

**Legal Chancellor's Office**  
Legal Chancellor Mr Indrek Teder  
Kohtu 8, 15193 Tallinn

*Confidential*

Cc: Mr Veiko Kaufmann, Chairman of the Management Board, EVEL  
Mr Deniss Boroditš, Deputy Mayor, Tallinn City Government

15.11.2010 No

**Re: Application for initiating a constitutional review proceeding of the 02.11.2010 decree No 95 of the Minister of Economic Affairs and Communications and for checking the compliance of the Competition Authority's water services pricing methodology with the principle of ensuring fundamental rights and freedoms and due process**

Dear Mr Teder,

I write to you as I am extremely concerned about the way the Anti-Monopoly Bill, the 02.11.2010 decree No 95 of the Minister of Economic Affairs and Communications (herein temporary prices decree) and the Competition Authority's instruction "Recommendations for calculating the price for water service" (herein CA's pricing methodology) are being implemented. I believe that if the current approach to regulation remains in place, it will only harm the water industry and the environment in the long term.

AS Tallinna Vesi has always stated its willingness to work within a regulatory system that fully respects key economic principles and is in accordance with internationally acceptable regulatory principles. We believe that such a system will benefit our customers and the citizens of Estonia as it places the power of tariff setting and the achievement of service objectives within a transparent methodology with clear principles, objectives and assumptions. Without full transparency the tariff can become nothing more than a political tool with very little reference to the cost of providing the service or the level of service being provided.

Our grave concerns for the above mentioned pieces of regulation relate to the rushed timetable for approvals, the absence of any discussion with the water companies and municipalities, and the complete lack of reference to any form of service standards that have to be achieved for the proposed tariffs.

Firstly, the timetable to approve the bill, the decree and the methodology was extremely short. Key regulatory principles were completely overlooked and key stakeholder groups were ignored.

A very short timetable leaves all water companies very little time to adapt their accounting and other management systems to the new rules, which means water companies do not have sufficient time to implement the required changes.

Secondly, there has not been any real discussion with the water companies or any other key stakeholder group. ASTV plus the association representing all water companies (EVEL) took the time and trouble to provide detailed comments to help improve the quality of the CA's methodology. These comments were also forwarded the Ministry of Economic Affairs and Communications. To date, while

the CA's pricing methodology was published on CA's website on 12.11.2010, this methodology had already been included in the temporary prices decree on 02.11.2010 while none of the comments made by the industry have been taken into account and neither the CA nor the Ministry have even responded to any of the questions raised. Without an open discussion and transparent presentation of the changes any regulation will lack credibility and may not be perceived as fair.

Thirdly, establishing a price without establishing the levels of service that have to be attained in order to charge such a price is in contradiction with all basic economic principles. Without clearly defined standards how does the customer know what they are paying for?

Thus, without a proper and real discussion with all key stakeholders it is possible that water companies will be unknowingly breaching the CA's rules and will consequently have a temporary price forced upon them without fully understanding the reasons why.

Therefore, please find attached our application for initiating a constitutional review proceeding of the temporary prices decree and for checking the compliance of the CA's pricing methodology with the principle of ensuring fundamental rights and freedoms and due process.

I very much hope you will seriously consider the points raised in our analysis. Our overall objective is to point out to you that we feel that due process has not been followed, which is prejudicial towards key industry participants.

I very much look forward to your response.

Yours sincerely,

Ian Plenderleith

Chairman of the Management Board