

Thommessen has a specialised department for EU/EEA and Competition Law that is leading within this practice area.



EU/EEA LAW

Broad experience at national and international level

Do you have competitors you believe could have received illegal state aid?

Do you face national legal measures restricting or complicating business management, establishment or investment in Norway or an EEA country?

Thommessen provides advice on how clients can apply EU/EEA law to achieve commercial and strategic objectives.

EXTENSIVE EXPERIENCE

Thommessen's EU/EEA department has vast expertise and experience. Within EU/EEA law our dossiers include cases related to:

- Assistance to clients experiencing legal restrictions frustrating their possibility to exploit a business opportunity or make investments in Norway or other EEA countries.
- Assistance to Norwegian and foreign clients who are required to follow EU/EEA regulations, in relation to environmental rules for instance.
- State aid quality assurance programs to assess the validity of business cases and projects for private investors, organisations or public authorities where the public authorities contribute with financial means.
- Procedural assistance in cases before the EFTA Surveillance Authority or the European Commission and in court proceedings before the EFTA Court, the European Courts of Justice and Norwegian national courts.

ILLEGAL RESTRICTIONS ON ESTABLISHMENT AND INVESTMENTS

When setting up a business or investing in Norway or other EEA countries, there are a number of national measures that could be considered restrictive. Numerous cases related to Norway have been tried before the EFTA Surveillance Authority or the EFTA Court in recent years, including:

- *Restrictive tax measures*, where focus has especially been on corporate taxation and national measures withholding at source outgoing dividends, legislation generally in breach of the free movement of capital and the freedom of establishment.
- *The Reversion Case*, which concerned a discriminatory arrangement granting private undertakings and all undertakings from other EEA countries a time-limited concession for the acquisition of waterfalls for energy production, with an obligation to surrender all installations to the Norwegian Government without

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compensation at the expiry of the concession period, whereas Norwegian public undertakings benefited from concessions for an unlimited period of time.

- *The Norwegian Gaming Machine Monopoly*, which resulted in several cases initiated by actual or potential competitors related to both on and off-line gambling.

In addition, even general restrictions on ownership can be illegal under the EEA framework. As recent as December 2009, the EFTA Surveillance Authority sent a letter of formal notice to Norway regarding a ban on ownership of more than 20% holdings in stock exchanges and securities depositories. Thommessen has provided advice and assisted clients in many of these cases.



ASSISTANCE IN RELATION TO COMPLIANCE WITH EEA REGULATIONS

Norway's affiliation to the EU through the EEA Agreement resulted in the implementation of an extensive set of rules within a number of areas – and especially rules for protection of the environment – and which most businesses in Norway have to take into consideration and comply with. Such regulations may require large-scale control and reporting commitments. A relevant example would be the REACH Regulations, which are a vital part of the EU's chemicals legislation. What are the companies' duties in relation to reporting of imports and use of chemicals in its operations? Thommessen is able to assist you with finding your way through such legislation.

STATE AID QUALITY ASSURANCE PROGRAMMES

Projects in which the state is involved should be scrutinized under a state aid quality assurance programme. Firstly, such a programme could contribute in achieving an optimal aid scheme. Secondly, a quality assurance programme would guarantee that any breach of state aid law is avoided, which alternatively could result in a claim of recovery for all aid granted.



It goes without saying that state aid law must be taken into account where the state contributes directly with financial means without any form of return on its grant or investment. However, it is similarly important to assess the situation when the state contributes in projects or activities such as Public-Private-Partnerships or in the structuring of complex transactions which involve public funding or public entities to avoid state aid exposure. If the public contribution is granted on more favourable terms than what would have been the case of a private investor, it could constitute state aid. State aid should also be addressed in M&A due diligence where the acquisition concerns an undertaking that may have received aid that has not approved by the EFTA Surveillance Authority or the European Commission. Similarly, it is important to be aware of state aid issues for example in the context of privatization.

In addition to quality assurance programs our files includes cases on assisting private undertakings in drafting a complaint or defending the beneficiary of an aid before the EFTA Surveillance Authority, assisting public authorities in drafting notifications and acting on behalf of complainants, beneficiaries or public authorities in state aid cases before the EFTA Court as well as national courts. Our experience covers i.a. the case on regionally differentiated public social security contributions, VAT exemption of newspapers and periodicals in Norway, the possible establishment of an energy market for energy-intensive industry, financing of publicly owned hospital pharmacies and state aid issues related to climate change and emission trading.

SUSPICION OF ILLEGAL PUBLIC GRANTS TO COMPETITORS

Public entities may grant aid in many different shapes or forms and the grant may not be limited to a direct unilateral cash contribution. State aid can also be granted in the form of favourable arrangements for taxes and duties, the transfer of public property below market price, supply agreements with the state at prices above market value and public



investments in commercial companies where the investment will not pay the state a normal rate of return.

In a number of cases we have assisted clients suspecting that their competitors have received assets, cash or other forms of economic contribution from the state. The amounts are often considerable and can be well into the billions. State aid law is a particularly effective means of preventing this type of distortion of competition since illegal aid must, in principle, be recovered with interests from the beneficiary. In these specific type cases we assist in drafting and filing of complaints at the EFTA Surveillance Authority, informal and formal contact with the Authority throughout the case handling procedure and – if necessary – initiating court proceedings before the EFTA Court or national courts.

TEAM THOMMESSEN

Thommessen's EU/EEA team is recognised as one of the most experienced in Norway. Our lawyers have been representing and advising public authorities and private parties in EU and EEA matters for more than 15 years. We have assisted companies in all major industries and several ministries and other entities within the public sector, including as EU/EEA law advisor on a case for the Auditor General of Norway. The clients and cases have provided us with a unique capacity to view a case from different angles and to understand the practical needs of our clients. Several of the lawyers in the EU/EEA department have work experience from the EFTA Surveillance Authority, the European Commission, the EFTA Court or from expert consultancy services in Brussels. The department has intimate knowledge of the administrative procedures and the formal and informal decision-making processes in the EU and EEA bodies.

Many cases on EU/EEA law interface with other areas of national law or specific industries, EEA law and national tax law being only one of several examples. In such cases our clients will take advantage of the fact that Thommessen has top expertise within the entire area of business law and personal knowledge about most industries and sectors. In each individual case we work in close cooperation with other departments at Thommessen in order to offer teams which, in addition to EU/EEA law, also has knowledge and experience on relevant sector regulations, tax law, accounting principles, litigation or otherwise. This ensures that each case is handled in an optimal and cost-effective manner for the client and this provides Thommessen with the opportunity to provide excellent professional legal services and practical advice.

INTERNATIONAL RELATIONS

Thommessen is the Norwegian member of Lex Mundi, the world's leading association of independent law firms (www.lexmundi.org). This cooperation provides access to law firms all over the world, all of which are market leaders within their respective jurisdictions. In addition, in a number of important jurisdictions we have contacts in law firms which are not members of Lex Mundi.

RECOGNITION FROM THE MARKET

Each year researchers in international publishing houses carry out surveys and rankings of the largest law firms. Thommessen is recognised for professional quality and breadth within most areas of expertise and is rated as one of Norway's leading business law firms. We are consistently ranked both domestically and internationally as a leading firm in Norway on EU/EEA law, for example in the annual rankings of Chambers & Partners in the category Competition, and The Legal 500 in the category EU and Competition. Our recognition as a leading firm is also reflected by the fact that we are often instructed in international cases on the recommendation of other top international law firms or global clients.



– Breadth of practice is perhaps the most notable feature of the group; lawyers handle cartel and abuse cases, merger control work public procurement matters, state aid cases and EU and EEA law.

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