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DAF/COMP/AR(2010)3



Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

29-Sep-2010

English - Or. English

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

DAF/COMP/AR(2010)3
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN NORWAY

-- 2009 --

This report is submitted by Norway to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 27-28 October 2010.

JT03289061

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Executive summary

1. In the first part of 2009, the Norwegian Competition Authority took a closer look at the challenges the competition authorities would be facing as a result of the financial crisis. This work was done in cooperation with the competition authorities in the other Nordic countries. The conclusion was clear: our competition legislation was well equipped to meet the financial crisis and its effects, and more importantly, competition policy should remain in place.

2. The Competition Authority experienced the financial crisis in several different ways. First of all, there was a substantial reduction in the number of notifications of company mergers: down from 440 in 2008 to 293 in 2009. The implementation ban was challenged on several occasions, even though the Competition Act provides for dispensation if circumstances so dictate.

3. To counteract the crisis, the government introduced various fiscal stimuli measures. In order to get the best possible value from each krone in the package, it was important to have fully functional competition in respect of public tenders. Thus, another area where the crisis could have potential consequences for enforcement was illegal cooperation. Consequently, the battle against cartels and illegal cooperation was a high priority during 2009. This initiative has continued with full force in 2010.

4. Our experience in applying the current Competition Act has shown us that we still face challenges in achieving a convincing deterrent effect. One mean to achieve this is to harmonize fine levels and practices with those of the EU. The authority has also worked to improve the leniency programme so that its purpose satisfactory. Our proposals for improvement have, however, not won support within the Higher Prosecuting Authority.

5. Notwithstanding, even though the current framework is not entirely satisfactory, the authority has in the first nine months of 2010 conducted 3 dawnraids in 17 different locations. In the same period, 5 leniency applications have been received, of which three is granted. These ongoing cases draw heavily on the authority's resources.

6. Taking a more long term perspective, the OECD's "Declaration on Green Growth", from the Council Meeting at Ministerial level in June 2009, state that economic recovery and environmentally and socially sustainable economic growth are key challenges that all countries are facing today.¹

7. As mentioned initially, the joint Nordic report for 2009 focused on the importance of competition policy in speeding up economic recovery from the crisis. In their semi-annual meeting in the Faroe Islands in March 2010, the directors general of the Nordic competition authorities discussed some of the challenges the competition authorities face in respect of the shift towards green growth.

8. The directors emphasized the importance of competition, cost efficiency and coherent policies in a successful shift towards green growth. A crucial element in the shift towards a green growth economy is to remove or reform policies that undermine the transition. The Directors underlined that environmental policies must be assessed *inter alia* with regard to barriers to entry and policies that limit opportunities for effective competition.

¹ OECD "Declaration on Green Growth", adopted at the Council Meeting at Ministerial level on 25 June 2009, C/MIN(2009)5/ADD1/FINAL.

9. In order to establish a common background for addressing future challenges in this context, it was agreed to produce a joint Nordic report which should focus on the relationship between environmental and competition policy. The report will be presented in the fall of 2010.

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

1.1 Summary of new legal provisions of competition law and related legislation

1.1.1 Regulations relating to the appointment of administrators

10. In cases where the Competition Authority sets conditions before a merger may be implemented, the Authority may appoint an administrator to ensure that the parties adhere to the conditions. New regulations containing more detailed rules about this procedure were adopted by the Ministry of Government Administration and Reform on 15 September 2008 and came into force on 1 January 2009. These regulations contain clear guidelines for the appointment of such administrators and their obligations, along with the parties' obligations towards an administrator in connection with the fulfillment of his duties. The regulations make the situation more predictable for both administrators and the parties.

1.1.2 Exemption from the implementation prohibition

11. In connection with the automatic suspension to all notifiable concentrations, effective from 1 July 2008, the regulations laid down by the Competition Authority on 9 March 2009 contain rules for exemption from the implementation prohibition for the acquisition of certain types of securities. These regulations enable partial implementation of public acquisition offers, or a series of securities transactions which take place in a regulated market, to take place before the deadline has elapsed. Such exemption is conditional on the transaction being reported to the Competition Authority immediately and also on the voting rights of the securities not being exercised. These regulations came into force on 1 April 2009.

1.1.3 Svalbard subject to the Competition Act

12. From 1 July 2009 the Competition Act applies on Svalbard. This decision was passed by the King in Council on 17 October 2008. The Act applies without any special adjustments being made, although an exemption has been made in respect of the provisions relating to compliance with the EEA Agreement since it does not apply to Svalbard.

1.1.4 Regulation of online residential property advertisements

13. In response to a proposal made by the Competition Authority, the Ministry of Government Administration and Reform laid down new regulations on 9 September 2009 which require Internet portals to provide access to anyone wishing to advertise residential properties under non-discriminatory conditions. Internet portals such as Finn.no had previously allowed only professionals to advertise private residences. These new provisions mean that private individuals can now place residential property advertisements, thus allowing them to choose whether or not they wish to carry out more of the sales work themselves. These regulations came into force on 1 January 2010.

1.2 Other relevant measures, including new guidelines

1.2.1 Guidelines for preparing economic analyses

14. In connection with dealing with cases subject to the Competition Act, the Competition Authority received a large and increasing number of economic analyses based on empirical studies and economic modelling. In order to facilitate placing weight on such analyses in its assessments, the Authority has

drawn up Guidelines for Preparing Economic Analyses presented to the Authority. These Guidelines are purely for guidance purposes and have no binding effect on the Competition Authority's administrative procedures.

1.2.2 Best Practices on the Conduct of Merger Control Proceedings

15. The Competition Authority has drawn up Best Practices for the Conduct of Merger Control Proceedings, which have also been translated into English. The purpose of these Best Practices is to offer a better understanding of the way in which the Competition Authority conducts merger control proceedings pursuant to Chapter 4 of the Competition Act. They are intended to help the parties involved obtain the best possible knowledge about the process in advance, and to ensure the best possible cooperation during the administrative proceedings in order to achieve a focussed and efficient process. They are based on the Authority's experience in conducting merger control proceedings.

1.3 Government proposals for new legislation

1.3.1 Enhanced enforcement of the Competition Act

16. On 12 December 2008 the Ministry of Government Administration and Reform submitted a proposal for consultation about a legislative amendment designed to boost enforcement of the Competition Act. In order to reinforce the leniency programme, the Ministry proposed extending the scope of leniency to also include penal provisions in Section 30 of the Competition Act. These proposals have, however, not won support within the Higher Prosecuting Authority. The Competition Authority has consequently decided to not pursue the matter further, at this point. The proposals will eventually be reconsidered under a broader review of the competition law.

17. Proposals were also presented to restrict the right to inspect documents prepared in connection with leniency applications, so that anyone applying for leniency would be no more exposed to civil action for damages than someone who does not apply for leniency. The Ministry has also presented proposals for regulations designed to strengthen the protection of anonymity for companies or private individuals who tip off the Competition Authority about breaches of the Competition Act. This draft legislative amendment is largely based on input provided by the Competition Authority to the Department of Government Administration and Reform. The outcome of this process has yet to be concluded.

2. Enforcement of competition laws and policies

18. The primary responsibilities of the NCA are as follows:

- Monitor adherence by businesses and industry to the Competition Act's prohibitions against competition-restricting cooperation and abuse of a dominant market position.
- Ensure that mergers, acquisitions and other forms of concentration do not significantly restrict competition.
- Implement measures to increase the transparency of markets.
- Enforce Articles 53 and 54 of the EEA Agreement.
- Identify laws, rules and governmental measures that have undesirable effects on competition.

19. The NCA can fine businesses for breaches of provisions of the Competition Act. Norway's current Competition Act came into force on 1 May 2004.

2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions

20. For several years the Competition Authority has placed top priority on the detection of cartels, and it has spent this time developing expertise and providing trade and industry with information about the law, prohibition regulations and leniency. This initiative will be continued, particularly in conjunction with the work being carried out on combating illegal collusive tendering.

21. However, in many ways 2009 was not been a very typical year. The financial crisis affected economic activity, and this can be seen in the Competition Authority's statistics.

22. In its work, the Authority had a strong commitment to ensure that the Government's package of measures could have the intended impact without competition crime reducing its impact. The results of the investigative projects into the building and construction trades have provided the basis for new projects in 2010.

23. The authority has in the first nine months of 2010 conducted 3 dawnraids in 17 different locations. In the same period, 5 leniency applications have been received, of which three is granted. These ongoing cases draw heavily on the authority's resources. These ongoing cases draw heavily on the authority's resources.

2.1.1 An overview of some significant cases

24. In 2009 the Competition Authority secured evidence related to two different cases in seven different locations against a total of five companies. Nine formal statements were taken in connection with the investigations of these two cases.

25. Case statistics for investigative work for the period 2006-2009 is presented below:

Investigative work				
Activities	2006	2007	2008	2009
Securing evidence § 25 – cases/locations	2/4	2/6	3/5	2/7
Depositions (formal statements) § 24 – cases/locations	2/7	3/12	4/12	2/9
Assistant to the ESA/European Commission – cases/locations	1/2	0	2/3	0

26. Presented below is a brief summary of some significant decisions in the sphere of anticompetitive behavior in 2009. We have also included significant cases where the major part of the investigation took place in 2009 but the decisions were issued in 2010.

2.1.2 Description of significant cases

- **Case against Tine.** The action brought by Tine against the State through the Competition Authority, because Tine would not accept a fine of NOK 45 million, was heard by the Oslo District Court during the autumn of 2008. In a judgement handed down on 25 March 2009 the Court overturned the decision made by the Competition Authority. The Authority appealed against this judgement to the Borgarting Court of Appeal. The appeal comprised both an assessment of the evidence and interpretation of the law. In September 2010, the Civil Court of Appeal ruled that Tine violated the Competition Act when, in autumn 2004, the company negotiated an agreement to become the sole supplier to Rema 1000. The Court concluded that Tine has to pay an administrative fine of NOK 30 million.²
- **Monitoring dairies.** Monitoring of gross margins in the dairy sector was continued in 2009. The purpose of this activity is to check whether Tine's gross margins are low enough to constitute a margin squeeze that would be damaging to competition and in breach of Section 11 of the Competition Act.
- **Internet portals open for private residences from 1 January.** Internet portals such as Finn.no have previously allowed only professionals to advertise private residences. In response to a proposal made by the Competition Authority, new regulations were adopted in September 2009 which require Internet portals to provide access to anyone wishing to advertise residential properties under non-discriminatory conditions. These regulations came into force on 1 January 2010.

With effect from the beginning of the year, Internet portals are thus required to allow access to anyone wishing to advertise residential properties on the Internet, i.e. private individuals can now advertise properties on the residential pages of such portals.

It has always been legal to sell properties without using an estate agent, but vendors have been obliged to use an estate agent or lawyer when wishing to place an advertisement on an Internet portal. The new regulations will enable people to have a real choice about whether or not they wish to undertake some of the sales work independently. The new rules will result in increased competition for estate agents and lawyers and a greater degree of freedom for consumers. This could lead to lower costs when selling residential properties, something which will benefit both purchasers and vendors.

- **Compulsory licence rejected.** The Competition Authority rejected a request from Pharmaq AS for a compulsory licence. A compulsory licence is a licence issued by a public authority permitting the exploitation of patented inventions without the consent of the patent holder. Pharmaq had asked the Competition Authority to grant the company a licence to exploit a patent held by Intervet International B.V. Intervet owns patents for the production and sale of i.a. a vaccine for Pancreas Disease (PD) which affects farmed fish. Pharmaq argued that they had developed a better vaccine than the existing one and that Intervet had not managed to supply adequate quantities of vaccine to cover the demand of the market.

Section 47 of the Norwegian Patent Act allows the authorities to grant compulsory licences if such is in the interests of the public. The current regulations are enforced by the Competition Authority. A compulsory licence represents a dramatic encroachment of the rights of the patent holder, and intervention in respect of such is governed by strict terms and conditions. After undertaking an overall assessment the Competition Authority decided that the conditions for granting a compulsory licence were not fulfilled in this case. Among other things the Authority

² Note that it is undecided at the time of writing whether the decision will be appealed by any of the parties.

found no documentary evidence to suggest that the supply problems and quality differences were as extensive as claimed by Pharmaq. An appeal against the Competition Authority's decision has been submitted to the Norwegian Ministry of Government Administration and Reform.

- **Breaches of the prohibition regulations.** During the course of 2009 the Authority made decisions in the following cases relating to breaches of the prohibition regulations:
 - Taxi Midt-Norge AS was fined NOK 300,000 for breaching the law in its bid for the transport of patients in Nord-Trøndelag. This case concerned illegal collusive tendering among the company's 270 licence holders. In the same decision the Authority ordered the cessation of these illegal activities. Afterwards, the Competition Authority wrote a letter to the health authority about how they should formulate calls for tender to ensure real competition for contracts.
 - Grunnarbeid AS and Gran & Ekran A/S, two contractors in Trøndelag, were fined NOK 5 million and NOK 2 million respectively for engaging in illegal collusion in individual bids they had submitted for the maintenance of seven bridges in Steinkjer. The Competition Authority believes that the two companies were not actually competing and that the two bids were submitted in order to increase the price and create the impression of competition. The two companies have denied this and have sued the Competition Authority. The case appeared before the courts in April 2010, and was decided in favor of the Authority. The case has been appealed.
 - Norges Turbileierforbund (the National Coach Owners' Association) was fined NOK 400,000 for breaching the law by encouraging its members to increase their prices. Several articles in the Association's membership magazine supported price increases and among other things made suggestions about the extent of such increases and how it could be accomplished by using a price calculator that was made available to its members. In its decision the Authority ordered the cessation of these illegal activities. The Association has rejected this and has sued the Competition Authority. The case appeared before the courts in February 2010, and was decided in favor of the Authority. The case has been appealed.

2.2 *Mergers and acquisitions*

27. In 2009, the NCA received a total of 294 standard notifications of concentrations. The number of standard notifications in 2009 represents a 33 percent decrease from the level in 2008.

Requests for complete notifications were issued in 8 cases (15 in 2008)
The Authority intervened in one planned concentration.

2.2.1 *Summary of significant cases*

28. The table below presents an overview of the Authority's activities in the area of merger control in the period 2006-2009.

	2006	2007	2008	2009
Notifications of mergers and acquisitions	872	561	444	294
Interventions against mergers and acquisitions	2	5	4	1

2.2.2 *Summary of significant cases*

- **Intervention against health foods acquisition.** The Competition Authority decided in 2009 to intervene against the merger between Validus AS and Sunkost ASA. The Authority concluded that this merger would result in a substantial restriction of competition in the market for health foods sold at specialist health foods stores and that it would severely restrict competition in the wholesale market for sales of dietary supplements/natural cosmetics/hygiene products to such stores. Reduced competition in these markets would have resulted in higher prices, a limited range of goods and reduced internal efficiency to the detriment of consumers. An appeal against this decision was submitted to the Ministry of Government Administration and Reform, but the appeal was subsequently withdrawn. Consequently the decision stands.
- **Laboratory analyses.** Eurofins Danmark AS was allowed to purchase Lantmännen Analycen AB conditional on its selling its subsidiary, LabNett AS, to an external, independent party. In 2009 the Authority appointed an administrator to conduct the sale of LabNet AS so that Eurofins was able to comply with this condition.
- **Prohibition of implementation.** July 2008 saw the introduction of a new type of offence that will be sanctioned by a fine: automatic prohibition of implementation, making it illegal to implement a merger that is subject to compulsory notification pursuant to the Competition Act until the Competition Authority has processed the case.

The first cases to be heard after this rule was introduced in 2009 are the following:

- A fine of NOK 150,000 for breaching the law was imposed on RS Platou A/S for failing to wait for the legally required waiting period to elapse when the company purchased a controlling stake in Glitnir Securities A/S.
- A fine of NOK 100,000 for breaching the law was imposed on Advokatfirmaet Steenstrup Stordrange A/S (a law firm) for failing to wait when it merged with Advokatfirmaet DLA Piper Bergen DA (a law firm).

2.3 *The Norwegian Complaints Board for Public Procurement (KOFA)*

29. The Norwegian Complaints Board for Public Procurement's (KOFA) handles complaints of violation of the procurement rules. The board's secretariat is placed, administratively, under the Norwegian Competition Authority (NCA). A substantial number of the cases involve non-compliance with the procurement rules. Cases where public authorities have failed to announce publicly public procurements also feature prominently on the secretariat's activities. The board's secretariat and the NCA work closely together to combat the challenges posed by violations of the competition Act and the public procurement regulations.

30. In 2009, KOFA received a total number of 276 complaints. In the same period 230 cases were decided; 114 were deemed violations of the public procurement regulations, 50 were rejected while 36 were deemed non-violations. In the remaining cases, the complaints were withdrawn before the initiation of in-depth investigations. Case statistics for the period 2003-2009 is presented below.

Case statistics Public Procurement Complaints Board (KOFA) 2003–2009							
	2003	2004	2005	2006	2007	2008	2009
Complaints	268	287	287	158	155	224	276
Decided	182	248	260	176	217	171	230
Rejected	76	104	134	50	48	43	50
Violations	51	80	71	79	118	61	114
Non-violations	24	10	27	29	36	38	36

31. Illegal direct procurement is procurement that is not advertised in line with the public procurement regulations. Illegal direct procurement is regarded as being the most serious breach of the regulations because such procurement completely evades the requirement for competition, which is the main purpose of the regulations.

32. In 2009 the Complaints Board received 43 complaints relating to illegal direct procurement, and KOFA issued 7 fines for illegal direct procurement. By the end of 2009, the Complaints Board has thus issued a total of 11 fines since it acquired the right to issue fines on 1 January 2007.

33. The large number of cases received related to illegal direct procurement indicates that knowledge that this is a serious violation, subject to a significant fine, has increased during the past few years. The Complaints Board does not have the authority to investigate cases involving suspicion that an awarding body may have neglected to advertise a tender. The Complaint Board is therefore dependent on suppliers, organizations, politicians and others submitting complaints to KOFA.

34. On quite a number of occasions, state or municipal procurement officers have detected illegal cooperation between potential suppliers. The NCA has recently issued a check-list to aid procurement officers prevent or detect violations of the Competition Act. The check-list is basically a simplified version of the "Guidelines for fighting bid rigging in public procurement" recently published by the OECD.

35. For the financial year 2009, KOFA had a budget allocation of approximately 9 million NOK (1.44 million US dollars). In the same period, total revenue from imposed penalties amounted to approximately 4.9 million NOK (approximately 0.77 million US Dollars).

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

3.1 Cooperating bodies

36. The NCA holds regular meetings for information and contact with cooperating bodies such as the Financial Supervisory Authority of Norway, the Norwegian Post and Telecommunications Authority, the Norwegian Water and Resources and Energy Directorate, the Agency for Public Management and eGovernment.

37. The Competition Authority has cooperation agreements with the Consumer Ombudsman and the Norwegian Consumer Council. In addition to engaging in regular cooperation on specific cases, the three organizations hold regular cooperation meetings twice a year. A regular meeting has also been established for discussing the groceries markets among the Consumer Council, the Consumer Ombudsman, the National Institute for Consumer Research and the Competition Authority.

3.2 Expressing competition concerns related to existing or proposed regulations

38. The Competition Authority shall supervise competition in the various markets, among other things by implementing measures to promote market transparency and by calling attention to any restrictive effects on competition of public measures.

39. The Norwegian Competition Authority is often consulted as a hearing body by other public authorities. The NCA also submits, on its own accord, its opinion on competition related issues to other public authorities. By acting as a hearing body, the Authority ensures that the competition perspective is given due consideration when new policies are being adopted. The Norwegian Competition Authority made 39 hearing submissions of significance in 2009.

40. Where appropriate, the Competition Authority can submit proposals aimed at furthering competition and facilitating market access by new competitors. If the Competition Authority so requires, a response from the public body responsible for the measure must be made within the deadline specified by the Competition Authority. The response must include inter alia a discussion of how the competition concerns will be dealt with. This was done on three occasions in 2009. The authority i) advised the County Governor of Hedmark about taking competition into consideration in connection with the assessment of dispensation from the Shopping Centre Regulations, ii) submitted comments to the Ministry of Health and Care Services about the scheme for public operating subsidies and refunds for physiotherapists, and iii) submitted comments to the Municipality of Oslo about the competition-restricting effects of a decision adopted by the City Council in respect of the taxi industry.

3.3 Increased transparency and awareness of consumers

41. The Authority is also instrumental in the adoption of measures to increase competitiveness in markets. Notable among these were measures initiated to stimulate the demand side of markets. This was done mainly through the adoption of measures which increased the awareness of consumers.

- **List of energy prices.** The Competition Authority maintains an up-to-date list of energy prices. However, the technical solution is old and it is limited in terms of functionality and reliability. In addition, it is not sufficiently easy to use. The revised 2009 national budget provides no funds to develop a new solution as had been proposed. The reason given was that a central decision was required about how responsibility for consumer portals of this type should be assigned.

During the autumn of 2009 the Competition Authority initiated limited work designed to make a number of functional changes and obtain better user access within the solution. Towards the end of 2009 funds were promised by the Ministry of Government Administration and Reform (FAD) in order to continue developing the energy price database. This will simplify maintenance, make it easier for users and provide more accurate price comparisons.

- **Double calculation fare system for taxi transport.** In 2009 the Competition Authority drew up and circulated consultative documents containing new draft regulations relating to fare calculations and maximum prices for taxi transport. The regulations are expected to be put into force in 2011.

4. Resources of the competition authorities

4.1 Resources overall (current numbers and change over previous year):

4.1.1 Annual budget

42. In 2009, the NCA had a budget of 83.7³ million Norwegian kroner (approximately 13.3 million US dollars). This represents approximately a 6 percent decrease in nominal terms to the corresponding figure in 2008.

4.1.2 Number of employees

43. As at 31st December 2009, the NCA had a total of 104 employees, including those on leave. During the last few years the Competition Authority has established stable operations in Bergen. It has

³ This figure excludes the budget for the Norwegian Complaints Board for Public Procurement (KOFA). As noted earlier on, KOFA had a budget of approximately 9 million Norwegian kroner in 2009.

succeeded in retaining skilled employees and has through extensive training built up a staff with sound knowledge of competition economics and competition law. The average age is 37.

44. Following several years with a high turnover of staff, the Competition Authority has established a more stable operation. As in past years, most employees have worked for the Competition Authority for only a relatively short period of time. However, there has been a considerable improvement as regards length of service in 2009 as compared with 2008 and 2007. In 2009 56 % of the Authority's employees had been employed between two and five years; 32 % had served for less than two years; and 12 % had served for over 5 years.

45. In 2007 turnover stood at 20 %, compared with 15 % in 2008 and 11 % in 2009. The Competition Authority's employees are very attractive on the labour market and it is difficult to keep them in the long term. This implies that no further reductions in turnover can be expected in the future.

46. The table below gives an overview of the distribution of employees according to gender and position as at 31st December 2009.

Position	Total	Women	Men
Managers	18	5 (28 %)	13 (72 %)
Senior advisers	36	12 (33 %)	24 (67 %)
Advisers	34	19 (56 %)	15 (44 %)
Higher executive officers	10	7 (70 %)	3 (30 %)
Executive officers	4	4 (100 %)	0 (0 %)
Trainees	2	1 (50 %)	1 (50 %)
Total	104	48 (46 %)	56 (54 %)

47. The Competition Authority has many employees with higher education. 76% are qualified as economists, business economists or legal practitioners. Five employees hold doctorates. The Authority's Chief Economist is a Professor of Economics.

4.1.3 Human resources (person-years) applied to:

48. **Enforcement, merger, and advocacy.** The business of the NCA is organized by sector. In other words, most professional staff would work with mergers, anti-cartel and market dominance-related issues.

49. The authority started registering resource use on different activities in January 2009. Although there might be some minor defects in the figures in the initial phase of the time registration system, we estimate, however, that in 2009, mergers stood for about 21 per cent of the use of human resources, anti-cartel and dominance 35 per cent while advocacy stood for the 11 per cent of the resources use. The remaining part can be attributed to EEA and other international issues (9 per cent), as well as work related to new law and regulations, analyses and the notification obligation (25 per cent).

5. Summaries of or references to new reports and studies on competition policy issues

5.1 "Competition policy and green growth – Interactions and challenges"

50. Green growth strategy is a policy focus that involves emphasizing environmentally sustainable economic progress. Together with innovation, going green can be a long-term driver of economic growth, through, for example, investments in renewable energy and improved efficiency in the use of energy and materials.

51. It is repeatedly stated in i.a. OECD documents relating to the work on developing a green growth strategy, that a successful shift to green growth can only be achieved through cost efficient and coherent policies.

52. The 2010 joint report from the Nordic competition authorities focused on the relationship between environmental and competition policy, and presents an overview of environmentally related cases which the Nordic competition authorities have faced in the last few years and what can be learnt from them in relation to future enforcement, advocacy focus and the development of a green growth strategy

53. An important point in the report is that competition policy has an important role to play in the development and implementation of a green growth strategy, and in facilitating a successful shift to green growth.

5.2 "Competition policy and financial crisis - Lessons learned and the way forward"

54. The 2009 joint report from the Nordic competition authorities focused on challenges imposed by the financial crises on competition policy. The report, which was made public at the annual meeting of the Nordic competition authorities in Reykjavik, Iceland in September, first presents a review of how the crisis has affected the economies of the Nordic countries and the measures imposed to counteract the negative effects in each country. The report presents a historical perspective on previous crises, and briefly reviews the lessons learned from a competition point of view. The report also reviews empirical evidence on the connection between competition, innovation and economic growth. Before concluding with specific recommendations on competition policy in times of crisis, the report covers how competition policy has been challenged so far in the Nordic countries during the crisis. In this regard, a presentation of the Icelandic experience is particularly relevant and important. The report represents a joint and clear statement by the Nordic competition authorities in support of continued strong enforcement during the global economic crisis.

5.3 "Free software – Some fundamental observations"

55. Based on the priorities stipulated by the Ministry of Government Administration and Reform, the Competition Authority has been working for a long time on analyzing the competitive situation in the software markets. The Authority has previously drawn up a report entitled "Competition and Innovation in the Software Markets." In this report the role of the public authorities in promoting innovation and competition in the software markets was discussed only briefly. For this reason Professor Nils-Henrik Mørch von der Fehr draw up another report in 2009 on behalf of the Competition Authority entitled "Free Software – Some Fundamental Observations." This report highlights the role of the public authorities as potential prime movers of competition in the software markets.

56. The Competition Authority believes that software markets are characterized i.a. as global and dynamic. In many cases there are network effects on the demand side, while at the same time the supply side experiences increasing returns to scale. In such markets a form of innovation competition often occurs, where the winner may be left with a high market share until the next innovation is made. A company

which has a monopoly in a product market for a period will have incentives to prolong the duration of its monopoly and extend it into new markets. The competition authorities have the important task of clarifying whether or not such behavior violates the Competition Act.

57. The global nature of software markets means that the authorities in a small country like Norway have limited opportunities for influencing competition in these markets. This is pointed out both in von der Fehr's report and in a report issued by the Danish Competition Authority. The imposition of separate measures in Norway will therefore, in most cases, have only a limited effect.

58. As regards free software - software with an open source code - there may be variations in the extent to which market failure exists. On the one hand, a person who develops free software will not share in the benefit others get when they obtain the use of such software, so the incentives to produce it will be too weak. On the other hand, free software can constitute part of a business strategy in which software is given away so that a profit can be made from consultancy services related to its use. If public authorities provide support for the development of free software, the existence of a market failure should be clarified.

59. Any Norwegian policy giving preference to free software can provide the parties involved with a foothold which could form the basis of a wider breakthrough in the market. This may be particularly important in areas that are dominated by proprietary software and which have high barriers to entry. However, the fact that the software markets are international will often limit the effects of Norway being, at best, a pioneering country. Von der Fehr points out that such measures would be risky, partly because it is unclear if the quality of free software is sufficiently high. The Competition Authority shares von der Fehr's view on this point and wishes to point out that if the public authorities are to do anything, then measures should be targeted directly at any market failures.

60. An important condition for ensuring competition in software markets is interoperability between different types of software. This ensures that the products from different suppliers will work together. It is thus important to prevent software manufacturers from designing software in such a way that software interoperability and functionality are achieved only with software from the same supplier in adjacent markets. The use of open standards helps to promote such interoperability.

61. As regards open document standards in particular, efficiency benefits can be achieved if the users of such services are not locked into one special, proprietary type of software. Von der Fehr has advised the Norwegian authorities to be open to both the ODF and OOXML standards in order to avoid ending up in a situation where they might have "backed the wrong horse" because they did not know which would become the dominant standard. Generally speaking, when choosing one or more standards one should compare the benefits of the network effects of having one standard against the benefits of standards competition and innovation that are available with several standards. Based on the analyses in von der Fehr's report and the report issued by the Danish Competition Authority, the Competition Authority finds no basis for currently recommending one document standard for the type of documents for which the ODF and OOXML standards are intended.

62. The software markets are dynamic and international. It is therefore important to monitor these markets, especially in view of the fact that the parties with periodical monopolies are abusing their dominant positions in order to prolong their monopolies and extend them to new markets. It will also be important for the competition authorities to keep up-to-date with developments in these international markets. Apart from this there is nothing contained in von der Fehr's report, the Danish Competition Authority's report or the Authority's own assessment to indicate that there is currently a need to impose special measures in these markets, especially since special measures in Norway would have little impact on the global software markets.