



PLEASE EXCEMPT APPENDIX 5 AND APPENDICES 5.1–5.3 FROM PUBLIC DISCLOSURE

OECD National Contact Point Norway
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Your ref.:
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Date:
2014-10-10

Complaint to the OECD National Contact Point Norway: FIVAS – Norconsult. Follow-up.

1. INTRODUCTION

Reference is made to the meeting of 4 September 2014 and your email of 8 September with questions that we were given until 10 October to respond to. Answers to the questions are provided below.

Some documentation is enclosed as appendices to this letter. The documents enclosed as Appendix 5 and Appendices 5.1–5.3 are internal documents. It would be damaging to competition if these documents were made public. We therefore request that they be exempt from public disclosure; cf. Section 13 of the Freedom of Information Act and Section 13 of the Public Administration Act.

2. ABOUT THE NORCONSULT GROUP AND NORPOWER SDN BHD

2.1 The Norconsult Group

Norconsult Holding AS is the parent company of the Norconsult Group. Norconsult Holding AS is owned by more than 2,000 employees in the Norconsult Group. There are no external shareholders. The company is not listed on the stock exchange.

Norconsult AS is a wholly owned subsidiary of Norconsult Holding AS, and it carries out operational consultancy activities directly or indirectly through its subsidiaries. Below, the term 'Norconsult' is used as a general term for the Group.

Norconsult is Norway's largest and one of the leading multidisciplinary consultancy companies in the Nordic region, with 2,900 employees, of whom approximately 2,150 in Norway. Our activities are mainly directed at infrastructure planning and engineering. For a number of years, we have assisted in the planning and follow-up of a large proportion of Norwegian hydropower development projects. This has given us expertise that makes us competitive also internationally.

The 2013 annual report for the Norconsult Group is enclosed ([Appendix 1](#)). The annual report is also available on our website (www.norconsult.no).

We have subsidiaries in several countries. Reference is made to the more detailed description in the 2013 annual report; see, for example, the overview on page 9 of the report.

2.2 NorPower Sdn Bhd ('NorPower')

NorPower Sdn Bhd ('NorPower') is a wholly owned subsidiary of Norconsult AS. The company is Malaysian and was established in October 2012.

NorPower has a project organisation consisting of 27 employees, 14 of whom are from Sarawak. The company has a Norwegian CEO and a board of directors consisting of four Norconsult employees. The company's activities are currently related to the assignment as technical adviser in connection with projects that Sarawak Energy Berhad ('SEB') is carrying out or planning in Sarawak. An integral part of our assignments is also to transfer knowledge to local employees, both in NorPower and SEB, and our goal is that a large proportion of the engineers in NorPower shall be from Sarawak.

3. NORCONSULT/NORPOWERS'S ROLE IN THE MURUM AND BARAM PROJECTS

3.1 The Murum project

The Murum project is a hydropower plant with a total installed output of 944 MW. The plant consists of four equally sized generators and a 140-metre high dam. The water reservoir makes up a total of 244 km² and is now nearly full. The construction work started in 2008, the dam was finished in 2014 and production start-up is expected in early 2015.

NorPower has assisted SEB in the Murum project since March 2013. NorPower's assignment has consisted of preparing procedures and checklists in connection with testing and operational start-up of electromechanical equipment, such as turbines and generators.

The assignment in the Murum project is based on a request from SEB to study the possibility of introducing Quality Assurance (QA) systems used in the Norwegian oil and gas industry on hydropower plants. This was established as a development project based on NorPower's framework agreement with SEB, in which NorPower's experts are an integral part of the SEB team responsible for QA and the start-up of the power plant.

At the time NorPower was hired, the construction of the Murum plant was at an advanced stage. NorPower's role in the project has therefore been modest because the company only became involved in the final phase to assure the quality of technical equipment delivered to SEB.

Norconsult AS does not have a contract with SEB for the Murum project; the contractual relationship is between NorPower and SEB.

3.2 The Baram project

SEB is planning the construction of a hydropower plant with a total installed output of approximately 1,200 MW. The technical specifications stipulate a 168-metre high dam and a water reservoir of 388 km². The Pre-Feasibility Study and Feasibility Studies were carried out by two large, internationally recognised consultancy companies, the German Fichtner (<http://www.fichtner.de>) and American MWH (<http://www.mwhglobal.com>).

The Baram project is in the phase of preparing tender documents with technical specifications and drawings. SEB has carried out a prequalification of tenderers for a tender competition that is expected to be initiated soon. A final decision on whether to initiate the construction of the Baram Dam will not be made until this competitive tender procedure is finished and a Social and Environmental Impact Assessment (SEIA) has been carried out.

NorPower's role in the Baram project is limited to that of sub-consultant to the Australian consultancy company SMEC (www.smec.com). SMEC is a large Australian consultancy company with extensive international activity. SMEC has a framework agreement with SEB. SMEC's assignment for SEB in the Baram project is described on SMEC's website (<http://www.smec.com/Default.aspx?aProjId=1548>).

NorPower's assignment for SMEC consists of preparing specifications and cost estimates for electromechanical equipment based on the development alternatives that SMEC is considering in consultation with SEB.

Norconsult AS does not have a contract with SEB for the Baram project; the contractual relationship is between NorPower and SMEC.

3.3 Information on the internet

Norconsult has provided information about NorPower's involvement in Sarawak on the following website:

<http://www.norconsult.com/contact-us/global/asia/NorPower/NorPower/>

A description of Norconsult/NorPower's involvement is also available on other websites; see for example www.careernorway.com and www.waterpowermagazine.com. The information on these websites comes from Norconsult.

These websites provide transparent, honest information about NorPower's involvement in Sarawak. Moreover, this information has long been known to FIVAS.

We also provided the same information in our letter to FIVAS dated 13 May 2014 ([Appendix 2](#)).

4. NORCONSULT'S PROCEDURE/Framework FOR INTEGRITY/HUMAN RIGHTS DUE DILIGENCE

4.1 In general

In 2012, Norconsult formalised its principles for Leadership, Values and Ethics ('LiVE'). LiVE describes how we cooperate with colleagues and clients, and our role in relation to society. The principles shall ensure sound business activities and that we make the right choices. LiVE and Norconsult's Code of Ethics are enclosed ([Appendix 3](#) and [Appendix 4](#)). These governing documents are also available on our website.

Section 5.1 of the Code of Ethics describes Integrity Due Diligence of contracting parties.

As requested, we also enclose the Group's Procedure for Integrity Due Diligence ([Appendix 5](#)) and the annexes to this ([Appendix 5.1–5.3](#)).

These documents were drawn up for internal use. They are not available to the public but are found on our intranet pages. The procedures are important elements of our internal management system, and they contain sensitive information that can be damaging to competition. As previously mentioned, we therefore request that they be exempt from public disclosure. Until otherwise agreed with us, we assume that the documents will not be disclosed to FIVAS either.

In 2013, Norconsult initiated a comprehensive integrity programme based on the principles set out in the World Bank's Integrity Compliance Guidelines. The integrity programme (which includes LiVE, the Code of Ethics and the integrity due diligence procedure) is intended to ensure that the company prevents or, if applicable, quickly identifies and remediates violations of the Group's Code of Ethics. The integrity programme is described on page 26 of the Group's 2013 annual report.

4.2 Assessments made before entering contracts with SEB

In spring 2011, SEB invited a number of international consultancy companies from Australia, the USA and Europe with expertise in hydropower development to participate in a competitive tender ([Appendix 6: Invitation to tender from SEB, dated 18 March 2011](#)). NorPower signed its first framework agreement with SEB in 2012 following a competitive tender process. In connection with this agreement, we carried out an Integrity Due Diligence assessment of SEB as contracting partner, without finding any objections.

The contract with SEB for the Murum project was signed on the basis of the framework agreement of 2012. When NorPower signed an agreement in December 2012 on its assignment for SMEC in the Baram project, there was nothing to indicate that another assessment should be made of whether it was OK to take on the assignment.

NorPower renewed the framework agreement with SEB in autumn 2013. We then performed a new Integrity Due Diligence of SEB to ensure that it had not been convicted of corruption or activities warranting criticism and that it was not involved in any ongoing legal proceedings in that regard. In accordance with the procedure described in 4.1 above, the check was carried out using the World Check database, a subscription-based electronic service to which Norconsult is connected.

Norconsult is concerned with acting in a decent, honest manner and expects the same from its suppliers and clients. As mentioned, this is also set out in our Code of Ethics. At no time have we had reason to doubt SEB's conduct. During the period we have had assignments for SEB, we have perceived SEB as a sound, reliable client with whom we cooperate well. We would like to add that the CEO of SEB is Norwegian and has more than 20 years' experience of managerial positions in companies such as Norsk Hydro and Aker Yards ASA.

5. DIALOGUE WITH SEB ABOUT THE ALLEGED VIOLATIONS DESCRIBED IN FIVAS'S COMPLAINT

The management of Norconsult AS and NorPower have held quarterly meetings with the management of SEB. In addition, NorPower has had regular meetings with SEB. At these meetings, SEB has explained the background for the criticism and accusations that some have made against SEB – and provided its comments and an explanation. Based on our overall picture of the situation, we have no reason to criticise SEB or question the company's conduct.

6. OTHER MATTERS OF SIGNIFICANCE

6.1 International Hydropower Association

The International Hydropower Association ('IHA') was established in 1995 under the auspices of UNESCO. The objective of IHA is to promote and disseminate good practice and further knowledge about the hydropower industry (www.hydropower.org).

In 2005, IHA adopted a Hydropower Sustainability Assessment Protocol ('HSAP') that is a tool for use in assessments at different stages of a hydropower development. The Protocol was revised and expanded in 2011. The 2011 Protocol is enclosed ([Appendix 7](#)). A number of different actors were involved in the work of developing the HSAP, including representatives of several countries (including the Norwegian Agency for Development Cooperation (NORAD)).

IHA has a total of approximately 100 members. They include the state-owned electricity company Statkraft and SN Power. SN Power also has a representative on IHA's Board of Directors.

SEB has been a member of IHA since 2010 and a 'Sustainability Partner' since 2011. Through the Sustainability Partnership, IHA was hired to assist SEB when the company introduced the HSAP in its activities and when carrying out the assessments that the Protocol specifies. IHA also assists in training employees in SEB.

SEB has played an active role in IHA. Among other things, it was one of the hosts when IHA organised its World Congress in Kuching in Sarawak in May 2013. The CEO of SEB is on IHA's Board of Directors.

Developing renewable hydropower is often controversial. It is sufficient to refer to experience from our own country, where such developments have sparked debate and engagement, not least from the opponents of

hydropower development. The HSAP contains a number of requirements for what assessments shall be made at the various stages of such a project, also regarding social and environmental factors. Reference is made in particular to the HSAP p. 39, p. 59, p. 75–83, p. 116, p. 129–136, p. 172 and p. 185–192, which concern issues covered by the complaint from FIVAS. SEB has confirmed to us that the projects in Sarawak are carried out in accordance with the requirements specified in the Protocol. Reference is also made to SEB's website, which describes assessments of social and environmental factors:

<http://www.sarawakenergy.com.my/index.php/hydroelectric-projects/fact-sheets/social-and-environment-impact-assesment-seia>

<http://www.sarawakenergy.com.my/index.php/hydroelectric-projects/fact-sheets/murum>

<http://www.sarawakenergy.com.my/index.php/hydroelectric-projects/fact-sheets/baram>

6.2 The affected local communities' view of SEB's development

FIVAS's complaint gives the impression that the local community in general are opposed to the development. This is not correct. At IHA's World Congress in Kuching in Sarawak in May 2013, the legally and culturally recognised leaders of the communities affected by SEB's development made a joint statement to the media. The statement is more positive than the impression made by FIVAS's complaint.

The statement is posted on the internet: <http://www.youtube.com/watch?v=hY7hf3m9pYw&feature=youtu.be>

In addition, we enclose some news articles that also express a very different view than that reflected in FIVAS's complaint: Article in The Borneo Post on 22 May 2014 ([Appendix 8](#)), article published at theborneopost.com on 22 May 2014 ([Appendix 9](#)) and article published at theborneopost.com on 30 May 2014 ([Appendix 10](#)).

It is unclear to us on what basis FIVAS claims that it acts in agreement with the affected local communities.

7. DOES THE ISSUE MERIT FURTHER EXAMINATION BY THE NCP?

The NCP has stated that it will consider whether to accept the complaint for consideration.

In our opinion, our assignments for SEB/SMEC relating to the Murum and Baram projects do not violate the OECD Guidelines. We thereby contest the material basis for the complaint from FIVAS. We will explain this in more detail if requested.

We do believe, however, that the complaint involves factors that mean that it should not be considered by the NCP; cf. also point 25 in the Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises. In this context, reference is made to the following:

- (a) Our involvement in the Murum project is modest and linked to a late stage of the project at which it was nearly completed.
- (b) A development decision has not yet been made in the Baram project. Our assistance in this project during this phase was nonetheless limited to being a sub-consultant to the Australian company SMEC. In implementing the different stages of the development process, SEB will, as mentioned, use the assessment criteria and processes etc. that the HSAP recommends. This means that the process will follow the hydropower industry's requirements for 'good industry practice'.
- (c) There is reason to question whether the complainant really represents the population groups that it claims to represent.
- (d) Through the assignments we have participated in that the complaint concerns, we have not played a role that means that we can be deemed to be 'causing or contributing to adverse impacts' or 'adverse

impacts [that are] directly linked to (our) business operations'. Our understanding of the OECD Guidelines is that greater 'proximity' to the alleged violations is required than we can reasonably be seen to have in this case. Reference is also made to point 14 of the Commentary in Part I of the Guidelines.

- (e) We have carried out assessments of the projects and the client that, based on the concrete circumstances, must be deemed reasonable.
- (f) We have governing documents regarding ethics and procedures that address the most important values, conditions and interests that the OECD Guidelines for Multinational Enterprises are intended to protect.
- (g) None of the companies in the Norconsult Group are publicly listed companies. An important point in FIVAS's complaint is the alleged lack of transparency that it claims violates the Guidelines' requirement for transparency. As stated above, we believe that we have disclosed the information that can reasonably be required. We even believe that we disclose more information than is normal for unlisted companies.

8. POSSIBLE DIALOGUE WITH FIVAS WITH ASSISTANCE FROM THE NCP

Norconsult provides factual information about NorPower's engagement as a technical adviser in concrete projects in Sarawak on our website. This information has long been known to FIVAS, and we have provided further information in our letter to FIVAS dated 13 May 2014.

FIVAS and its partners depict Norconsult's role in Sarawak as far more extensive and important than it actually is. We have therefore considered it inexpedient to engage in further dialogue with FIVAS.

In its complaint, FIVAS states that the organisation has not raised, or taken the initiative to raise, the alleged violations in other forums. In an email of 15 May 2014 ([Appendix 11](#)), FIVAS stated that it had agreed meetings with members of the Norwegian parliament and the Council of Ethics in May 2014, at which it would raise the issues it has now filed a complaint about. FIVAS also states on its website that it raised the issues in a letter to King Harald in 2013 (<http://fivas.org/sider/tekst.asp?side=632>).

We believe that it is appropriate to mention that FIVAS has previously acted in a completely unacceptable manner towards Norconsult/NorPower. On 21 May 2014, FIVAS visited Norconsult's reception in Sandvika with a delegation from the Save Rivers organisation. The visitors had no appointment with anyone and did not want to state to the reception what the visit was regarding. FIVAS took photos of our employees without their permission, and the photos were later published. We assume that this type of unacceptable, unprofessional behaviour does not repeat itself.

If the NCP concludes that the complaint merits further examination, we confirm that we will take a positive view of participating in the procedure that the NCP finds expedient.

We are of course available if the NCP needs further information.



Yours sincerely
Norconsult AS

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