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Anti-Monopoly Act

§ 2. The following amendments shall be made in the **Public Water Supply and Sewerage Act** (RT I 1999, 25, 363; 2009, 39, 262):

Section 5 (2¹) 3) shall be declared invalid;

Section 5 (6) shall be declared invalid;

Section 6 shall be amended and worded as follows:

§ 6. Connection charge for connecting to the Public Water Supply and Sewerage System

(1) The water undertaking appointed by the local government's council has the right to charge justified connection charge from the connectee connecting to the PWSSN, in line with what is stipulated in this Act.

(2) The connection charge is calculated by the water undertaking based on the methodology of calculating connection charge. The Competition Authority or local government have, as per their competence, the right to check the size of connection charge, its justifiability and compliance with methodology.

(3) Water undertaking prepares the methodology for calculating connection charge in accordance with what is set out in this section. If the water undertaking's service are located on a wastewater collection area, the pollution load of which is below 2000 population equivalent or outside of the wastewater collection area, the water undertaking has to co-ordinate the methodology with the local government. . If the water undertaking's service are located on a wastewater collection area, the pollution load of which is 2000 or more population equivalent, the water undertaking has to obtain the Competition Authority's approval to the methodology. Water undertaking shall publish the methodology of calculating connection charges after receiving the respective approval.

(4) In case the operating area of the water undertaking is located on a wastewater collection area with a pollution load of both more or less than 2000 population equivalents, and the same method for calculating the connection fee is used in these areas, the method named in Subsection 3 of this Article shall be coordinated with regard to for all wastewater collection areas with the Competition Authority.

(5) § 14² (3-13) of this act shall be applied to the approval to the methodology of calculating connection charges.

(6) The connection charge shall ensure:

1) the development of the public water supply and sewerage system, including the development of storm water system, pursuant to the public water supply and sewerage development plan, except in the area specified in clause 14 (2) 6) of this Act;

2) connection of the water supply and sewerage facilities of a registered immovable to the public water supply and connection of the structure for leading off storm water, drainage water and other soil and surface water of a registered immovable, if such exists, to the storm water system.

(7) If the development of the public water supply and sewerage system, incl. storm water system, takes place outside the public water supply and sewerage development plan based on an application of a connectee or a third person and upon an agreement with the water undertaking and the owner of the public water supply and sewerage system, the costs associated with such development and connection shall be fully covered by the applicant.

(8) The expenses incurred as grant aid in developing the public water supply and sewerage system shall be deducted from the total cost of connection and this must be reflected in the methodology of calculating connection charge.

(9) Connection charge may only be charged to the extent of the expenses incurred by the water undertaking necessary for connecting the water supply and sewerage facilities of a registered immovable to the public water supply and sewerage system, in line with the particularity set out in the clause 6 (1) of this section.

(10) A repeated or additional connection charge shall not be charged for connecting the water supply and sewerage system of the registered immovable also in cases if the location of the connection point of the water supply and sewerage facilities of a registered immovable and a public water supply and sewerage system or the technical solution changes due to development activities of the water undertaking or a new water undertaking starts to service the area or the owner of the public water supply and sewerage system is changed.

(11) Upon reconstruction of water supply and sewerage facilities of a registered immovable or upon a change of ownership, connection charge is not charged from the owner or possessor of the water supply and sewerage facilities of the registered immovable unless amendment of the conditions for connection causes additional expenditure for the water undertaking.

(12) The water undertaking shall have the right of demanding from the client additional connection charge if the connection conditions of the water supply and sewerage facilities of the client's registered immovable are modified on the initiative of the client, resulting in additional expenses for the water undertaking.

Section 6¹ shall be added to the Act in the following wording:

§ 6¹. Offsetting the connection charge

If the public water supply or sewerage system was constructed only for the client of the water undertaking who has paid the connection charge to the full extent of expenses associated with connection, as the water undertaking was not aware of any additional possible connectees of the area, and additional clients connect to the public water supply or sewerage system within seven years after connection of that client, the water undertaking shall set-off the payable connection charge to the connectees who have previously paid the connection charge within three months after connection of each new client, proceeding from the connection expenses incurred and the number of new clients who have connected to the public water supply and sewerage system, with consideration of the depreciation of the public water supply or sewerage system. The named principle is required to be included also in the methodology of calculating connection charge.

Art 7 Subsection 1 is amended and worded as follows:

(1) For the purpose of this act the water undertaking is a legal person governed by private law, who provides water supply to the client's registered immovable from public water supply system or organises the discharge and treatment of wastewater, storm water and drainage water and other soil and surface water from the client's registered immovable.

Subsections 5-7 are added to the section 7 in the following wording:

(5) If a person has not been appointed as a water undertaking in line with the rules set out in this Act, but the person's activity complies with the paragraph 1 of this subsection and the water supply or wastewater system owned or possessed by the person complies with the definition of public water supply and wastewater system named in the paragraph 1 of the § 2, the requirements and obligations set out in this Act for a water undertaking shall apply to that person.

(6) At least 12 months before suspending or terminating the provision of public water supply and wastewater discharge services the water undertaking shall inform the local government and the Competition Authority in writing about the time-schedule for suspending or terminating and to submit an overview of the measures

that ensure compliance with the requirements set out in this act and resulting from the contracts concluded with the local government.

(7) Suspending or terminating the activity is allowed only in case another water undertaking appointed by the council of the local government ensures the performance of the obligations of the water undertaking resulting from this act and the contracts concluded with local government or in case the performance of the obligations of the water undertaking is ensured in some other manner and it is approved by the Competition Authority.”

Section 7¹ and section 7² shall be added to the Act in the following wording:

§ 7¹. Publication of water undertaking’s activity report

(1) For the purpose of disclosing the activities of the water undertaking and ensuring of transparency, the water undertaking shall once a year publish an activity report on the home page of the water undertaking or the local government, within 30 days after approval thereof by the water undertaking.

(2) The activity report mentioned in subsection (1) of this section must include a summary of the annual report and an overview of the investments made in the previous year, drinking water quality, waste water purification, future developments, and investments planned for the development of the public water supply and sewerage.

(3) The requirements of this Act shall not exempt the water undertaking from complying with the obligations of the holder of information as set out in law.

§ 7². Special requirement for accounting

(1) In addition to the compliance with the requirements set out in § 18 (2) of the Competition Act a water undertaking is required to keep separate accounting on the costs as follows:

- 1) water supply;
- 2) conducting and treatment of wastewater;
- 3) conducting of storm water, drainage water and other soil and surface water;
- 4) additional services related the activities named in clauses 1-3 of this subsection;
- 5) connection changes for connecting with the public water supply and sewerage;
- 6) other activities.

(2) Assets purchased with grant aid need to be separately brought out with the costs named in clauses 1-4 of subsection 1 of this section.

(3) In case a customer or another water undertaking is provided with services on the territory of several local governments, water undertaking is required to keep separate accounting by different local governments in line with what is stipulated in subsection 1, except in cases, where the local governments have agreed otherwise.

Section 14 shall be amended and worded as follows:

§ 14. Price of water service

(1) The following fees can be taken for the service of supplying water and leading off and purifying waste water, rain water, drainage water and other soil and surface water (hereinafter *price of water service*):

- 1) a charge for water extracted;
- 2) a charge for leading off and purifying waste water;
- 3) a charge for leading off and purifying storm water, drainage water and other soil and surface water;
- 4) a basic fee

(2) price of water service shall be established such that the water undertaking can:

- 1) cover reasoned operating costs;
- 2) make investments into existing water and waste water systems in order to secure sustainability;
- 3) comply with environmental protection requirements;
- 4) comply with quality and safety requirements;
- 5) **operate with justified profitability on invested capital**

6) develop the public water supply and sewerage system, incl storm water sewerage, in accordance with the public water supply and sewerage system development plan in a specific development area where more than 50 per cent of residential buildings for which building permits were issued before 22 March 1999 are connected to the public water supply and sewerage system

(3) The charges specified in clauses (1) 2) and 3) of this section for leading off and purifying waste water, rain water, drainage water and other soil and surface water may differ depending on the pollution level of the waste water, rain water, drainage water and other soil and surface water. The charge for leading off and purifying waste water, rain water, drainage water and other soil and surface water may also differ depending on whether it is lead to the combined wastewater system or a stormwater system. In addition to the price of water service, a fee for pollution exceeding the standard may be established if the pollutant content, including hazardous substances content in the discharged waste water, rain water, drainage water or other soil and surface water exceeds the maximum pollutant content as established by the rules on use of the public water supply and sewerage system or the contract for use of the public water supply and sewerage concluded between the water undertaking and the client or exceeds the maximum pollutant limits stipulated for dangerous substances in § 10(2) of this act.

(4) The price of water service shall not be discriminatory with regard to different clients or groups of clients.

(5) The price of water service shall not be used for covering expenses already covered by the connection charge.

(6) In case the water undertaking provides water service at several various wastewater collection areas, a common price of water service can be established for all areas, taking into account the total costs of the water undertaking named in Subsection 2 of this Section.

(7) With regard to the fees named in Subsection 1 of this Section, various client groups can be established on the basis of various costs of the water undertaking due to various consumption volumes.

(8) The basis for calculating the price of the water, waste water and storm water services is the volume of water.

(9) Recommended principles for calculating the price of water service shall be prepared by the Competition Authority.

(10) In case grants have been received for the development of public water supply and sewerage system from national or EU funds, the approval of the price of water service shall be based on the liabilities assumed for receiving the non-returnable grant aid.

Section 14¹ and 14² shall be added to the Act in the following wording:

§ 14¹. Establishment of the price of water service and maximum profitability (return on capital invested)

(1) The water undertaking establishes the price of water service and shall disclose these at least 30 days before the date as of which such price applies. Following the making of the resolution by which the price is established, the water undertaking shall publish a notice regarding establishment of the price at the home page of the local government or the water undertaking and once in at least one local or county newspaper.

(2) Water undertaking may charge a fee named in § 14(1) of this Act for the service provided to another water undertaking only in case it has submitted a separate price application for that and has received an approval on the bases and pursuant to the procedure specified in § 14². Until receiving the approval, it is prohibited for the water undertaking to suspend or terminate the provision of the service unilaterally.

(3) In case the water undertaking provides the service of public water supply and wastewater discharge on a wastewater collection area with a pollution load of both more or less than 2000 population equivalents, however, based on the price application the water undertaking wishes to establish an equal price of water

service for these areas on the basis of total costs, the water undertaking shall submit a price application covering all wastewater collection areas to the Competition Authority.

§ 14². Price regulation for water service

(1) In case the operating area of the water undertaking is located on the wastewater collection area, the pollution load of which is 2000 population equivalent or more, then the water undertaking prepares the proposal for the price for water service (hereinafter referred to as *price application*) and submits it before establishing the price for water service with the price list of the services related to the main services and other documentation serving as the basis for the price application for the approval of the Competition Authority. The Competition Authority checks that the priced applied for includes only the justified costs and justified profitability provided in § 14 (2) of this Act.

(2) In case the operating area of the water undertaking is located on the wastewater collection area, the pollution load of which is less than 2000 population equivalent, then the water undertaking submits the price application on the bases and according to the procedure established in subsection 1 of this section to the rural municipality or city government, who checks the compliance of the price application with this Act and the legal acts of the local government established on the basis thereof, including public water supply and sewerage development plan. When approving the price, the local government shall proceed from this Act and recognised principles of price regulation, if necessary, turning to the Competition Authority for getting the know-how.

(3) If the local government should refuse to approve an application to set prices and the water undertaking does not consider such refusal justified, or if other disputes should arise between the local government and the water undertaking in connection with approval of the application to set prices, based on a respective application submitted by the water undertaking or the local government, the Competition Authority shall submit its reasoned opinion regarding the matter.

(4) A decision concerning approval of the application to set prices shall be adopted and a reasoned opinion specified in subsection (3) of this section submitted within 30 days as of submission of a correctly completed application. If an application to set prices is particularly complicated or requires more processing work than usual, the Competition Authority or local government may extend the term up to 90 days and shall inform the applicant of the extension of the term before the original term expires.

(5) In case the Competition Authority or local government do not approve the price application submitted by the water undertaking, then the water undertaking is entitled to dispute the non-approval in the administrative court.

(6) Water undertaking is obliged to monitor the circumstances not dependent on its activity, which impact the price for water service, and inform the Competition Authority at the latest within 30 days as of the occurrence of the circumstances, which may impact the price for the service more than by 5 %. Within 30 days from receiving such information, the Competition Authority shall decide whether and within which term the water undertaking must submit a new price application.

(7) Water undertaking must allow the Competition Authority and the person authorised by the local government to inspect its accounting when performing the tasks set out in this section, justify the bases for the composition of the price for water service and provide the required explanations regarding its economic activity.

(8) The Competition Authority and the person authorised by the local government are entitled to enter for an on-site inspection the territory, rooms and facilities of the water undertaking, examine there the required documents, other information and circumstances and to make extracts, transcripts and copies, with the presence of the representative of the water undertaking.

(9) The Competition Authority and the local government are entitled to request for additional information from the natural and legal persons and the representatives thereof connected with the water undertaking, also

from state authorities and their officials, in case it is necessary for making a decision regarding the approval of the price or for checking the submitted data. The Competition Authority also has the rights described in this subsection with regard to the local government and its officials.

(10) The Competition Authority is obliged to ask for the opinion from rural municipality or city government regarding the compliance of the price application with the PWSSS development plan.

(11) The term of processing the price application is suspended in case the Competition Authority has not received the requested information that it required for approving the price application.

(12) When approving the price application the Competition Authority and the local government are obliged to maintain the business secret of the water undertaking on the bases and according to the procedure established in § 63 of the Competition Act.

(13) When approving the price application the local government has the same rights and obligations than these of the Competition Authority, unless otherwise provided by this Act.

The title of section 15¹ shall be amended and worded as follows: „**Liability**“;

In section 15¹ (2), the words “50 000 kroons“ are replaced with the words “500 000 kroons“;

Subsections 4 and 5 shall be added to section 15¹ (1) worded as follows:

„(4) Non-compliance of a connection charge established by a water undertaking with the methods for calculation of connection charge or non-compliance of a price of water service with law or non-compliance with the requirements related to accounting, provision of information, obligation to establish price or connection charge or violation of other requirements the non-compliance with which may hinder the performance of price regulation or supervision over the price of water service shall be penalised by a fine of up to 500,000 kroons.

(5) Non-compliance of the conditions of a connection contract or a contract specified in §8 Subsection 3 of this Act set by the water undertaking, also violating the rules specified in Article 5 (2¹) or Article 8 (4) are penalised by a fine of up to 500 000 kroons.

Section 15³ (2) is amended and worded as follows:

„(2) A rural municipality or city government shall conduct extra-judicial proceedings in the matters of the misdemeanours provided for in subsections 15¹ (1), (2) and (5), and the Environmental Inspectorate shall conduct extra-judicial proceedings in the matters of the misdemeanours related to hazardous substances. If the licensed territory of the water undertakings is located at a waste water collection area, the pollution load of which is 2 000 population equivalent or more, the Competition Authority shall conduct extra-judicial proceedings in the matters of misdemeanours provided for in subsection 15¹ (4), and if the licensed territory of the water undertakings is located at a waste water collection area, the pollution load of which is less than 2 000 population equivalent, the rural municipality or city government, or the Competition Authority, shall conduct the extra-judicial proceedings.“;

Sections 15⁴ and 15⁵ are added to the Act worded as follows:

„§ 15⁴. Supervision

(1) Supervision over compliance with the requirements provided by this Act and legislation established on the basis thereof shall be exercised, **within the limits of their competence**, by the rural municipality or city government, the Competition Authority and the Environmental Inspectorate.

(2) The Competition Authority and rural municipality or city government shall verify the compliance of the price of water service and connection charge with legislation and methods specified in section 6 (3) of this Act and make resolutions and issue precepts in respect of them according to its competence.

(3) The Competition Authority shall have the right of exercising additional supervision over connection fees or water services prices either out of its own initiative or based on a reasoned application submitted by the local government, the Ministry of Environment or the Environmental Board. When performing supervision, the Competition Authority shall have the rights specified in § 142 (7–9) of this Act and the obligation to keep the business secret of the water undertaking on the bases and pursuant to the procedure specified in § 63 of the Competition Act.

(4) The Environmental Inspectorate shall verify the compliance of the activity of a water undertaking and a client of a water undertaking with the requirements to processing of hazardous substances and make resolutions and issue precepts in respect of them.

(5) The rural municipality or city government shall verify the compliance of the activity of a water undertaking with this Act, legislation of the local government, including the rules specified in section 5 (2¹) and section 8 (4) of this Act, and the public water supply and sewerage system development plan, and make resolutions and issue precepts in respect of them.

(6) The rural municipality or city government shall verify the compliance of the price of water service with the public water supply and sewerage system development plan and require the water undertaking to submit a price application in case the price of water service does not cover the expenses set out in the public water supply and sewerage system development plan in line with this Act.

(7) The supervisory authority shall use the information at its disposal solely for the performance of duties arising from law.

§ 15⁵. Issue of precepts and penalty payments

(1) In order that a violation of the requirements of this Act and legislation established on the basis thereof be terminated or prevented, the Competition Authority and rural municipality or city government may, within the limits of their competence, if necessary, issue to a water undertaking a precept for bringing the connection charge or price of water service in compliance with this Act and the legislation established on the basis thereof.

(2) In the event of failure to comply with a precept specified in subsection (1) of this section, an official exercising supervision may impose a coercive measure pursuant to the procedure provided for in the Substitutive Enforcement and Penalty Payment Act. The upper limit for a penalty payment is 100,000 kroons.

Subsections (6)-(11) are added to section 16 worded as follows:

(6) Until the water undertaking shall enact prices for water services according to price regulation provisions of this Act, the water supply and treatment of wastewater services shall be provided to the consumers with the price effective on October 31, 2010, which are enacted by the council of the local government based on the wording of section 14 (2) of this Act effective until October 31, 2010. The Competition Authority has the right at any time to demand from the water undertaker enactment of prices pursuant to this Act.

(7) Until the implementation of the methodology of calculating connection charge as by this Act by the water undertaking, the bases and procedure of calculation of connection charge that is effective on October 31, 2010, that have been imposed by the Water Supply and Sewage Connection Rule enacted by the council of the local government, according the section 5 (2¹) 3) and section 6 (1) this Act effective until October 31, 2010, shall be applied.

(8) Contract signed between water undertaker and the client before November 1, 2010 are valid insofar as they are not in contravention to this Act.

(9) The Competition Authority may, establish a temporary price of water service for water undertaker in a situation where the water undertaking is selling water service for a price that is non-compliant with the

conditions set forth in the section 14 (2) of this Act and the water undertaking has not complied with the precept issued by the Competition Authority. The price set by the Competition Authority is valid until the water undertaking obtains an approval from the Competition Authority to the new price of water service.

(10) The Competition Authority shall take the structure of the applicable price of the water undertaking, the actual costs of the financial year preceding the year of issuing precept and justified profitability rate as the basis for approving the prices set out in subsection 9 above. The Ministry of Economy and Communications shall establish the procedure for establishing the price of water services by a regulation, proceeding from the grounds set out in this subsection.

(11) In case a lower price has been established for physical persons than for legal persons on the basis of the wording of § 14 of this Act valid on October 31, 2010, the water undertaking is obliged to bring the applied prices in compliance with the requirements on equality of treatment in the manner that the annual difference between the prices applied to a physical and legal person would not exceed 1/15 of the difference between the prices applied by the water undertaking on October 31, 2010. When establishing the price of water service in the case named in the subsection 9 of this section, the Competition Authority shall proceed from the proportion represented in the price applied at the time of issuing a precept to the water undertaking.

§ 3. Penal Code (RT I 2001, 61, 364; 2009, 39, 261) shall be amended as follows:

1) subsection 1¹ shall be added to the section 399 worded as follows:

“(1¹) The water-, heating-, electricity or gas undertaking selling services for price or maximum chargeable fee that has not been approved, and if such approval is required, or for an unlawful price for some other reason, if this has brought along a material abuse of the undertaking’s dominant position – shall be penalised with a fine.”

2) subsection 2 shall be amended and worded as follows:

“(2) An act specified in Subsections 1 or 1¹ of this Section in case it has been performed by a legal person – shall we penalised with a fine.”