This note is submitted by the Delegation of Norway to the Working Party No. 2 FOR INFORMATION at its next meeting on 27 October 2000.
Postal Services

1. The postal sector in Norway is currently divided into two parts. The so called reserved area is a legal monopoly where the state-owned postal operator (Posten) has the exclusive right and obligation to supply universal services. The remaining part of the postal sector is in principle open to competition. Even though there has been some entry by private firms, Posten is still the dominant supplier of most postal services.

2. The prices that Posten charges for its universal services are to be approved by the Ministry of Transport and Communications (MTC) which also acts as owner on behalf of the State. As regards the competitive services, neither Posten nor its competitors are subject to price regulation.

3. The implementation of the Directive 97/67/EC has been a driving force in the liberalisation of the postal sector, both by limiting the reserved area and by regulating access to essential facilities controlled by the incumbent. The question of access may for example arise whenever a competing postal operator wants to offer its services in sparsely populated areas where it is uneconomical to have more than one distribution network. Due to its universal service obligation, Posten already has an established nation wide distribution network. Any excess capacity in this network should be put to its most productive use, and this can only be achieved by securing all downstream competitors access on equal terms. The existing rules on access to essential facilities are enforced by the Norwegian Post and Telecommunications Authority (NPT), an affiliate of the MTC.

4. Posten is a vertically integrated company in the sense that it both operates within and outside the reserved area. It is however required to hold separate accounts for its competitive and non-competitive activities. The primary objective of this accounting separation is to ease the regulation of the tariffs for universal services and to promote effective competition by reducing the scope for cross-subsidisation from reserved to competitive activities. The accounting separation may also improve the control or regulation of prices for access to essential facilities.

5. The NCA is not in a good position to judge whether the accounting separation is effectively enforced and what consequences it may have had for the quality of the regulation of the reserved area and for the level of competition outside this area. As regards the question of access to essential facilities we have the impression that this may pose rather difficult problems for the regulator. This is both a question of identifying what activities are essential facilities, and establishing operational methods for regulating access to these facilities.

6. Allegations of cross subsidisation from non-competitive to competitive activities and of restricted access to essential facilities, seems common in the postal sector. To what extent such allegations are founded, is difficult to assess. Posten is currently facing competition from a number of relatively large foreign companies, and the scope for successful predation may therefore by limited.

7. NCA is not aware of any systematic study of transitional costs or loss of economies of scope related to the separation of ownership or operation.
Telecommunications

8. With the removal of the remaining exclusive rights on the part of the state-owned incumbent Telenor in 1998, the telecom sector in Norway is now in principle completely open to competition. Telenor is however still the dominant supplier of most telecom services and infrastructure.

9. The Telecommunications act of 1995 as amended explicitly recognises the need for regulating the behaviour of suppliers with significant market power. The prices charged by such suppliers for services to both end-users and competitors shall be non-discriminatory, transparent and cost-oriented. Furthermore, operators with significant market power shall accommodate all reasonable requests for access to their networks. If an agreement is not reached between the parties, the Norwegian Post and Telecommunications Authority (NPT) has the power to decide on the terms of access. NPT is a subordinate agency of the Ministry of Transport and Communications. NPT is organised as a regulatory authority in its own right charged with administering public rules and regulations in the post and telecommunications area and with facilitating the provision of good and reasonably priced telecommunications services to users.

10. Telenor may be regarded as a vertical integrated company in the sense that it both provides network-services and services to end-users. Telenor is required to comply with certain principles for accounting and reporting to the regulator. NPT has notified that an improved accounting system will be imposed on Telenor from year 200. This system is intended to be a better instrument for enforcing the rules on non-discrimination, transparency and cost-orientation. The regulator has received at number of allegations of anticompetitive behaviour since the market was opened to competition, and expects the new system to facilitate its work in sorting out such claims.

11. In 1999 the Parliament voted against a proposal for a separation of Telenor’s infrastructure into a separate corporate.

12. The Parliament has decided to have Telenor partly privatised. It is foreseen that the IPO will take place before the end of 2001, at the earliest to start in the end of October this year. The responsibility for acting as owner on behalf of the State will be transferred from the Ministry of Transport and Communications to the Ministry of Trade and Industry.

13. The NCA is not aware of any systematic studies regarding the eventual costs of separation in the Norwegian telecom sector.

Electricity

14. The electricity sector in Norway has undergone a major reform during the 1990s. One of the main objectives of the Energy Act of 1991 was to increase the efficiency by promoting competition between independent suppliers. In order to secure the suppliers access to end users, the grid is regulated as an essential facility. The transmission tariffs are set by the Norwegian Water Resources and Energy Directorate (NVE) according to a system of so called point-tariffs. By signing an agreement with the local network, the consumers are connected to the entire grid system of the country. Since the transmission tariffs are independent of the source of supply, the consumers have an incentive to choose the cheapest supplier of electricity.

15. The greater part of the high voltage transmission grid is state owned through Statnett. At the distribution level, there are number of local monopolies that are usually owned by the municipalities. Both the State and most of the municipalities are engaged in the generation and sale of power. There are also some private suppliers in this market. The suppliers of electricity are not subject to price regulation.
16. The States interest in the generation and transmission of electricity was prior to the reform held in the company Statkraft. This company was vertically separated by the divestiture of Statnett. The NVE has also tried to encourage the vertically integrated companies owned by the municipalities to divest into separate legal entities, but with little success. Integrated companies are however obliged to keep separate accounts for their non-competitive activities. The stated objective for these measures has been to improve the quality of the regulation of the grid, and to promote effective competition between energy suppliers.

17. The regulator has recently also made improvements in the regulation of transmission and distribution tariffs. In contrast to the former rate-of-return regulation which gave grid owners automatic coverage of costs, the new model fixes a revenue ceiling that is independent of actual costs within a period of five years. Furthermore, the basis for this ceiling is not historical costs alone but also the scope for future efficiency improvements as judged by the regulator.

18. To the extent that cross-subsidisation from non-competitive to competitive activities within integrated companies may still be possible, its impact on the level and quality of competition will probably be rather modest. The competitive part of the market does not seem sufficiently concentrated to raise serious concerns about predatory behaviour. The possibility of predatory behaviour funded by regulatory evasion is also limited by the fact that the larger companies are more often vertically separated than the smaller ones.

### Natural gas

19. The key regulator in the petroleum and energy sector is the Norwegian Petroleum Directorate (the NPD). The NPD exercises supervisory control of petroleum activities on the Norwegian continental shelf and on Spitsbergen. The directorate functions as adviser to the Ministry of Petroleum and Energy and to the Ministry of Local Government and Regional Development.

20. There are about 35 fields in production on the Norwegian Continental Shelf. Each field is divided into several blocks, which again is divided into smaller units through production licenses. The production licenses are organised as joint ventures, which normally deliver gas at the border of the country of the buyer.

21. Production is pursued by some twenty oil companies. The Norwegian State has major direct and indirect ownership shares in the petroleum sector through the company Statoil, which is completely owned by the State, and Norsk Hydro, which is 51% state-owned.

22. The Norwegian gas transportation systems are all joint ventures between public and private and between Norwegian and international companies. In all the pipelines, the Norwegian State is the major owner through the companies Statoil and Norsk Hydro. Usually, the ownership structure of the delivering field and the transportation system are identical. In many cases the sale of gas in a field will only necessitate a pipeline connection to an existing trunk line.

23. In order to establish a self-regulating mechanism for the off-take of gas, it is the Norwegian policy to strike a balance between pipeline ownership and shipping interests. Thus, the Government decides on the ownership share in landing pipelines and terminals, aiming at pro-rata shares. It will not, however, be possible to maintain a perfect balance between pipeline ownership and shipping activities. A system of tariffs is put in place in order to compensate for such imbalances.

24. All agreements for the use of pipelines and installations are submitted to the Government for approval. The Government may determine different tariff levels for different fields or time periods, if this
is advisable in light of the overall management of resources, or in order to save resources that would otherwise be lost. The Government may decide that other licences may use certain production platforms and pipelines, if this improves overall operations or is desirable for resource management purposes.

25. The Government has also established rules permitting the terms of approved agreements to be reconsidered if important resource issues are at stake, or if the preconditions have been substantially changed. Tariffs may also be changed if this can prevent a premature shutdown of the field. Changing the tariffs in a field’s final phase may be a means of securing the profitable recovery of the field’s remaining reserves.

Broadcasting

26. The Ministry of Cultural Affairs is responsible for developing policy and drawing up new legislation, implementing regulation etc. in the media field. The Ministry is also responsible for issuing licenses for private commercial broadcasters transmitting nation-wide by terrestrial networks and to supervise the license conditions related to these broadcasters.

27. The Mass Media Authority (MMA) is a governmental body placed directly under the Ministry, issuing licenses for local and satellite broadcasters. The tasks of the MMA include supervision of license conditions concerning local and satellite broadcast and general regulations on sponsorship and advertising in all Norwegian broadcasts. The MMA also has some responsibilities related to the provision of cable network distribution services, including ruling on common subscribers choice of content, and a “must carry” obligation imposed on network operators by regulation.

28. The Ministry of Transportation and Communications is responsible for the telecommunications policy. The Norwegian Post and Telecommunications Authority (NPT) is an administrative body directly subordinated the Ministry of Transport and Communications, and is responsible for infrastructure and spectrum concerning broadcast, allocating terrestrial network frequencies, authorising suppliers, drawing up new legislation, controlling the market etc.

29. According to the regulation of cable networks, NRK (the national public service broadcasting corporation) as well as TV2 (a private license holder for nation-wide television) shall be distributed through network channels reserved for this requirement. This obligation to carry also includes terrestrial broadcasts from local commercial public service television, when receivable by network head-end.

30. According to regulations under the Broadcasting Act, vertical integration is prevented solely by a provision on cable companies’ access to license for local broadcasting: Cable companies may not hold a license to operate local broadcasting services, or possess more than 49 percent of the shares in a local broadcasting company. A content producer (broadcaster) may own distribution networks, regardless of distribution technology.

Waste Management

31. Collection of consumer waste is legally a responsibility for the municipalities, but the physical collection may be left to private companies. Many Norwegian municipalities have established internal production units. Even though most of the production is handled by the municipalities themselves, other firms are often invited to participate in competitive tenders. In a study from 1996, 78 out of a sample of 119 municipalities reported that they had exposed some or all of the waste collection to competition (either
in the form of tenders or in the form of negotiations with two or more suppliers). The municipalities’ own production units may compete with private companies in a tendering process.

32. Disposal of consumer waste is a municipal responsibility. Any person that operates a waste treatment and disposal plant that may result in pollution or be unsightly must have a permit from public authorities. Conditions may be imposed in the permit, for instance as regards transport, treatment, recycling and storage of waste and measures to prevent the facility from becoming unsightly. Both municipalities and private undertaking operate in the disposal market.

33. The Norwegian Competition Authority has only handled one complaint in this market concerning an alleged cross-subsidisation by a municipality. The allegation was that the municipality charged a high price on the consumer waste management (where it had a monopoly) and a low price on production waste management (where it faced competition). The Authority was unable to reveal whether cross-subsidisation had actually taken place.

**Air services**

34. At present the Norwegian State, represented by the Civil Aviation Administration (CAA), owns 18 Norwegian airports. Of these, Oslo Airport Gardermoen is owned by Oslo Airport AS, and the CAA owns all shares in this company. In addition to these airports, there are 28 regional state-owned airports.

35. There are also 11 relatively small privately owned airports that are open to public flights. At one of these there is a three-parted ownership. The runway and surroundings are owned by the Norwegian State, represented by the Ministry of Defense. The control tower and technical installations are owned and operated by the state, represented by the CAA, whereas the terminals and parking lots are owned and run by a private company. This form of joint ownership is an exception to the Norwegian system.

36. The Norwegian State, represented by the Ministry of Defence also owns military airports. Some of these are open to civil flights. In the future, the responsibility of some of these airports will be taken over by the CAA.

37. According to the Air Navigation Act of June 1993, sections 7-11 and 7-5, anyone, including airlines, who wants to build an airport or make fundamental changes or expansions of its airport, has to apply for a time-limited license from the Ministry of Transport and Communications. The licensee is obliged to follow given regulations of airport services, collect any governmentally set taxes, let the airport be open for public flights, and may, within the scope of international regulation, set its own fees for using the airport. Operating international flights from the airport requires additional approvals related to customs, police, and passport control services.

38. The CAA regulates the suppliers access to the market for ground handling services, except at Oslo Airport Gardermoen where such access is regulated by the airport itself. Self-provision by airlines is the main rule at Norwegian airports. At Gardermoen, ground handling is supplied by an independent company in addition to the three major Norwegian carriers SAS, Braathen and Wideroes’.

39. Norway has given the Oslo Airport AS at Gardermoen and Stavanger Airport Sola status as «fully co-ordinated airports» and allocation decisions thus have to be in line with Council Regulation (EEC) No 95/93.

40. The slot co-ordinator at Oslo Airport Gardermoen and Stavanger Airport Sola is the company Airport Co-ordination AS. The company is owned by SAS (20%), Braathens (20%), Wideroes’ (10%), CAA (30%), Oslo Airport Gardermoen (20%). The chairman of the board is appointed by the CAA.
Railways

41. Norway has during the 1990s implemented a series of EC directives relating to the railway sector in the national legislation. The Norwegian track-system is therefor open to so called international groupings of railway undertakings, and railway undertakings engaged in international combined transport of goods throughout the EC. Norway has also been co-operating with other European countries in establishing Trans-European Rail Freeways for Freight.

42. The bulk of the rail services being carried out on Norwegian track-system, is however still sheltered from competition. The state-owned rail-company NSB has legal monopoly to supply national transportation services. The Ministry of Transport and Communications is responsible for the regulation of NSB, and also acts as its owner on behalf of the State.

43. NSB was formerly the owner of rolling stock, track and other infrastructure. Accounting separation was imposed in 1990 in order to improve the economic management of the railway-sector. In 1996 most tracks were transferred from NSB to an administrative public body (Jernbaneverket). Other facilities such as stations and terminals are still owned by NSB, but are rented to Jernbaneverket on a cost basis. NSB and Jernbaneverket shared administration and board of directors until 1999.

44. In 1999 the Norwegian Institute of Transport Economics carried out a comprehensive study of alternative strategies for introducing intra-modal competition in the Norwegian railway sector. One of the conclusions from this study is that opening for competition in the freight services may be easier than in the passenger services. The study also indicates that the lack of a well functioning second-hand marked for trains may act as a substantial barrier to entry. By separating the ownership from the operation of trains, this entry barrier may be reduced.