

NORWAY*(1997)***Executive Summary**

1. No major amendments have been made to the competition legislation in 1997.
2. The Norwegian Competition Authority (the NCA) intervened against three mergers and examined several other merger cases. Interventions have also taken place against restraints on competition in various markets. The Authority has expressed its opinion on several restraining effects of public measures.
3. The NCA has given priorities the last years to deregulated markets. The main target has been to initiate competition in these markets and to ensure that competition policy views are taken into account when sector specific authorities regulate monopolies. In 1997 the NCA has in particular dealt with pharmaceuticals and telecommunications.

I. Changes to competition laws and policies

4. No major amendments have been made to the competition legislation in 1997, but a few new regulations have been issued.
5. The NCA has adopted a new regulation on price information for services that entered into force on 1 January 1998. The obligation to provide consumers with price information for services was first introduced in the 1994 Competition Act. It supplemented the corresponding obligation to inform consumers on prices of goods.
6. According to the new regulation, prices for services shall be available either in the form of a take-away price list or notification on price placards. Price information is supposed to provide a reliable basis for making price comparisons and decisions to buy. If it is impossible to indicate exact prices per unit or intervals of prices, the consumer shall be supplied with information about the method of price calculation. For some services the seller is obliged to specify a detailed invoice.
7. From 1 January 1998 a new regulation obliges suppliers of electric power to notify consumer prices to the NCA. The Authority will weekly publish updated price lists on its homepage on Internet. The price lists contain information on each supplier's prices to internal customers, i.e. customers within the supplier's local electricity grid, as well as conditions of sales for external customers.
8. A public price list will improve households' ability to compare the price of their current supplier, which normally is the local one, with the prices of alternative suppliers. This will ease households' considerations on the profitability of switching to another supplier and might thus strengthen competition in the retail market for electric power to consumers.

NORWAY

II. Enforcement of competition laws and policies

9. The NCA has established a forum called the Director General's Contact Forum. 22 persons have been invited to participate. The persons have backgrounds from several industries, consumer interests, the main organisations of the labour market, academics, lawyers, and local authorities. The aim of the forum is to improve the knowledge and understanding of competition policy as well as to improve the Competition Authority's understanding of the effects of its enforcement activities. The forum shall not discuss specific decisions and shall in no way influence the Authority's integrity and position as an independent authority. Two meetings have been arranged in 1997.

1. *Infringements of the prohibitions*

Illegally influencing prices in craft guilds

10. In 1994 a local business association of artisans was reported to the police for having infringed the prohibition of price fixing by recommending per hour prices for their members. The association was in 1996 found guilty in the court of first instance but was acquitted by an appeal court. The case was appealed to the Supreme Court, which in May 1997 annulled the verdict. After a renewed trial in high court the local craft guild was fined NOK 10 000 in January 1998.

Dale Garn og Trikotasje

11. Dale Garn og Trikotasje AS, a producer of wool and woollen goods, was reported to the Norwegian Authority for Investigation and Prosecution of Economic and Environmental Crime (the IPEEC) in January 1997 for infringements of the prohibition of resale price maintenance. In December 1997 the IPEEC issued fines of NOK 800 000 for the company, and from NOK 35 000 to 70 000 for three higher employees in the company. The fines have so far not been accepted.

The Stavanger Jeweller Guild

12. The jeweller guild in Stavanger and some guild members were reported to the police in September 1995 for recommending their members to use certain common calculation systems and for having sought to influence a jeweller to charge higher prices. The guild was fined NOK 30 000 and each reported member NOK 10 000 for infringing the prohibition of price collusion. The fines were accepted in February 1997.

Producers of plastic pipes

13. Four producers/importers of plastic pipes and several persons in these undertakings were in June 1993 reported to the police for infringing the prohibition of price collusion. Fines of totally NOK 15.1 million were issued in 1994 but not accepted. The case went to trial in June 1997 and the court found none of the accused guilty. The verdict was not appealed. The case involved problems such as scarce written evidence, and the withdrawal of previous explanations. The court criticised certain investigation methods of the NCA.

The Norwegian Association of Removal Companies

14. The board of the Norwegian Association of Removal Companies suggested minimum prices for removal tasks, which intended to be used by their 24 members. This case and similar local cases in Oslo and Bergen were closed after meetings with the Association, which was instructed not to break the prohibitions of the Competition Act. The case also disclosed episodes of fictitious bids when a removal company was asked to arrange governmentally financed removal tasks.

Period Penalty Payment

15. For the first time ever the NCA has decided to impose period penalty payment in order to ensure adherence to decisions made pursuant to the 1994 Competition Act. The period penalty payment was levied on a dominant Norwegian producer of flour (Felleskjøpet Østlandet) in order to ensure its adherence to the NCA's intervention against their loyalty rebates.

Alternative means of sanctions

16. The NCA has made a report on the various means of sanctions against illegal behaviour provided for in the 1994 Competition Act. The report especially deals with period penalty payment and relinquishment of gain as alternatives to reporting the infringements to the police. The report will be followed up in 1998.

2. Merger control

17. The Competition Authority has registered a total of 1035 mergers or acquisitions in 1997. 41 mergers have been investigated. In the following three cases the Competition Authority decided to intervene.

TrioVing/Møller Undall

18. In July 1996 Trio Ving AS – an importer of locks – bought all the shares of the holding company Newman Tonks Norway AS, whose main assets were the distribution companies in the Møller Undall Group. Trio Ving has a dominant position in many segments of the Norwegian market for locks. The market is characterised by structural barriers to entry, such as brand names, customer loyalty, national standards, official authorisation schemes, and a need for close relationships with distributors and customers. Through the acquisition of Møller Undall Trio Ving gained control over the most important channel of distribution and eliminated a potential competitor to Trio Ving. The NCA evaluated acquisition specific efficiency gains that were found insignificant and far from sufficient to outweigh the social efficiency loss of reduced competition.

19. The NCA thus concluded that the acquisition would strengthen a significant restriction of competition. However, the integration process seemed to have progressed so far that it would be costly and almost impossible to restore the company to its previous substance and strength.

20. Under considerable doubt, the NCA in June 1997 decided not to order Trio Ving to re-establish the acquired companies. Instead, measures to reduce some of the anticompetitive effects were imposed. Among other things, an exclusive distribution right was annulled. Gresvig/Sport Holding

NORWAY

21. The Competition Authority has intervened against the Gresvig ASA's acquisition of Sport Holding AS. Sport Holding holds the right to use the "Intersport" trademark in Norway, Denmark, and Poland.

22. Prior to the acquisition, the two companies controlled the respective central organisations of the retail chains "G-Sport" and "Intersport", which are the largest chains in Norway in the market for sports equipment. The retailers in both "G-Sport" and "Intersport" are mainly franchisees. The franchise agreements give the franchisers control over large parts of retailers' purchases, assortment and partly the determination of retail prices. In the Norwegian retail market for sports accessories the two chains had a market share of 30 percent and 15 percent, respectively. The market shares were considerably higher in many regional markets.

23. The resulting increase in concentration, especially in some local and regional markets, combined with the franchiser's control over the retailers, would lead to a significant restriction of competition in the retail market for sports equipment. The Competition Authority decided to approve of the merger conditional on several measures to counter Gresvig's control over the retailers, inter alia a reduction of the percentage that franchisees were required to buy from the franchiser. Gresvig was instructed to notify any amendments of existing agreements and new contracts with the retailers. The decision further entails measures restricting Gresvig's opportunities to obtain ownership control of an even greater share of the independent retailers.

Norsk Kjøttssamvirke/Yggeseth

24. Norsk Kjøttssamvirke, the Norwegian sales co-operative of meat producers, acquired Yggeseth, a sales and meat cutting company.

25. In the market for deliveries of cut meat to the food processing industry, the market shares of Norsk Kjøtt and Yggeseth were 52 percent and 8 percent respectively. In addition to many small (family) companies there was only one other competitor of considerable size. Import competition was also weak. The merger increased concentration of a market characterised by barriers to entry and a significant restriction of competition. The parties argued that the acquisition would lead to considerable cost reductions. The NCA, however, found these cost reductions to be achievable through other means and that they mainly were private and not social efficiency gains.

26. The NCA ordered Norsk Kjøttssamvirke to sell Yggeseth. The decision was appealed to the Ministry, which repealed the intervention. The Ministry agreed with the competition analysis of the NCA but emphasised that an intervention would contradict official district policy, as there was substantial risk of a shut down of the local cutting mill in Rendalen if the merger was not accepted or another company bought Yggeseth.

3. *Interventions against restraints on competition*

27. The Competition Authority may intervene against business terms, agreements and actions if the Authority finds that they have the purpose or effect of restricting competition contrary to the objective of the Competition Act. During 1997 the NCA has investigated 79 cases, in which it intervened in 11 cases. In seven cases the arrangements were changed by the parties themselves at the instigation of the NCA. In the following a summary of some of the cases relating to interventions against restraints on competition will be given.

Refusal to supply electric water heaters

28. The NCA ordered Oso Hotwater (OH) to supply electric water heaters to Oslo Rørhandel (OR) on similar terms as to other wholesalers.

29. OH is a Norwegian producer of electric water heaters for use in private houses and holiday homes. Contrary to OH's competitors the company distributes to wholesalers all over Norway. OH has a dominant position on the Norwegian market. OR is a wholesaler of sanitary equipment. The company mainly supplies a retail chain of merchant builders'.

30. OR's alternatives to buy from other suppliers were considered to be limited. The NCA also emphasised that selling water heaters through the retail chain might have positive effects on competition in connected markets. The decision might expose plumbers to competition on the products they install. It might also strengthen the position of the newly established OR in the highly concentrated wholesale market for sanitary equipment. The decision was appealed to the Ministry, which confirmed the decision.

Record lists

31. A retailer of low-priced records complained to the NCA about the anticompetitive effects of a system for registering "official" sales volumes. The list of sales was compiled by the Association of Record Wholesalers – an association of international record producers. The list was issued weekly in the largest Norwegian newspaper. In order to have the total number of sales registered on the list, the wholesale price and the average retail price had to exceed certain threshold levels. If these criteria were not met, the registered volume of sale was reduced.

32. The NCA considered an entry in the list to strengthen sales volume as it would contribute to considerable exposure in the newspaper, in the national broadcasting as well as in retail outlets. The system might have an anticompetitive effect, as wholesalers would try to prevent retailers from stipulating prices below the thresholds. The Association was thus warned that the NCA intended to intervene against the system.

33. The Association accepted to fully remove the criteria of minimum average outlet prices and to reduce the required minimum wholesale price. Retailer discounts were not influenced or limited by the requirement on suppliers' price lists. The case never led to an actual intervention but the Association was instructed to notify any changes in the rules of making the list.

Dominant airlines and exclusive agreements with company customers

34. The NCA has investigated agreements which the dominant airlines in Norway, SAS and Braathens SAFE, have with company customers, among them several governmental bodies. In the agreements there are clauses that in practice imply that each airline gets a single supplier position. These company customers were obliged to use the contracting airline even if other airlines offered better conditions. Thus, the clauses were considered to have severe lock-in effects and made it difficult for incumbent airlines to compete and new airlines to enter the market.

35. The NCA prohibited SAS and Braathens SAFE to have or to enter into new contracts in which their airlines are given priority over airlines that offer better conditions.

NORWAY

36. The NCA considered the lock-in effects of the clauses to be especially important after the opening of the new Oslo airport in October 1998. Thus, the date when the decision entered into force had to be set early enough to facilitate new entry and at the same time late enough to allow the airlines sufficient time to adjust. The decision entered into force on 2 April 1998.

Second hand sales of flats in housing co-operatives - foreclosure of external agents

37. The NCA has dealt with four cases concerning the relationship between central house-building co-operatives and local housing co-operatives. The central house building co-operatives, in addition to their main task of initiating house building projects, perform commercial activities related to second hand sales and capital management.

38. When a flat is put up for sale, residents in adjoining housing co-operatives have the right of first priority. Usually the central house-building co-operatives have been authorised to administer these rights. This has been done in a very long-winded manner, especially when external estate agents have been engaged to take care of the sale. The procedures and the rules of the co-operatives have in practise foreclosed external estate agents from this particular market.

39. Two regional house-building co-operatives were instructed by the NCA to change their procedures and rules in order to end the discrimination between external and internal estate agents. Both decisions were appealed to the Ministry who confirmed the interventions. The Ministry also addressed the Ministry of Local Government and Regional Development stating that legislation should be amended in order to remove these restrictions on competition.

40. In a similar case a third nation-wide house-building co-operative amended their rules and procedures for second hand sales in accordance with the comments from the NCA before it came to an actual intervention. This house-building co-operative also amended the rules that prevented the local housing co-operatives from using external financial sources to handle their assets.

4. Exemptions from the prohibitions

41. The NCA may grant exemption from the prohibitions. In 1997 the Authority dealt with 128 exemption cases. The weekly man-hour spent on each case may differ substantially. The average was two weeks per case.

42. Exemptions were granted in 101 cases for all or parts of the restrictive arrangements concerned. In several cases conditions were imposed to limit harmful effects of the collaboration. About one half of the cases concerned collaboration on prices within small chains of retailers. In most of these cases exemptions were granted.

43. 70 of the cases concerned were exemptions from the prohibition of horizontal price collaboration, whereas 12 dealt with vertical price fixing. 44 exemptions were granted from the prohibition of market sharing agreements and the number of exemptions from the prohibition against tender collaboration was seven.

44. In the Competition Act there are four criteria for granting an exemption, several criteria may be combined. Exemption may be granted when the restrictive practices lead to increased competition (46

decisions in 1997), promote efficiency (17), have little competitive significance (32), or there are special grounds for doing so (10).

45. The request for an exemption was refused in its entirety in seven cases. Some of these cases involved industry-wide collaborations. Other cases involved a large public purchaser.

46. Nine out of the decisions were appealed. The NCA amended its decision in two cases, while seven cases were referred to the Ministry. In the following a summary of some of the cases related to exemptions are presented.

Ethical guidelines in projects and crafts

47. In 1996 the NCA evaluated the ethical guidelines of the Norwegian Association for Building Projects. The guidelines contained a provision on how to behave when colleagues handed over a job. This provision was found to be an infringement of the prohibition of market sharing. An application for exemption was refused. This decision also had consequences for the guidelines of sub groups in the Association.

Collection and recycling of waste

48. The main policy of the Norwegian environmental authorities concerning waste management has been to make voluntary agreements with the associations of the industry responsible of marketing the virgin products. During the past years several companies handling different waste materials have been established to take care of the obligations in the voluntary agreements and regulations. During 1997 the NCA has handled several cases related to the collection and recycling of waste.

49. An exemption was granted to suppliers of tyres allowing them to co-operate on a voluntary tax, which was earmarked to finance an arrangement for nation-wide collection and recycling of used tyres. Also, a market sharing agreement between the established joint venture and a group of several special waste-collecting companies was exempted. The exemptions were granted on special grounds, as the co-operation seemed to be a result of official environmental policy.

The Collective Film Distribution Agreement

50. The prices of film distribution to Norwegian cinemas are regulated through the Collective Film Distribution Agreement. There are three parties to the agreement, an association of 13 private distribution agencies, a distribution agency owned by 40 municipalities and an association of 180 local cinemas. The agreement is constructed in a way that makes it applicable also to third parties.

51. The price for renting a film is set as a percentage share of a cinema's ticket income. The rates vary between four categories according to cinema attendance. They do not vary according to costs. The NCA found that the system of fixing rates independent of costs might entail too low distribution of low-cost films, and that high-cost films might not be supplied. The agreement was considered to enhance entry barriers and protect incumbents against potential competitors, both at the distribution level and between cinemas.

52. An application for renewed exemption was dismissed by the NCA. The Authority found that the alleged cost reductions did not outweigh the severe restrictions on competition by the all-inclusive

NORWAY

industry arrangement. The NCA admitted there could be positive effects for smaller cinemas, but stated that the Authority is generally reluctant to exempt on other grounds than social efficiency.

53. The decision was appealed to the Ministry of Planning and Co-operation, granted an exemption throughout the agreement's duration till 1 January 1999. The Ministry found that the agreement helps securing the supply of a wide range of quality films to a reasonable price, including supplies to small cinemas in the districts. It was also emphasised that it may be difficult to predict the consequences of a potential breakdown of an agreement that has regulated the industry for more than 40 years.

5. Price surveillance

Lifting of price regulations

54. The NCA has lifted the regulation of Norcem AS' maximum prices for cement. Norcem's position as the single supplier of cement on the Norwegian market has the last years been challenged by a new competitor, which imports cement from the UK.

55. The regulation of maximum prices has been replaced by a system of notification. Both companies, now active in the market, are required to report average prices and volumes for various products in different geographic areas twice a year.

III. The role of competition authorities in the formulation and implementation of other policies

1. The relationship between the Competition Authority and industry specific public authorities

56. The *Norwegian Health Authority* and the Competition Authority has held a meeting to discuss the relations between each other. The two authorities informed each other on their activities and discussed whether a follow-up and co-operation was warranted on specific areas.

57. In 1997 an agreement was concluded between the *Banking, Insurance and Securities Commission* and the Competition Authority on responsibilities and mutual information exchange in connection with overlapping competence.

58. The Ministry of Labour and Government Administration has not yet approved the proposed co-operation agreement between the *Norwegian Water Resources and Energy Administration* and the Competition Authority. The co-operation has been followed up both through mutual exchange of information and by mutual competence building.

59. The NCA has also arranged similar meetings with the Norwegian Telecommunications Authority, the Postal and Telecommunication Authority/the Ministry of Communication, and the Civil Aviation Administration.

2. *The pharmaceutical sector*

60. The pharmaceutical sector is very complex as it is characterised by market failure as well as regulation failure. The NCA has commented on a report concerning distribution of pharmaceuticals. In the following a summary of the NCA's comments to the report is presented.

61. The NCA admits there is a need for regulating retail prices as long as no other outlets than pharmacies are allowed to sell pharmaceuticals. The NCA will not, however, support a price regulation at the wholesale level

62. The NCA is of the opinion that a system of free entry combined with a qualification based approval system will lead to more efficient retail distribution than today. A removal of the current "need-to-meet-demand-test" for opening a pharmacy outlet would lead to lower consumer prices, increased availability and service. State subsidies, tenders or public operation of pharmacies might be considered if this leads to insufficient entry in scarcely populated areas. Provided there is a system of qualification approval, it should be left to the owner to decide on how to organise the activity, e.g. as a personal or limited company, etc.

63. The committee wants to prohibit producers, wholesalers and those who prescribe pharmaceuticals from having direct or indirect ownership in pharmacy outlets. The NCA is generally sceptical towards ownership limitation as it may restrain competition and reduce entry. Moreover, the NCA emphasises that the Competition Act contains sufficiently appropriate measures towards vertical integration to counter potential negative effects on competition.

64. The NCA supports the proposal of letting the pharmacies substitute freely between parallel and direct import of pharmaceuticals, unless the doctor actively has indicated otherwise on the prescription. If this arrangement does not prove to be sufficient to facilitate parallel import, one should consider instructing doctors and pharmacies to prescribe the cheapest pharmaceutical. One should also consider altering pharmacies' incentives, giving them parts of the gains on parallel import. The NCA also supports the proposal that doctors should actively indicate if generic pharmaceutical substitutes are not to be made up by the pharmacy outlet.

65. According to the NCA, non-prescription drugs should be permitted to be distributed through other channels than pharmacy outlets, as this would increase competition, stimulate efficiency in pharmacies and increase the availability for consumers. It should also be considered to allow mail order distribution.

66. The NCA supports the committee's proposal to encourage a more permanent organisation of hospitals' collaboration on purchases of pharmaceuticals, as long as the arrangement does not infringe the competition rules of the EEA-agreement.

67. The NCA finds the requirements of full assortment and delivery deadlines to impose considerable barriers to entry in the wholesale market. It is questionable whether the requirements really are necessary. The NCA has previously promoted alternative measures that, at a lower social cost, would meet the health political considerations. In the opinion of the NCA, the duty to deliver should be transferred from wholesalers to producers. This would increase wholesalers' negotiation strength versus the international producers, and might also lead to a more efficient distribution of pharmaceuticals.

68. The committee can not find any health political reasons for the Norwegian State to be the owner of the biggest whole-seller, Norsk Medisinaldepot. In addition, the NCA finds it troublesome that the State

NORWAY

has a double role as owner and regulator and is therefore positive towards selling the state-owned shares to private investors.

69. The Norwegian State pays about NOK 3,6 billion per year to the pharmaceutical industry through the reimbursement system for certain pharmaceuticals. The NCA favours that pharmaceuticals for the same diagnosis should be grouped and given the same reimbursement price. A system of therapeutic reference prices would reinforce competition between producers. An alternative measure would be to tender the reimbursement-pharmaceuticals internationally.

70. Shortly after the report, a working group with representatives from different ministries was established to follow up the proposals advanced. The group immediately started to work on a revision of the law on pharmacies. The NCA co-operates closely with the representative from the Ministry of Labour and Government Administration.

3. *Amendments to the law on telecommunications*

71. The Competition Authority has commented on the proposals for amendments to the law on telecommunication and draft regulations on public telecommunication networks and service provisions (the Law). The background for the Ministry of Transport's proposed amendments is that the remaining monopoly areas in the telecommunication market shall be removed from 1 January 1998.

72. The objective of the Law is to achieve economic efficiency by means of workable competition. The Law outlines a regulatory regime in which the Norwegian Post and Telecommunication Authority (the PT) and the Competition Authority to a large extent have overlapping competence. The PT is ascribed the surveillance authority with respect to concessions, new regulations and notifications.

73. The Law establishes a new set of regulations for all operators in the telecommunication market. The aim of the regulations is to ensure cost-based prices offered on objective, transparent and non-discriminatory terms. Furthermore, market dominant suppliers are obliged to offer inter-connect with other suppliers of public telecommunication networks and services.

74. The Competition Act applies to all trades. Under the Act the NCA has the authority to intervene. Among other things, the NCA may intervene against anticompetitive mergers, business terms, agreements and actions.

75. In the opinion of the NCA there should be a more precise division between the regulatory activities of the two authorities. Overlapping competence partly raises problems with respect to co-ordination of activities, partly with respect to the interpretation of the notions "economic efficiency" and "workable competition". Furthermore, operators may have to relate to two different authorities in a particular case. The NCA therefore considers that it should be responsible for economic regulations of the market, while the PT should take care of technical regulations.

76. With respect to the contents of the Law the NCA finds among other things that it does not clarify matters of vital importance for competition in the telecommunication market. In particular, the law obliges market dominant suppliers to accept any reasonable demand for access to its networks. It is, however, not defined what is meant by reasonable. The lack of a precise definition may force new suppliers to invest irreversibly in their own networks. Furthermore, given the use of regulatory principles such as "cost orientation" and "non-discrimination", care should be taken that the regulations do not reduce suppliers' incentives to cut costs or inhibit socially profitable investments.

IV. Resources of the Competition Authority

77. The 1997 annual budget was NOK 60.04 million (ECU 7.5 million).
78. In 1997 the Competition Authority employed 134 person-years:
- | | |
|---------------------------|-----|
| Economists | 45 |
| Lawyers | 18 |
| Other professionals | 41 |
| Support staff | 30 |
| Total person years | 134 |
79. In 1997 the person years were utilised on the following tasks:
- | | |
|--|-----|
| a) Enforcement against anticompetitive practices | 57 |
| b) Merger review and enforcement | 9 |
| c) Advocacy efforts | 19 |
| Sum a) + b) + c) | 85 |
| d) Price information/consumer protection | 34 |
| e) Work for other authorities..... | 15 |
| Sum a) + b) + c) + d) + e) | 134 |

V. New reports and studies on competition policy issues

80. The NCA has prepared several reports on competition policy issues, among them:
- report on prices, margins and the conditions for competition in the market for pharmaceuticals;
 - the relevant markets in the finance and insurance sector;
 - effects of parallel imports;
 - alternative means of sanctions.