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2001

Executive Summary

1. **Strengthening of Competition Policy.** The Bondevik Government, which entered into office in October 2001, seeks to strengthen Norwegian competition policy by implementing a five-point action plan that shall ensure efficient resource utilisation, enhance competition in trade and industry and strengthen the position of consumers.

2. **Enforcement and advocacy.** The NCA handled in 2001 difficult cases that were subject of considerable media attention. Our work was marked by several large merger cases. Illegal collaboration between companies was uncovered and reported to Økokrim (The Central Unit for the Investigation and Prosecution of Financial and Environmental Crime). The NCA also intervened to counter other types of anti-competitive practice. As far as the public sector is concerned, the NCA pointed out a series of anti-competitive practises.

3. The “Competition News” (Konkurransenytt) was first published in December 2000 and 10 issues were published in 2001. It contains articles on the NCA’s decisions and resolutions, as well as news on competition policy nationally and internationally.

4. During the year, five new issues appeared in the series “Articles from the Norwegian Competition Authority”. The issues were “Sanctions – are they worth the price”, “General conditions and competitiveness in the agricultural sector”, “The effects on price and competition of VAT reform”, “Comparative price survey. Individual supermarkets chains in Oslo” and “Price dispersion – petrol and vehicle diesel”.

5. **International co-operation.** International competition cases were followed up via the EEA Agreement, and through the OECD, WTO, ICN, Nordic network, and bilateral co-operation. Emphasis was placed on the prioritisation of international cases during the reorganisation of the NCA.

6. **Organisation.** The NCA’s eight regional offices were closed down by 1st April 2001 due to, among other things, tighter budgetary constraints and the need for concentration of resources to meet the challenges faced by competition authorities. Following the reorganisation, the NCA will have a workforce of about 100 person-years pro annum. The NCA’s new organisational structure was established on 1st June 2001.

1. Legislation and strengthening of Competition Policy**1.1 Strengthening of Competition Policy**

7. The Bondevik Government, which entered into office in the autumn of 2001, seeks to strengthen Norwegian competition policy. A five-point action plan is being implemented. The action plan aims to ensure an efficient resource utilisation, enhance competition in trade and industry, and strengthen the

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position of consumers. Competition policy and the implementation of the action plan form part of the modernisation programme for the public sector. The five main elements of the action plan are:

- to place greater emphasis on competition policy and strengthen the Norwegian Competition Authority;
- to review public regulations and institutions that may restrict competition;
- to ensure that government/public procurement initiatives enhance competition and access to the market;
- to ensure that privatisation of public companies not contribute to restricting competition or to the formation of monopolies;
- to ensure that the public sector is organised and run in a manner that promotes competition.

1.2 Revision of the Competition Act

8. On the 24th November 2000, the Government appointed a public committee to review Norwegian competition legislation and present proposals for new competition regulations by the 1st November 2002. The Competition Law Committee presented its initial recommendations to the Ministry of Labour and Government Administration on 6th July 2001.

9. The reasons given for needing a broad review of competition legislation included, among other things, experiences with the Norwegian Competition Act and the EEA's competition legislation, and developments in the EU's and EEA's competition policy in recent years. The following questions will be of particular importance in the formulation of new Norwegian competition law: organisation of the competition authorities, including decision processes and various models for reconsidering and assessing the authorities' decision, and the formulation of appropriate means of control and sanctions to ensure the effective enforcement of and compliance with the regulations.

2. Enforcement of competition law and policies

10. This section deals with the issues of illegal collusion, exemptions from the prohibitions in the Competition Act, other anti-competitive activities and acquisition of enterprises.

2.1 Illegal collusion

Sections 3-1 to 3-4 in the Competition Act contain explicit prohibitions against

- Collaboration and influence on *prices, mark-ups and discounts*.
- Collaboration and influence on *tenders*.
- Collaboration on, or use of influence to achieve, *market sharing*.
- *Associated undertakings* determining or encouraging these competition restraints.

11. In 2001, the NCA dealt with 50 cases relating to the prohibition of collaboration and influence on prices, mark-ups and discounts, and on supplier regulations. Three cases were reported as crimes, while

enforcing the provisions concluded 39 cases. The reduction of the number of cases compared with previous years, is due to the closing of our regional offices which reported many minor offences regarding suppliers fixing of prices, discounts or mark-ups for the recipients' sale of goods or services.

Verification and enforcement cases	1997	1998	1999	2000	2001
Handled	121	214	114	101	50
Dropped	38	97	92	47	7
Enforced	81	114	20	50	39
Compulsory fine	1	0	1	0	1
Reported as crimes	1	3	1	4	3

12. The NCA verifies that the business community complies with the prohibition provisions of the Competition Act, or with resolutions made in accordance with the Act, primarily by carrying out investigations of individual companies. The court of examination and summary jurisdiction is the authority that decides on whether to grant the right to look for evidence. Those cases that are investigated and assessed are often complex and take considerable time.

13. In 2001, the NCA secured evidence in three cases in accordance with Section 6-2 of the Competition Act. Evidence was secured at several of the country's leading asphalt entrepreneurs, several of the country's leading construction entrepreneurs and four of the country's leading forwarding agents.

2.1.1 Cases

2.1.1.1 Collaboration among wholesalers of electrical equipment (cables etc.)

14. The wholesalers of electrical equipment (cables etc.), evidence securing case from 1999, were reported to Økokrim (The Central Unit for the Investigation and Prosecution of Financial and Environmental Crime) in April 2001. These wholesalers sell electrical installation materials that are used in everything from private homes to larger industrial projects. Most of the sales are made to electricians. The sales of such electrical products in Norway amount to several billion NOK per annum.

15. The reported pricing cartel had collaborated nationwide and had been doing so for most of the 1990s. The Norwegian Competition Authority believes that this has involved all or most of the cable and installation products the wholesalers sell. The wholesalers are suspected to collaborate on wholesale prices and, in certain cases, on discounts and net prices to their customers as well.

16. The casework involved a great deal of comprehensive, groundbreaking work being done to calculate the gains made, among other things, from the collaboration with a view to adopting a resolution concerning the relinquishment of the gains made. A report estimated that the gains made ran into several hundred million NOK. The report has been sent to Økokrim to serve as the basis for a possible confiscation case.

2.1.1.2 Collaboration among hotels

17. A number of hotels in Stavanger and the surrounding district are suspected to exchange information about room prices and beds filled figures on a daily basis for a long period of time. The

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exchange of such information is in the opinion of the Norwegian Competition Authority contrary to section 3-1, subsection one, of the Competition Act and the matter was reported to Økokrim in August 2001.

2.2 *Exceptions from the prohibitions*

Section 3-9 of the Competition Act empowers the NCA to grant exemptions, subject to certain conditions, for agreements that conflict with the provisions of the Act that relate to prohibitions. The conditions that must be met for dispensation to be granted are that competition in the respective market is strengthened, that the efficiency gains made offset any effects that restrict competition, and that the competition regulations are of little significance on competition or that specific factors have to be taken into account.

18. In 2001, the NCA assessed a total of 113 requests for exemptions. In 91 cases, an exemption was granted for the whole, or parts of, the planned collaboration. This figure includes 44 exemptions that were given for collaboration in chains or groups. Six requests for exemptions were rejected, while 16 exemptions were rescinded.

Exemption cases	1997	1998	1999	2000	2001
Handled	129	131	85	147	113
Granted	101	70	53	99	91
Rejected	7	1	6	5	6
Dropped / Rescinded	21	60	26	43	16

19. The tables below show the prohibition provisions that the NCA granted exemption from, and the legal basis for these exemptions. In some cases, more than one legal foundation can be applied, and exemption from more than one provision may be granted at the same time.

Legal basis for the exemption	1999	2000	2001
Section 3-9 a) competition strengthened	21	32	37
Section 3-9 b) efficiency gains	8	31	26
Section 3-9 c) minor significance for competition	22	39	28
Section 3-9 d) special considerations	6	1	4

Provisions from which exemption was granted	1999	2000	2001
Section 3-1, Subsection 1, price collaboration	47	87	78
Section 3-1, Subsection 2, price influence	8	9	13
Section 3-2, collaboration on tenders	6	28	17
Section 3-3, market sharing	16	29	17

2.2.1 *Exemption granted*

2.2.1.1 Transportation paid for by the public purse

20. Oppland Skyss og Informasjon, which is a marketing and administration company for the taxicab trade in Oppland county, applied for an exemption until the end of 2002 so that it could enter into negotiations with Oppland county authorities concerning common prices, tender co-operation and the allocation of transport jobs paid for by the public purse. After an appeal to the Ministry of Labour and

Government Administration was not upheld, the Oppland county authorities applied for a temporary exemption on behalf of the company, so that it would have sufficient time to organise and put out to tender the transportation of schoolchildren. The National Insurance Service's office in Oppland county had to do the same with respect to the transportation of patients.

21. In general, the Norwegian Competition Authority is sceptical about collaboration between taxicab owners in a licence district on joint price negotiations regarding transportation paid for by the public purse. If competition is eliminated from this type of job, prices might be higher, production lower and the quality of service poorer than what might have been the case in a situation in which there was more effective competition. However, such co-operation can in some situations result in efficiency gains due to the better co-ordination of jobs and reduced administration costs, for the regional Authority, regional national insurance office and taxicab owners who are part of the collaboration.

22. During a transition phase, before the job of putting something out to tender has been completed, it would be an advantage for the authorities involved to only have to relate to one opposite party instead of having to negotiate with the individual taxi companies and licensees. The Norwegian Competition Authority therefore granted Oppland Skyss og Informasjon a temporary exemption in December, until 1st August 2002 (V2001-120).

2.2.2 *Rejected Exemption Applications*

2.2.2.1 Transportation paid for by the public purse

23. Taxi Sørlandet AS (V2001-12) and Nordland Taxi AS (V2001-109) both wanted exemptions so that they could co-operate in price negotiations with regional authorities regarding transportation paid for by the public purse.

24. Taxi Sørlandet applied for an extension of its exemption beyond 1st July 2001 so that it could make a joint offer on prices, conduct joint negotiations about, and agree on common prices for the transportation of schoolchildren and patients, and for performing other jobs agreed with Vest-Agder Regional Authority. The company also wanted to participate in tenders for similar transport agreements on behalf of the licence holders who are shareholders in the company. The Norwegian Competition Authority refused the application. The same was true for Nordland Taxi's application for an exemption so that it could enter into price negotiations on behalf of the taxicab trade in the county with Nordland Regional Authority.

2.2.2.2 Environmental charge

25. The Association of Sanitary Equipment Manufacturers applied to the Norwegian Competition Authority for exemption from the Competition Act, so that its members could co-ordinate the environmental charge due from sales of water heaters. The reason for the application was given as the fact that a fixed charge that passes through all links in the selling chain is simple to administer and thus provides efficiency gains. Besides this, all the manufacturers had signed individual agreements with one and the same recycling company and this would make the co-ordination even more rational and cost-effective.

26. The Norwegian Competition Authority based its assessment on the fact that such co-ordination would contravene the act's prohibition provisions regarding price co-ordination. Such an agreement would

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reduce the competition between actual and potential recycling schemes, which could lead to the inefficient use of resources. The Association of Sanitary Equipment Manufacturers has so many members that such collaboration would be almost sector encompassing and for this reason the application for an exemption was refused (V2001-69).

2.2.2.3 Prohibition against fixed prices list

27. The Norwegian Competition Authority prohibited comprehensive sector price co-operation regarding guarantees and defect repairs with respect to white goods. The Association of Repairers of Electrical Household Appliances' application for continued exemption from the Competition Act in order to prepare such a price list was refused. The fixed price list had been prepared by the National Association of Suppliers of Electrical Household Appliances in Norway and the Association of Menders of Electrical Household Appliances for more than 30 years. It has determined what suppliers have to pay for repairers.

28. Comprehensive sector collaboration can generally cement the structure of a sector and thus make it difficult to improve competition in the market. In the Norwegian Competition Authority's opinion, the utilisation of a fixed price list limits competition between suppliers and between repairers. The anti-competitive effects of this collaboration were reconsidered and now deemed to exceed the efficiency gains that could be achieved by co-ordinating price negotiations, which had previously formed the basis for the exemption.

29. Hereafter, the Norwegian Competition Authority wants individual suppliers to sign bilateral contracts with selected repairers to increase competition. The prices charged for services will thus reflect the individual repairer's efficiency and proficiency to a greater degree than has been the case up to now. The Authority's decision (V2001-97) was appealed to the Ministry of Labour and Government Administration.

2.3 *Intervention in anti-competitive practices*

30. Interventions in anti-competitive practises are particularly relevant in industry-wide collaboration and undesired behaviour of dominant enterprises. Undesired behaviour may be discount arrangements, pricing or refusals to deal that reduce competition in contravention of the objective of the act.

Based on **Section 3-10 of the Competition Act**, the NCA may, by means of individual decisions or regulations, intervene to halt conditions, agreements or activities that the Authority considers to have the aim or effect of, or are suitable for the purpose of, restricting competition in conflict with the aim of efficient use of society's resources. Examples of conduct that may be covered by the provision relating to intervention are: the use of methods that restrict competition to maintain a dominant market position, the exclusion of competitors, the rejection of business contacts and the refusal to grant membership to associations. Intervention may take the form of issuing a prohibition, giving an order, or granting consents subject to certain conditions. Interventions may also involve regulating prices.

31. In 2001, the NCA assessed 66 cases relating to collaboration that restrict competition, and damaging use of market power, as laid down in Section 3-10 of the Competition Act. Four decisions to intervene were made. Following exhaustive assessments, the NCA found no reason for intervention in 15 cases. The remaining cases were quickly dismissed.

Intervention cases carried out in accordance with Section 3-10	1997	1998	1999	2000	2001
Cases handled	79	52	69	74	66
Intervention resolutions	11	4	4	7	4

32. In addition to individual decisions, the Norwegian Competition Authority issued two instructions involving maximum price regulation for taxicabs. In both cases, the maximum prices were adjusted upwards. The upward adjustments were made due to developments in costs and carriage prices in areas of the country where taxicab companies' prices are not regulated by the NCA.

2.3.1 Cases

2.3.1.1 Electronic invoices

33. The Norwegian Competition Authority prohibited banks and the Bankenes Betalingsentral (BBS) (the banks' central clearinghouse) from operating with exclusivity agreements in connection with electronic invoices. By forbidding such agreements the Authority removed a significant barrier to competition which opened the way for invoice issuers to choose between several different e-invoice solutions. BBS will thus no longer have a monopoly that allows only it to offer all the country's Internet banking user e-invoices. The prohibited exclusivity agreements meant an Internet bank could not present demands for payment that were passed on by anybody else other than BBS. Invoice issuers (companies, organisations, local and national government) with customers who used a bank that had signed such an agreement could therefore not choose anybody else other than BBS as their invoice intermediary. The Authority concluded that exclusive agreements between BBS and the banks limited invoice issuers' choices and blocked competing invoice intermediaries out of the market. By forbidding these agreements the Norwegian Competition Authority provided the conditions for competition in the forwarding e-invoices from invoice issuers to Internet bank users market. This market is expected to develop quickly and competition is expected to provide a broader range of choice, better quality and lower service prices. More invoice issuers can thus choose to issue electronic invoices rather than paper based invoices, which will provide economic benefits. The decision was made in November and has not been appealed (V2001-108, see www.konkurransetilsynet.no).

2.3.1.2 Approval scheme for wet rooms

34. The Norwegian Competition Authority issued a prohibition against the 'Expert panel for wet rooms approval scheme' for materials and equipment. In the Authority's opinion this scheme hindered new businesses being set up and hampered innovation and cost effectiveness in the market. Besides this, the scheme was additional to NBI Technical Approval, which ensures that products comply with public regulations. The Authority believes that it is unfortunate that such approval schemes are operated under the direction of trade interests. The case was taken on following a complaint by the construction materials producer, Isola AS (V2001-88).

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2.3.1.3 Pesticides

35. In one of the cases the intervention itself took place right after New Year 2002, but the preparatory work was concluded before the end of 2001. The Norwegian Competition Authority instructed CropScience Nordic AS to supply its full range of pesticides to Agrovekst AS on the same terms it supplies them to other distributors in the market. Agrovekst is one of three players in the distribution market for pesticides. The market leader, Felleskjøpet, has a market share of approximately 70 per cent. Norgesfôr AS has a slightly larger market share than Agrovekst of the remaining market. The supplier's parent company, Aventis SA, is a global market leader in "life sciences", which encompasses the business areas of pesticides and medicines. Aventis is the company with the most certified pesticides on the Norwegian market.

36. The Norwegian Competition Authority found that the competition in distribution would be limited if Agrovekst fell out of the market. The strict Norwegian regulations for certifying the manufacture, import, sale and use of pesticides hinders the establishment of new businesses and further increases the anti-competitive effects (V2002-4).

2.3.1.4 Appeals against decisions

37. The Norwegian Competition Authority received three appeals regarding decisions it made pursuant to section 3-10 of the Competition Act (Intervention against anti-competitive behaviour). One of the appeals related to a decision regarding the price regulation of material for Troms bunads was also appealed. The Ministry of Labour and Government Administration upheld the decision regarding the obligation to supply but stipulated, among other things, new delivery prices. The Ministry's stipulation of prices meant that the appeal regarding the decision made in 2001 needed no further consideration.

38. A second appeal concerned a decision made in 2000 that prohibited an ammunition agreement between The Association of Rifle Clubs and Nammo Raufoss AS, a supplier of ammunition. The Ministry of Labour and Government Administration upheld the Norwegian Competition Authority's decision with one minor amendment.

2.4 *Supervising mergers and acquisitions*

Founded in the provisions of **Section 3-11 of the Competition Act**, the NCA has the power to intervene in business acquisitions if it finds that they would lead to, or would strengthen a significant restriction of competition in breach of the intent of the Act relating to the efficient use of the society's resources. The term "business acquisition" here is intended to include mergers, acquisition of shares or interests, and part-acquisition of a business. Intervention may take the form of issuing prohibitions, giving orders, or granting consents subject to certain conditions. Intervention must be carried out within six months of the acquisition contract having been concluded. Where special grounds so indicate, the Authority may intervene up to one year from the same date.

39. The acquisition of shares or merger of companies does not involve a notification obligation pursuant to the Competition Act, however the Norwegian Competition Authority monitors the markets closely to consider whether such acquisitions significantly weaken competition in contravention of the purpose of the act.

40. In 2001, the NCA assessed 27 cases relating to business acquisitions. The NCA intervened in two cases.

Business acquisitions	1997	1998	1999	2000	2001
Total cases assessed	41	46	31	40	27
Interventions	3	2	2	2	2

2.4.1 *Interventions in merger cases*

2.4.1.1 Simo's acquisition of Brio Barnvagnar

41. The Norwegian Competition Authority stipulated conditions for the acceptance of a merger between Simo Invest and Brio Barnvagnar. The Authority believed that Simo's acquisition would increase the appreciably limited competition in the pram market. It therefore stipulated conditions to limit the economic consequences for society that would result from the acquisition. Among other things, dealers would have to have the freedom to select their suppliers and suppliers would be able to select distributors and dealers for their products/ brands. Loyalty promoting initiatives in particular would have to be removed. An obligation to notify the Authority was imposed on the new company, ENG, which would be triggered upon the acquisition of shares or signing of agreements that provide ENG with a determining influence over competitors or dealers (V2001-26).

2.4.1.2 Norsk Kjøtt's acquisition of Gudmundsen Eiendom

42. The Norwegian Competition Authority also stipulated the conditions on which the meat trade company Norsk Kjøttssamvirke (Norsk Kjøtt) could acquire Gudmundsen Eiendom. The Authority found that the company acquisition would strengthen a significant restriction of competition in the market, contrary to the purpose of the Competition Act which is to achieve efficient utilisation of society's resources. Conditions were stipulated that would limit Norsk Kjøtt's opportunities to use its market power to influence slaughterers and feed producers which would ensure the trade organisations Kjøttbransjens Landsforbund, Fjørfebransjens Landsforening and Prior Norge influence in the destruction of slaughterhouse waste market, and which would hinder the discrimination of players on the basis of who owns them (V2001-27).

43. The Norwegian Competition Authority's decision was appealed. The appeal referred to the conditions that applied to offers for ownership shares in the destruction trade. Norsk Kjøtt wanted it defined more precisely so that the decision would mean that ownership shares should be offered on market terms and not at any price. The Authority took note of the appeal. Other points were also amended so the organisations are freer when it comes to selecting the type of company they want to be and how destruction facilities can be centralised (V2001-51).

2.4.1.3 No intervention

44. The Norwegian Competition Authority found no basis for intervention pursuant to section 3-11 of the Competition Act in 16 cases. These included Aker Maritime's acquisition of shares in Kværner. However, there was one case above all that was the subject of abnormally intense media interest: SAS' (Scandinavian Airlines System) acquisition of shares in Braathens ASA, the largest domestic airline measured by the number of passengers.

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2.4.1.4 SAS' acquisition of Braathens ASA

45. On the 22nd May 2001, the Norwegian Competition Authority was notified by Scandinavian Airlines System (SAS) and Braathens ASA that SAS had signed an agreement with three of Braathens' owners, Bramora AS, Braganza AS and the Dutch airline KLM, concerning the purchase of their ownership of 68.8 per cent of the shares in Braathens. The parties pleaded the so-called "failing firm defence", which means that the competition situation would not be better off if the company went bankrupt because Braathens' market share would be taken over by SAS regardless of whether the takeover was permitted or not.

46. Failing firm' refers to a company which is acquired, but already on its way out of the market because of financial problems. If the acquired company is in a position where continued operation is not possible, the acquisition of the company will not necessarily lead to or increase the restriction on competition with respect to the market situation, which would come about anyway.

47. Three conditions must be fulfilled in order to use this argument: you must show that it is likely that the acquired company is a "failing firm" (nearly bankrupt), there must be no other purchasers who would be more favourable competition wise, and you must prove that it is likely that bankruptcy is not a better alternative competition wise.

48. Following comprehensive investigations, the Norwegian Competition Authority concluded that there were no alternative purchasers of Braathens. It was the Authority's view that bankruptcy did not constitute a better alternative competition wise, since in the event of a bankruptcy Braathens' market share would not be distributed among players in the market other than SAS.

49. For these reasons the Norwegian Competition Authority concluded that the "failing firm" argument was a valid one and that there was no causal effect between the acquisition and the limiting of competition. The competition situation would be the same with or without the takeover. Therefore the conditions for intervention pursuant to Section 3-11 of the Competition Act were not fulfilled (A2001-21).

2.4.1.5 Aker Maritime's acquisition of shares in Kvaerner

50. I July 2000, Aker Maritime ASA (AMA) acquired 26.6 per cent of the shares in Kvaerner ASA. The European Commission was notified of the acquisition in accordance with EEA's merger rules. In December the same year, AMA decided after prior communication with the Commission to reduce its holding to 17.8 per cent. The Commission stated that an ownership share of this size would not give AMA control over Kvaerner and that the acquisition therefore fell outside the Commission's Authority pursuant to the Merger Regulation. The Norwegian Competition Authority was therefore able to consider the acquisition in accordance with Section 3-11 of the Competition Act.

51. According to the Norwegian Competition Authority's assessment, AMA's acquisition of 17.8 per cent of the shares in the company only gave it limited influence over Kvaerner. The ownership share did not represent an incentive for the parties to modify their behaviour in the market to any particular degree. These two things meant that the share acquisition would not permit any potential for limiting competition to be realised. The Authority therefore did not find it necessary to consider the market conditions further to evaluate the potential competition limiting effects (A2001-13).

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

52. Public initiatives can have negative consequences on competition. The Norwegian Competition Authority is increasingly being used as a hearing body by other public authorities. This provides an opportunity to influence the decision process and include the competition aspect in the consideration of concrete initiatives. The Authority shall suggest alternative solutions or advise against the implementation of initiatives. In 2001, the Norwegian Competition Authority prepared a report on the agricultural industry's general conditions. The report is discussed in chapter six in this version of the annual report. The Norwegian Competition Authority handled 245 hearing cases during 2001. The Authority had significant remarks to make in 85 cases.

In accordance with Section 2-2 d) of the Competition Act, the NCA is to call attention to the restraining effects on competition, where appropriate by submitting proposals aimed at increasing competition and facilitating entry for new competitors.

In order to do this, the NCA has to issue submissions and specify those factors that restrict competition.

53. The Authority pointed out the unfortunate effects of public regulations to other government bodies on different levels on its own initiative in eleven cases, of which two to councils and country councils, and nine to ministries or directorates.

Hearing cases and cases according to the Competition Act, Section 2-2- d)	1997	1998	1999	2000	2001
Handled	180	159	182	179	245
Submissions	92	60	78	77	85
Cases, section 2-2 d)	11	51	17	12	11

3.1 Abstracts from hearing letters

3.1.1 Scrapping of vehicles

54. The Norwegian Pollution Control Authority (SFT) suggested in a submission that the European Parliament's and the Council of Europe's Directive 2000/53/EC should be incorporated into Norwegian Law via a new regulation about scrapped vehicles. It also suggested that a sector trade agreement should be signed between the Ministry of the Environment and the car trade represented by the of Car Importers, Bilimportørenes Landsforening (BLF).

55. The Directive requires the introduction of a manufacturer liability for vehicles. This liability is expected to be introduced via a regulation that gives everyone such as manufacturers or importers of vehicles an obligation to ensure the collection and scrapping of an equal number or share of vehicles. As well as the primary environmental motive the directive also stresses the functionality of the internal market and the maintenance of effective competition.

56. The Norwegian Competition Authority was critical about the Ministry of the Environment signing an exclusive agreement with BLF. Such an agreement could lead to only one recycling company being formed. This company would, under the proposed arrangement, probably only be subjected to limited competition. The regulation and practice must be done in such a way that every importer, which

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means both importers associated with the car manufacturers' distribution system and independent importers, is treated equally and can thus compete on the most equal terms possible.

57. An optimum "environmental charge" must in the opinion of the Norwegian Competition Authority reflect the actual costs associated with collecting and scrapping each vehicle. The costs of collecting and scrapping different models of car will probably vary. From our experience we also believe vehicles will have different lifetimes. If one is going to impose an optimum environmental charge, account must be taken of vehicles' varying characteristics.

58. The Norwegian Competition Authority couldn't see that the inquiry contained good arguments for abolishing the current arrangement of having a wrecking deposit even if manufacturer responsibility were introduced. Meanwhile, other ways than those suggested in the hearing of organising the collection and scrapping of vehicles should be considered. The Authority recommended that no agreement be signed between the Ministry of the Environment and BLF.

3.1.2 *Follow-up of VAT reform*

59. The new VAT Act made a series of new service areas liable for VAT. Some services were exempted from this obligation and foodstuffs were VAT rated at 12 per cent instead of 24 per cent. A submission regarding the follow-up of the reform from the Norwegian Competition Authority stressed that the VAT Act ought to have far fewer exemptions than was the case.

60. In general the Norwegian Competition Authority submitted that a single tax system with a single rate and as few exemptions as possible was technically the easiest to administer and enforce. It is also far easier for business people to relate to a single system. If as many sectors of the economy as possible are liable to the tax, this reduces the risk of distortions in the competition between sectors or companies resulting from different treatment by the tax system. The best idea is to have one system in which public business activities are also included.

61. The Norwegian Competition Authority highlighted the cleaning sector as an example of the distortion that arises between private and public sectors due to the tax system. A public institution that wishes to purchase cleaning services from a private player would have to pay VAT on the service. Should the institution perform the service itself instead, VAT is not added. This may lead to public institutions choosing to perform the service themselves to a greater extent instead of purchasing the service in the market, even when external production would be the cheapest for society.

62. Bookkeeping and legal services were also listed as examples of areas where problems arising from the distortion of competition may become appreciable in the future. Institutions may lose the incentive to make activities in new areas the subject of competition. The Norwegian Competition Authority believes that a solution to this type of problem would be to compensate public institutions for VAT if the institution chooses to purchase a private player's services. Such compensation exists in a number of areas today, but the arrangement should be as widespread as possible.

63. Voluntary and ideology based organisations want to have their own VAT exemption for membership fees that act as compensation for goods and services that form part of the organisation or association's ideological activities. If what is meant by "voluntary" and "ideology" is not clarified more precisely, the VAT exemption could in principle influence the form of organisation that an organisation chooses to take. Besides this, the Norwegian Competition Authority believes that this exemption basically provides the conditions for considerable new competition distortion problems arising.

64. The Norwegian Competition Authority also made a submission concerning the differentiation of the tax rate resulting from the reduced tax for foodstuffs, and about the distortions to the competition between house building co-operatives and other managers.

3.1.3 *Food fish concessions for salmon*

65. According to the Breeding Act, special permission is required from the fisheries authorities to operate a fish breeding business. The last national licensing round for new concessions to operate food fish breeding businesses concentrating on salmon and trout took place in 1985. The Ministry of Fisheries planned to award 38 new concessions along the coast from Finnmark to Rogaland during 2001.

66. In its submission the Norwegian Competition Authority focused on the effects on competition of the provisions that regulate the awarding of concessions. Among other things, the Authority believed a more detailed explanation needed to be provided as to how that specific number of concessions was arrived at. Market demand was not being met and the limited number of concessions available hindered the setting up of new businesses.

67. The Ministry of Fisheries wanted to give priority to concession applications from businesses with local connections and businesses that were integrated or planned to integrate with other trade and industry in the area. The Norwegian Competition Authority pointed out that these types of criteria would limit the range of companies that could participate in the application round. This meant that companies without local connections that might be in a position to administer the concession more effectively would be locked out of the market to the advantage of local businesses, which might perhaps administer the concession less effectively. Furthermore, EFTA's surveillance authority (ESA) believed that the provisions regarding local connections contravened the EEA Agreement.

68. The Norwegian Competition Authority supported the suggestion of introducing a consideration for individual concessions, but not the method chosen to fix the amount of the consideration. The concessions ought to be awarded through auctions where the amount paid is determined by bidding rounds, with no upper bid ceiling. By awarding concessions to the highest bidder, one would make the allocation of concessions efficient.

3.1.4 *Concessions for establishing pharmacies*

69. The Act Concerning the Operation of Pharmacies, Etc. authorises the authorities to introduce an upper ceiling to limit the number of new pharmacies being established in key parts of the country. The number of new concessions was for the first half of 2001 set at 30. Early in the year, the Norwegian Competition Authority criticised draft regulations that would shape the concession scheme and which, among other things, suggested the drawing of lots should more applications be made in regulated areas than the total fixed number of new concessions that were available.

70. The new Act Concerning the Operation of Pharmacies, Etc. attempted to make it easier to establish yourself in the pharmacy market by winding up the scheme whereby the need for a new pharmacy had to be officially tested.

71. The Norwegian Competition Authority's main objection to the draft regulations was that a concession ceiling would in itself limit competition because it would hinder new players entering the market, especially in areas with a ceiling scheme. The draft regulations allowed concession ceilings to apply to both larger and smaller cities, and their surrounding communities. This meant that in practice the

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ceilings would limit the opportunities for new, competing pharmacies to establish themselves in those parts of the country where the bulk of the population lives.

3.1.5 Express coach market

72. The Norwegian Competition Authority believes that the regulation of express coach traffic with respect to the railways should be abolished and that companies should be free to work all routes in Norway.

73. Express coach routes are coach routes that cross one or more county limits. Companies that want to operate such routes must have a concession from the Ministry of Transport and Communications or regional Authorities. Apart from the diesel duty compensation scheme, no public subsidies are available to express coach companies.

74. In principle, the concessions do not provide exclusive rights. However, there are few examples where more than one company has been granted a concession when “the demand is met” by the first company. In this sense, the awarding of concessions is demand tested. A company that has previously received a concession will as a rule be in a strong position when concessions are awarded anew at a later date.

75. One main aim of the concession scheme is to protect the railways from damaging competition because running railways involves large, fixed costs and they receive considerable public subsidies – listed in the budget as the public purchase of transport services – to ensure that running costs balance. Once society and taxpayers have actually paid these costs, it is rational to try and ensure that the available capacity can be used and that ticket earnings cover as large a part of the costs as possible.

76. The transport authorities are therefore reluctant to award concessions for coach companies in parallel with the railways. For this reason little competition has been allowed between coaches and trains or between the individual coach companies.

77. If some form or other of licence granting is going to continue to be practised for coach operation, the Norwegian Competition Authority recommends that testing whether there is a need for a service when a licence is granted ceases. Instead conditions can be stipulated so that in the customers’ interests reasonable departure intervals with respect to railway timetables can be ensured.

4. International co-operation

78. In 2001, international competition cases were followed up via the EEA Agreement, and through the OECD, WTO, ICN, Nordic network, and bilateral co-operation. Emphasis was placed on the prioritisation of international cases during the reorganisation of the Norwegian Competition Authority. Work on EEA cases receives a high priority at the Norwegian Competition Authority. The Authority believes that it is important to use the rights it has under the EEA Agreement to promote its views regarding important cases and legislation being dealt with in the EEA.

4.1 ECA

79. In 2001, European Competition Authorities (ECA) established a new network that linked competition directors in the EEA. Director generals in the ECA meet twice a year. Working groups are set

up to discuss matters of mutual interest. This year, one working group was set up to discuss leniency and one to consider multinational mergers.

4.2 *OECD*

80. The NCA participates in the work of the OECD regarding development of competition policy. In 2001, the Norwegian Government took an initiative regarding an in-depth review of Norway. The examination of Norway will take place on the OECD meetings in 2003.

4.3 *Nordic network*

81. The Nordic network involves co-operation between the competition authorities of Denmark, Finland, Iceland, Norway, and Sweden. The Faeroe Islands and Greenland have established their own competition authorities and also participate in the network.

82. Denmark, Iceland and Norway signed an agreement on 16th March 2001 that provides competition authorities opportunities to collaborate on specific cases. As a result of this agreement, competition authorities can exchange confidential information about cases of mutual interest. The agreement was signed due to the need for increased co-operation, especially with regard to combating international cartels and improved co-operation on merger cases.

83. Within the framework of the Nordic network, there are, at any given time, working groups considering matters of common interest. The most important working group established in 2001 was the one that was set up to discuss competition in air transport.

4.4 *International Competition Network (ICN)*

84. The ICN is being established following an initiative from the USA and the EU. The idea is to provide national and multilateral competition authorities with a specialised but informal network for developing regular contacts and dealing with practical competition related questions. The Norwegian Competition Authority is part of this network.

4.5 *Technical assistance*

85. As a result of an agreement with the South African Competition Authority concerning technical assistance, the Norwegian Competition Authority had two experts undergoing training for six weeks during spring 2001. The costs were funded by The Norwegian Agency for Development Co-operation (NORAD).

5. Resources of the competition authority

5.1 *Reorganisation and new structure*

86. Up until 2001, the Norwegian Competition Authority was organised into a central unit based in Oslo and a regional apparatus with a total of eight offices, of which seven were outside Oslo. In 2001, the Norwegian parliament (Stortinget) accepted the Government's proposed reorganisation of the Authority. The main elements of this process have been the closing of the regional offices, the reorganisation of the

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central unit, and the transfer of tasks to the Office of the Consumer Ombudsman.

87. The reasons for closing down the regional offices included, among others, tighter budgetary constraints and the need for concentration of resources in order to meet the challenges faced by competition authorities. Following the reorganisation, the Norwegian Competition Authority will have a workforce of about 100 man-years per annum.

88. The regional offices formally closed their doors on 1st April 2001 and were organised into a “reorganisation unit” which was active until mid-December. The Norwegian Competition Authority’s new organisational structure was established on 1st June 2001.

	Person-years	Budget expenditure¹	Budget expenditure in USD²
2001	120	66 700	8 893
2000	135	71 701	9 560
1999	146	65 624	8 750
1998	139	64 412	8 588
1997	132	63 082	8 411
1996	129	56 395	7 519

Employees	Number of persons by the end of 2001
Economists	44
Lawyers	25
Other professionals	24
Support staff	20
All staff combined:	113

6. Summaries of new reports and studies on competition policy issues

89. Information and public relations are important instruments in the Authority’s endeavour to enhance competition and economic efficiency. Some of the Authority’s most important target groups are trade and industry, consumers, and corporate lawyers. During the course of the year, five new issues appeared in the series “Articles from the Norwegian Competition Authority”.

6.1 No. 1/2001: “Sanctions – are they worth the price?”

90. In the summer of 2001, the Authority appointed a committee which compiled the report “Sanctions – are they worth the price?”, about sanctions pursuant to the Competition Act. The committee looked at how the current Competition Act could be enforced in a more efficient manner and also proposed

¹ In 1000 NOK (Norwegian “kroner”)

² In 1000 USD. Exchange rate 27.09.02 (1 USD = 7,50 NOK ≈ 1Euro)

reforms that could strengthen the Act's deterrent effects. The report discusses cartels and economic efficiency, optimal sanctions, benefit calculations profits, civil legal sanctions, leniency, and institutional matters. The committee consisted of five academicians and was chaired by Professor Christian Riis.

6.2 No. 2/2001: "General conditions and competitiveness in the agricultural sector"

91. This report provides an overview of the economic constraints affecting the agricultural industry. Starting with the goals of agricultural policy, this overview gives the Authority a strong base to evaluate appropriate measures to promote increased economic efficiency and lower prices. As a result, the report helps the Authority to plan future work on questions pertaining to competition associated with agriculture and the processing of agricultural products.

6.3 No. 3/2001: "The effects on price and competition of VAT reform"

92. Pursuant to the Competition Act, section 2-2 d), the Norwegian Competition Authority is required to call attention to any anti-competitive effects of public initiatives. Often, the Authority will raise issues at hearings. The Norwegian Competition Authority made two statements, on 6th March 2000 and 3rd May 2001, during a hearing about the new value added tax (VAT) system, which essentially means that services in general are no longer exempt from VAT, while comestibles are subject to a reduced output tax rate.

6.4 No. 4/2001: "Comparative price survey, October 2001. Individual supermarkets chains in Oslo."

93. The results of the third price survey, conducted by National Institute for Consumer Research (SIFO) in co-operation with the Norwegian Competition Authority, were collated in a single report and presented in October 2001. The purpose of the report was to uncover differences in price between the supermarket chains. The Authority wanted to contribute to making competition more effective, both by directly influencing the chains and by stimulating consumers' general level of price awareness, by making it easier to gain an overall overview of the grocery market. The survey showed that there were considerable differences between supermarkets in the general level of prices. The differences in price for some products were very large. Lower VAT seems to have been reflected in prices, though it is difficult to say whether this trend will last over the long-term.

6.5 No. 5/2001: "Price dispersion – petrol and vehicle diesel"

94. The Norwegian Competition Authority conducted a nationwide survey of petrol and vehicle diesel prices and also surveyed the issues that affect freight subsidy schemes. This report was commissioned by the Ministry of Labour and Government Administration. The survey was based on prices recorded once a month between 15th November 2000 and 15th July 2001. Prices were obtained from Statoil Detaljhandel, Norske Shell, Hydro Texaco, Conoco Jet and Rema Bensin. The Authority also tried to obtain a general overview of geographical price variations. The 'freight equalisation scheme' was evaluated and the Authority studied the effects of the reductions in petrol and vehicle diesel duties on 1st January 2001 and 1st July 2001. We found that, among other things, there were often greater price differences within counties than between counties. This suggests, for example, that it is possible to buy cheaper fuel within Finnmark than in certain petrol stations in Oslo. The 'freight equalisation scheme' is not a particularly accurate mean of price equalisation.