

Executive Summary

1. By the end of 1998 the Competition Act had been in effect for five years. This period has been characterised by large changes of national and international market and competition conditions. Major changes have taken place in the relations between national competition legislation and EC competition law. Three of our Nordic neighbours have become members of the European Union and have adopted new competition laws adapted to EC competition law. On the initiative of the Ministry of Labour and Administration (the Ministry), the Norwegian Competition Authority (the NCA) has prepared a study of the impact of the EEA Agreement on Norwegian competition legislation, and a comprehensive examination of the Competition Act and the Price Policy Act. This examination concluded with proposals for several changes and amendments of the competition legislation in order to face the competition policy challenges of today and the years to come. A bill to the Parliament is expected in September 1999.

2. With the aim to improve the methodological and analytical foundations for competition policy analysis the Ministry appointed an expert group, which finalised its report early in 1998. The report was the basis for the conference "Foundations of Competition Policy Analysis", which was arranged by the NCA in Oslo in September 1998. The Conference had a wide international participation.

3. In 1998 the NCA strengthened its information activities. A new journal "Konkurrans" ("Competition") shall profile competition policy focusing on important issues of current interest. Furthermore, the NCA established a home page on the Internet, which will contain all decisions by the NCA and the Ministry. Some information on the home page is provided in English. A new series of reports by the NCA has been established in order to spread information on our activities, thereby stimulating a wide debate on competition policy issues.

I. Changes to competition laws and policies, proposed or adopted

1. Summary of new legal provisions of competition law and related legislation

4. As a consequence of the EEA Agreement, Council Regulation (EEC) No 2409/92 of 23 July 1992 on fares and rates for air services has been implemented in Norwegian law by section 1 no 6 of Regulation No 691 of 15 July 1994 on the implementation and enforcement of the EEA Agreement in the area of civil aviation. The Norwegian Competition Authority is responsible for the enforcement of section 1 no 6 of the said Regulation.

5. On 2 November 1998, the Norwegian Competition Authority adopted a regulation on the air carriers' obligations to file passengers fares. It establishes an obligation for the air carriers to file fully flexible fares (basic fares) with the Norwegian Competition Authority no later than the day the fares come into effect. Fares offered on special conditions shall only be filed if requested by the Norwegian Competition Authority.

6. Due to the EEA Agreement all EEA relevant EC directives and regulations are incorporated into the EEA Agreement. As far as competition law is concerned, this means that all new EC regulations and amendments of existing regulations are incorporated into the EEA Agreement and implemented in Norwegian law as regulations.

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2. *Other relevant measures, including new guidelines*

7. The Competition Authority has adopted a set of internal guidelines on surveillance and seizure of proof in cartel cases. These guidelines include sections on priorities of cases, preparation and how to organise a cartel project, surveillance and seizure of proof at business premises and off-business premises (e.g. private homes), rules of procedure and evaluation of the cartel project. The main purpose of adopting these guidelines is to ensure the best possible use of the available resources on surveillance within the authority and to ensure that the legal rights of the parties involved are not jeopardised.

3. *Government proposals for new legislation*

8. In November 1998 the Ministry of Labour and Government Administration requested the Norwegian Competition Authority to examine the impact of the EEA Agreement on the Norwegian Competition legislation. A report was presented to the Ministry in January 1999. The report concludes that it should be considered whether the NCA should be given competence to enforce Articles 53 and 54 of the EEA Agreement (corresponding to articles 81 and 82 of the EC Treaty). The NCA further proposed that the Competition Act should be reviewed more generally as a consequence of the development within the EU and the EEA.

9. In 1998 the NCA appointed several working groups that should examine the need for amendments of the Competition Act. Partly as a consequence of these projects the NCA worked out proposals that was handed over to the Ministry in January 1999. In addition to suggesting some technical amendments of the Act, the NCA also underlined the need for a comprehensive revision of the Act.

10. The NCA has been represented in a working group appointed by the Ministry, which should consider the appeal procedures under the Competition Act. The group completed its work in 1999. The group did not propose to change the existing system, but advised that it should be considered in connection with a possible revision of the Act. A bill to the Parliament is expected in September 1999.

II. Enforcement of competition laws and policies

1. *Action against anticompetitive practices, including agreements and abuses of dominant positions*

Summary of activities of:

- competition authorities;
- courts.

11. The NCA has handled 214 cases concerning infringements of the prohibitions of the Act (price fixing, collusive tendering and market sharing). Most of the violations were minor, e.g. suppliers that had failed to denote resale prices as "recommended prices". Three of the cases were reported to the police.

12. 131 cases concerned individual exemptions from the prohibitions of the Act. Exemptions were granted in 70 cases, some of them conditionally. In one case exemption was refused. 60 existing exemptions were lifted, mostly because the co-operation had ceased to exist.

13. The Ministry of Labour and Administration is the appellate body for decisions by the NCA. The Ministry reached decision in five exemption cases, of which two decisions by the NCA were repealed. In two appeal cases the NCA amended its decision before being handled by the Ministry.

14. The NCA handled 52 cases concerning possible interventions against restrictive business practises, of which 14 were analysed in depth. Interventions were made in three of the cases.

15. The NCA examined 46 mergers and acquisitions, of which seven were in handled in depth. Two acquisitions were approved on certain conditions. The Ministry overruled one decision by the NCA to intervene against an acquisition.

a) *Description of significant cases, including those with international implications*

Enforcement of the prohibitions

16. In June 1998 the NCA reported three companies and five persons to the police for collusion on supplies of electric equipment, mainly to the hydroelectric industry. The alleged infringements of the Competition Act had occurred in the period 1990 – 1997. According to the NCA the collusion concerned price fixing, bid-rigging and market sharing. Employees in the companies concerned exchanged information on each other prices and technical solutions, inter alia in connection with tenders. A market sharing arrangement was supervised by a system, in which prices and sales data were registered on a list of offers. In May 1999 the police levied fines for the two of the companies amounting to NOK 20 million (ECU 2.5 million). Both companies accepted the fines.

17. The NCA also reported three companies to the police for collusion on repair and maintenance of hydroelectric generators. It detected documentation, which indicates that two of the companies have agreed that prices and other terms of supply shall be discussed before they submit offers on the same project. Furthermore, the companies have agreed on certain levels of net profits for various goods and services. A market sharing arrangement stipulated that one company should have 70 percent of the market, the other 15 percent. The companies should meet twice a year to discuss the results of the agreement. The case is still pending with the police.

18. In 1994 the NCA reported the head of a regional association of artisans and the association itself to the police. The association had encouraged its members to adhere to a certain minimum price. The Supreme Court stated that such an association must, without infringing the competition legislation, be able to make their members aware of the importance of profitability, even when this leads to price increases. However, in this case the encouragement took form of a campaign with a clear recommendation of a minimum price. The principle of freedom of speech would therefore not make the recommendation to be beyond the scope of the prohibitions. On this background the district court reached a verdict, in which the association was fined NOK 10.000. The head of the association was not convicted. His statement was found to fall within the principle of freedom of speech.

Exemptions from the prohibitions

19. In October 1998 the Norwegian Competition Authority granted a preliminary exemption to the airlines SAS, Braathens, Widerøe's, Coast Air, Teddy Air and Helikopter Service for price collaboration on interline tickets. Even though the Authority was sceptical to this type of collaboration the exemption was prolonged for a short period. The decision must be seen in light of the European Commission's proposal for a partial prolongation of the group exemption until 30 June 1999 (Regulation Nr. 1617/93, 25 June 1993) and for letting it have retrospective force from 1 July 1998. The NCA considered that the

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loss of economic efficiency would be relatively minor in such a short period. The price collaboration may reduce market competition in a way that decreases economic efficiency. In addition it was considered that the interlining tickets would give passengers increased flexibility and somewhat shorter travel time. However, the NCA considered that the positive effects might also be achieved without any collaboration on ticket prices, for instance if the airlines solely agree on settlement prices between themselves, having full discretion to stipulate carrier unique prices.

20. In November 1998 the Norwegian Competition Authority granted on certain conditions an exemption for an agreement between the Norwegian Publishers' Association and the Norwegian Booksellers' Association. The NCA considered that fixed retail prices on factual and literary matter might contribute to sustain both production and dissemination of such books. On this background the NCA found that cultural policy consideration outweighed efficiency considerations for parts of the agreement. It was not considered, however, that fixed retail prices on school books were necessary to fulfil the cultural policy goals of the agreement. This part of the agreement was therefore not exempted from the prohibitions of the Competition Act. The two Associations appealed the decision to the Ministry of Labour and Administration, which granted exemption for the whole agreement.

Interventions – abuse of dominant position

21. In February the Norwegian Competition Authority intervened against a scheduled discount scheme by Telenor AS - the state-owned incumbent telecommunication operator. The discount scheme implied that Telenor's ordinary telephone customers would face an increase of their monthly telephone charges in return for a certain discount on calls to three predefined mobile subscribers in the mobile net of Telenor. These subscribers would also get a similar discount on conversations with the fixed telephony customer. The NCA is aware of the risk that weak competition in the fixed telephony market might be used as a leverage device to decrease competition in other markets as well. It therefore decided to prohibit the discount scheme, unless its competitor in the mobile telephone market - NetCom GSM AS - was allowed to take part in the scheme on non-discriminatory terms.

22. In 1998 Telenor also entered into agreements on telecom products with two major building associations. The almost identical agreements offered the members of the association to enter a rebate agreement with Telenor. The duration of the contracts were three years. After in-depth analysis of the rebates the NCA did not make an intervention. The sector regulator has announced that it intends to intervene against the rebates on grounds that they do not reflect costs savings.

23. TrioVing is a dominant company in the market for locks. New entrants depend on access to the established network of retail outlets to have their products distributed to end consumers. The NCA examined TrioVing's distribution agreements in order to detect whether there were contract clauses that would limit the distribution of locks from other producers. It turned out that some of the clauses would have such effect and the NCA required TrioVing to remove the clauses from the agreements. The company accepted the decision and the agreements have been amended.

24. Du Pont Jet AS entered the Norwegian petrol market in 1992. It operates unmanned petrol stations. Petrol sold by Jet was stored in Gothenburg, Sweden, and transported to the Norwegian outlets by tanker lorries. The company was refused access to existing storage tanks in Norway for petrol owned by other oil companies, and complained to the Norwegian Competition Authority. The NCA concluded that the storage tanks were not to be considered as essential facilities since the costs of setting up new storage tanks were not prohibitive. This conclusion was also strengthened by the fact that Jet was already present in the market. A decision to intervene would be a destabilising signal for future investments in markets

with competition, and might therefore be detrimental to the economic efficiency in the long run. On this background no intervention took place.

25. Embra Trading (Embra) urged the NCA to examine the competitive effects in the cement market of the suggested environmental identification marks (the so-called Swan Mark) for concrete. It was alleged that the criteria for obtaining the Swan Mark would foreclose Embra from Nordic cement markets. The NCA pointed out that the Norwegian cement market is dominated by Norcem AS, a company belonging to the Scancem concern. Until the early 90s Norcem practically held a monopoly position, but some competition has been introduced since the entry of Embra. It would be detrimental to competition if the criteria once again would make Norcem the only alternative in the market. The criteria should be objective in relation to industry interests. The suggested identification mark was subsequently stopped.

26. The NCA is vested the authority to regulate taxi fares. The maximum fares were adjusted according to an index model, this year without an efficiency reduction. The adjustment was marginal and the association of taxi drivers was discontented with the result and the case handling. In parallel with the case handling the NCA undertook a renewed assessment of the foundations for the regulations of taxi fares. The conclusion from a competition policy point of view was that it would be desirable to end the regulations. A report recommending a cease of the regulations was handed over to the Ministry.

Mergers and acquisitions

- a) *Statistics on number, size and type of mergers notified and/or controlled under competition laws;*
- b) *Summary of significant cases.*

27. In 1997 Norway Post (NP) acquired Forbruker-Kontakt AS — a distributor of direct mail to Norwegian households. The acquisition increased the national market shares of NP from 57 percent to 63 percent. Forbruker-Kontakt only operates in densely populated areas. The product market encompasses advertising material that is stuck into and distributed with newspapers. The NCA considered that increased utilisation of the newspapers' networks to a certain extent would limit the market power of NP, but only in those areas where the newspapers had satisfactory delivery networks. The opportunity for NP to cross-subsidise its competition activities might deter entry. All suppliers of post distribution services are also buyers of services from NP, a fact which accentuates the need for non-discriminatory access terms to NP's services. The acquisition was approved on certain conditions, among others that the acquired entity should be organised and operated as an independent limited company. The NP was prohibited to discriminate between Forbruker-Kontakt and other distributors. The decision was not appealed and the companies seem to adhere to the conditions.

28. In December 1997 Scandinavian Airlines System (SAS) acquired a majority of the shares in Widerøes Flyveselskap (WF). SAS is the major scheduled airline, operating on national Scandinavian markets as well as to and from Scandinavian countries. WF is the major commuter airline on Norwegian markets. The relevant market was defined as air transport in scheduled traffic between city pairs. These relevant markets are highly concentrated. SAS and WF mostly provided complementary services. The main competition problem was that SAS would be able to increase its share of the transfer passengers originating from WF. The acquisition was accepted on condition that WF is forbidden to discriminate between SAS and other airlines. The decision was not appealed and the companies seem to adhere to the conditions.

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III. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

29. In 1998 the Norwegian Competition Authority handled 159 public hearings, of which it submitted opinions of some importance in 54 cases. In addition the NCA submitted 51 other opinions on its own initiative, of which 12 were directed to other ministries or directorates and 39 to local or regional authorities.

30. The NCA has followed up its co-operation agreements with sector specific regulators in the electricity, telecommunication and finance/insurance sectors. The agreement between the Norwegian Post and Telecommunications Authority was revised in 1998, after the adoption of the new act on telecommunications with appurtenant regulations. A joint report on co-operation procedures between the two authorities has been worked out. In practise the co-operation works satisfactory. The same goes for co-operation with the Norwegian Water Resources and Energy Authority and with the Norwegian Banking, Insurance and Securities Commission. The latter developed especially positively in 1998, considering the issuing of a joint report on profitability of securities, bonds and shares. In 1998 the NCA initiated discussions with the Norwegian Media Ownership Authority, among other things commenting on the guidelines of the new Authority. There is a joint understanding on exchange of information and co-operation between the two authorities, and at the moment it does not seem necessary to enter a formal agreement.

31. The NCA commented on a draft white paper to the parliament on agricultural policy. The concentration increase in the grocery sector during the 90-ties has counteracted the market power of the suppliers, including some co-operations. This may entail that it will be harder to obtain the prices stipulated in the agreement between agricultural organisations and the state, thereby probably promoting increased economic efficiency. The NCA also commented on the application of public means in the agricultural sector. Primarily, increased competition should be promoted by eliminating regulations that are not necessary due to market failures. Different regulations may give different results with respect to economic efficiency. It is therefore of importance that the various alternatives are examined in relation to economic efficiency. By defining precisely the relevant objectives, one will also illuminate possible conflicts between them. Thus, the NCA proposed that the white paper in particular should make a survey of the market failures and define precise objectives for the agricultural policy. It emphasised that regulations and supports based on the operators having market power are not economically efficient in general. In particular, the actors should not be vested with the authority to regulate since this would worsen the distortions of the market competition. Trade policy is part of the regulations of Norwegian agriculture. Quotas and customs are used to limit imports to Norway, thereby upholding domestic prices. The NCA considers customs to be a more efficient means than quota. A quota will not counteract market power in the domestic industry. Customs set an effective maximum price in the market and consequently limit the market power of the domestic industry. The NCA also commented on adverse effects of export subsidies. In markets where Norway would have been a net importer in case of no barriers to trade and domestic support, export will give rise to a loss in social welfare, directly in the form of export subsidies and indirectly by sustaining domestic market power. The NCA therefore suggested that such regulations and supports should be abandoned.

32. The NCA has focused on competitors' interconnection fees to the network of Telenor to obtain efficient utilisation of the infrastructure. In 1998 the Ministry of Transportation and Communication arranged an oral hearing on "some regulatory issues in the telecom industry", including "Local Loop Unbundling" (LLUB). The NCA submitted its considerations to the Ministry of Labour and Government Administration. Since the market for local access is characterised by large fixed costs the NCA considered that the competitors of Telenor should be granted access to the fixed network of Telenor. There are two ways that competitors may have access: LLUB and "bit stream access"(a leads-line solution for individual

residents based on for instance ISDN). In the NCA's opinion, LLUB would be the one that stimulates the strongest competition, since it allows for competition also on technical development of the infrastructure. If there are adverse effects of LLUB, a possible obligation to grant local access might be considered fulfilled if Telenor could prove that a bit stream access eliminates demand for LLUB. The possibility of a decision to grant LLUB will induce Telenor to offer good bit stream solutions.

33. Norway is obliged by The EEA Agreement to introduce carrier preselection within 1 January 2000. The NCA has argued that it must be possible to introduce carrier preselection prior to this date, and initiated an examination on a possible intervention under the Competition Act. Later on the Norwegian Post and Telecommunications Authority (the PT) initiated a public hearing on the background of the provisions in the Telecommunications act. Subsequently, there has been a dialogue between the two authorities concerning conditions and time limit for the introduction of carrier preselection. In September 1998 the PT reached a decision to introduce carrier preselection in two phases: An operator specific solution within 1 June 1999 and two predefined preselections within 1 November 2000. The decisions were mainly in accordance with the opinions of the NCA.

34. The NCA supported a public report concerning a proposal to grant private companies the right to mediate and hire out workers. The NCA considered that this would contribute to a better functioning short term market for workers, in which employers more flexibly and cost efficiently might adjust the use of workers. However, the proposal to harmonise the rules for hire of workers from short term mediators and the use of provisional employment might reduce the positive effects of the suggested amendments. This was due to the Norwegian rules for use of provisional employment, which are restrictive compared to other countries. The NCA agreed with the views in the report that there should be no public authorisation system for private firms that wish to mediate or hire out workers, because the system might lead to insufficient entry of private firms. The NCA was also critical to the proposal that the employment authorities should supervise private firms that hire out workers if these authorities also establish a state-owned company that competes in the same market.

35. The NCA has been engaged in projects concerning competition exposure of local services. It has made a survey of costs of collection and transportation of households' waste, the use of tenders and organisation of these services in the municipalities of Norway. The survey indicates that there is a relation between the organisation and the cost level of the services. The costs per household was lower for municipalities that have used competitive tenders than for other municipalities. On the initiative of the NCA the Ministry has supported a project with the objective to establish a course for local authorities on how to expose their services to competition. The NCA took active part in the project. The use of tenders and how to avoid bid rigging was among the subjects. The NCA has also worked together with other Nordic countries in a project on competition exposure of local services. The joint Nordic report was issued in the autumn of 1998.

36. The association of Norwegian (manned) petrol stations contacted all municipalities in July 1998 concerning establishments of unmanned petrol stations. The association feared that existing stations would be forced to close down their operations if the municipalities accepted establishment of unmanned petrol stations. In a letter to all Norwegian municipalities the NCA has pointed out that a refusal to accept new establishments would be barrier to entry having adverse effects on competition. The municipalities were informed of the NCA's survey from 1998, which showed that areas with unmanned petrol stations had lower average prices than those where unmanned petrol stations had not been established.

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IV. Resources of competition authorities

1. Resources overall

a) Annual budget

NOK 67 million (USD 8.6 million)

b) Number of employees

Economists	53
Lawyers	24
Other professionals	6
Support staff	<u>65</u>
All staff combined	148

2. Human resources (person-years) applied to:

a) Enforcement against anticompetitive practises 75

b) Merger review and enforcement 7

c) Advocacy efforts 19