on the Oslo Stock Exchange, with a share value of around NOK 320 billion, or more than € 39 billion. Of the other companies, 16 are defined as unlisted commercial companies while 24 have other purposes in addition to commercial.

I will not go into this in more detail, but point out that the State owns around 32 per cent of the listed shares on the Oslo Stock Exchange – and those are some of the largest Norwegian companies – and hold shares in around 10-15 per cent of Norwegian industry. The State ownership is especially strong within the petroleum and hydro-electric energy sectors. Large scale privatizations are neither warranted for fiscal reasons, nor politically feasible for a long period, which is why the principles for corporate governance of State-owned enterprises are of great importance also for a country like Norway.

Let me especially underline that with a large number of international financial investors at the Stock Exchange owning shares in a company together with the State, it is important that the State exercises its ownership functions in a transparent and professional manner, building confidence in the Market and among its partners.

### 4. Concentrating ownership functions

A State has several tasks and different roles. It is important that the Government recognizes this, and manages to separate its different roles, to ensure its legitimacy whether it acts in the role as owner, as policy maker, or as regulatory authority. As an Owner, the State must act professionally in relation to the company, co-investors and lenders. As a policy maker, the State must not favour its own company but

treat all companies within the same sector equally. The same when the State is a regulatory or inspection authority.

Especially in sectors where State-owned compete with private companies, the State must pay particular attention to ensuring correct and proper behaviour in its role as Owner and shareholder. The Board of Directors and the Management of the company must be organized in such a way that questions are not raised as to whether the State's different roles have been intermingled, and the operations must follow generally accepted codes of Corporate Governance. Only in this way can the Company and the State earn the confidence of the market participants. Only this will ensure that the individual Company's development takes place on a sound economic basis, and should thus also positively influence the value of the State's assets.

In Norway, the Government which came into power after the election in 2001 initiated improvements in the administration of State-owned companies. From being spread across the various sector-specific ministries, the administration of a number of companies started to be consolidated under the Ministry of Trade and Industry. A new Department of Ownership was established within the Ministry, and the number and competence of the staff strengthened. The underlying rationale for this was to develop the Ministry further as a centre of expertise for State ownership. There are, however, still some companies organized under other ministries, which as the commercial nature of their activities expand are planned transferred to the Ministry of Trade and Industry. The Department of Ownership today has 16 employees. We work in a team structure, with one economist and one lawyer responsible for each share interest.

##### **5. Legal framework and main principles of State ownership**

The great majority of companies where the State owns shares are organized according to the Norwegian Law on Joint-Stock Companies; the Law which also regulates privately owned commercial corporations. They pay tax along the same lines as private companies, have to answer to the same competition regulations, etc. Similar general principles are followed whether the State holds 100 per cent, is a majority shareowner or holds a minority post.

The Shareholders' General Assembly – where the Minister or a Department official (usually) vote the State's shares – elects the Board of Directors, which in its turn has the power to appoint, and if necessary dismiss, the General Manager. The General Assembly decides on the Articles of Association and the broad commercial purpose of the company, and supplies the share capital. As I mentioned in my introduction, the Ministry or its officials do not take part in the day-to-day running of the company where the State owns shares. Nor do we influence production, marketing or the other ordinary economic or commercial activities of our companies. These are matters for the Board and the Management. They are also responsible for the company's general financing and lending arrangements. In a joint-stock company the shareowners legal responsibility for company debt, as you know, is limited to the share

**capital. And in Norway it has happened that a 100 per cent State-owned company has gone into bankruptcy or applied for composition proceedings!**

**Where it is desirable that a commercial State-owned company provides some special social services, these are now regularly drawn up in an agreement with the relevant Ministry, and usually paid for by the State and identified in the State Budget; approved by Parliament.**

**A considerable amount of work has in recent years been dedicated to elaborating on good corporate governance principles. In the spring of 2002 the Government, in a White Paper to Parliament, identified ten main principles on which the administration of State ownership in individual companies should be based:**

- 1. All shareholders shall be treated equally.**
- 2. There shall be transparency in the State's ownership of companies.**
- 3. Ownership decisions and resolutions shall be made at the General Meeting.**
- 4. The State may set performance targets for each company together with other owners. The Board is responsible for meeting these targets.**
- 5. The capital structure of the company shall be consistent with the objective of the ownership and the company's situation.**
- 6. The composition of the Board shall be characterised by competence, capacity and diversity and shall reflect the distinctive characteristics of each company.**
- 7. Compensations and incentive systems shall promote the creation of value in the companies and shall be generally regarded as reasonable.**
- 8. The Board shall exercise an independent control of the of the company's management on behalf of the owners.**
- 9. The Board shall adopt a plan for its own work and shall work actively with development of its own competence. The Board's activities shall be assessed.**
- 10. The company shall recognise its responsibilities to all shareholders and stakeholders in the company.**

**These principles have been widely distributed, and the 10 principles with further material form the basis of the Ministry's administrative policies concerning State ownership. The Department of Ownership publishes an Annual Ownership Report with the results of the State-owned companies, names of all members of the Boards of Directors, etc. You will find this on the Ministry of Trade and Industry's website <http://www.dep.no/nhd/>**

#### **6. Board nominations and remuneration**

**The tradition in Norway is to have a relatively small Board of Directors, between 5 and 9 members, and they usually consist of people from outside the company. Except the members elected from and among the employees; by Norwegian law on employee participation the employees have the right to elect one-third of**

the Board members. Usually the President or General Manager of the Company is not a Board member, but has the right to attend the meetings.

I must then mention that in Norway, Parliament does not allow Ministry officials to sit on the Board of Directors in companies where the State holds shares (both in wholly or partly owned companies). Neither can Members of Parliament, Ministers or State Secretaries. Practice in other countries is often different; in other Nordic countries there is usually one Board member from the Ministry. Our prohibition stems from a political crisis in the 60-ies. The Ministry's Permanent Secretary was Chairman of the Board of a mining company where an explosion occurred, 21 people were killed, and the Minister had to resign. There may also be other good reasons for officials not sitting on Boards of Commercial companies; among them conflicts of interest and lack of time and commercial competence.

The Ministry does however participate actively in the nomination process; usually through membership in a Nomination Committee elected at the Annual General Meeting. The task is to find qualified Board members, with varied experience from the field in which each individual company operates, and/or with a more general commercial, financial and marketing background. The Board of Directors should work as a team, and its members be independent and have integrity. The Board is responsible for appointing (and dismissing) the Manager; many will say this is their most important task. The Board has overall responsibility for decisions of a commercial nature, including long-term strategic planning and budget supervision. The Board should always act in the interest of all shareholders! Usually, Board members are elected for a period of two years, and may be reelected.

Let me also mention that Norwegian Government policy is that at least 40 per cent of Board members should be female. There is now also soon in force a new Law for larger private joint-stock companies, with a similar rule. Most companies where the State holds shares already fulfill the 40 per cent rule, but there has been difficulties to fill the quota for the private sector. Let me add that there seems to be some empirical evidence that suggests that a company with diversity in the leadership – also female diversity – gets better results than the average company where the Board and the Management is, as they say, male, pale and stale.

Board remunerations in companies where the State holds shares should be on the same level as in the private sector, and are decided upon at the Annual General Shareholders' Meeting. Let me add that a principle to which we have attached some importance, is that a Board Member should not at the same time be a paid consultant for the company. This is particularly evident when it is the Chairman of the Board who is also the consultant; who should decide whether his services with extra pay are really necessary for the company?

#### 7. Reporting systems and accountability to Parliament

Companies in Norway where the State hold shares are subject to the same financial reporting codes and regulations as private companies. The Annual Accounts are subject to scrutiny by an independent

auditor, elected by the Annual General Shareholders' Meeting. At the Meeting, the Company's Annual Accounts and financial statement and the Board of Directors' Report are discussed and approved, and the amount of share dividends decided upon.

A company which runs regularly at a profitable level is supervised mainly through the Ministry's internal analysis of the Board's yearly report and the audited financial accounts. The Department of Ownership has established its own expectations of results and profitability for each company, which have been communicated to the Board and the Management and discussed with them.

Listed companies usually issue a quarterly report, which is presented in a meeting with stock analysts. Such meetings are attended by people from the Department of Ownership. We often also have regular one-to-one meetings with the larger companies, going through the report in greater detail. If the company is in trouble or starts running at a loss, it is of course subject to a more thorough analysis from the Department of Ownership; often with the assistance from outside accountants and/or consultants. If a deteriorating situation is not improved, the first step will be to call an extraordinary General Assembly and elect a new Board of Directors. This will then have the responsibility to take the necessary steps, finding new management and establish a strategy to get the commercial activities back to profitability.

According to the Norwegian Constitution, our Parliament must decide on most changes in State ownership. Increases in the share capital, as well as the setting up of a new State-owned company, is decided by Parliament, who must approve the share capital. The buying or selling of State-owned shares must also be voted upon by the Parliament. The political situation after each election varies, but I feel that usually Parliament, and the relevant committee within Parliament, keeps a close watch on the State-owned commercial sector.

The Minister's administration of State-owned interests is audited by the State Audit Bureau, which reports directly to Parliament in a yearly document. The Audit Bureau has lately paid special attention to the procedures when we have sold state shares to the public and to new private owner interests.

Unfortunately, political discussions may often cause doubts in the minds of investors – especially foreign – who are partners together with the State in a commercial company. This is why one sometime speaks of a “State rebate” for shares noted on the Stock Exchange, where the State is a shareholder. A credible, predictable and transparent ownership policy is the only way to retain confidence in the State as a long term partner in large commercial enterprises, dedicated to creating value for all shareholders. Following the newly issued OECD guidelines on the Corporate Governance of State-owned enterprises may in fact, and in the long run, turn out to be profitable both for the State and the national assets involved.