

Unclassified

DAF/COMP/AR(2013)46

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

09-Oct-2013

English - Or. English

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

DAF/COMP/AR(2013)46
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN NORWAY

-- 2012 --

This report is submitted by Norway to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 30-31 October 2013.

JT03345976

Complete document available on OLIS in its original format

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

English - Or. English

TABLE OF CONTENTS

Executive summary	3
1. Changes to competition laws and policies, proposed or adopted.....	4
1.1 Summary of new legal provisions of competition law and related legislation	4
1.2 Other relevant measures, including new guidelines.....	4
1.3 Government proposals for new legislation	5
2. Enforcement of competition laws and policies	6
2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions.....	7
2.2 Mergers and acquisitions	9
2.3 The Norwegian Complaints Board for Public Procurement (KOFA).....	11
3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies.....	12
3.1 Cooperating bodies	12
3.2 International cooperation	12
3.3 Expressing competition concerns related to existing or proposed regulations	12
3.4 Visibility, transparency and awareness of consumers.....	13
4. Resources of the competition authorities	14
4.1 Resources overall (current numbers and change over previous year):.....	14
5. Summaries of or references to new reports and studies on competition policy issues.....	15
5.1 Effects of the loyalty programs on competition in Norwegian air traffic	15
5.2 Competition in the fuel market	15
5.3 Digital markets.....	16

Executive summary

1. The Norwegian NCA's main task is to enforce the Competition Act, prevent and deter competition crime and affect market structure in a direction which promotes healthy competition. Uncovering illegal cartels and bid-rigging is the key priority for the Norwegian Competition Authority (NCA, henceforth).

2. An extensive cooperation between the companies Veidekke and NCC was among the major cases dealt with by the NCA in 2012. The cooperation concerned bids for asphalt paving contracts in the counties of North and South Trøndelag in central Norway, and took place in the period 2005 to 2008. In March 2013 the NCA issued a final decision. Veidekke received a fine of NOK 220 million (EUR 29.5 million) and NCC a fine of NOK 140 million (EUR 18.8 million). Veidekke applied for leniency (amnesty) by providing the NCA with information that led to the case. Thus, the company was exempted from paying the fine of NOK 220 million.

3. Another significant case, which was concluded by a judgment in the Supreme Court in 2012, concerned two contractors, Grunnarbeid AS and Gran & Ekran AS, which in 2009 were fined the amounts of NOK 5 million (approximately EUR 0.6 million) and NOK 2 million (approximately EUR 0.2 million), respectively, for collusion in connection with bid rigging in bridge construction work in Nord Trøndelag, the area north of Trondheim. The companies appealed, alleging that the decision was invalid. The case was first heard in the district court, then the Court of Appeal, and then ended up in the Supreme Court. In its judgment in October 2012, the Supreme Court fully supported the NCA. The Supreme Court stated that there had been a willful breach of the Competition Act, and that Gran & Ekran therefore must pay the original fine of NOK 2 million.¹

4. It can be added that the NCA in 2012 intensified its work on abuse of dominance cases, and an internal task force was established in this regard.

5. Related to merger control, the NCA received notification of 411 concentrations in 2012. Full notification was requested in 13 cases, and the NCA intervened in four concentrations.

6. In February 2012, a proposal for a revised competition law was delivered to the Ministry of Government Administration, Reform and Church Affairs. In its report, the commission that has been working on a new competition law proposed several significant changes that would increase the efficiency of the law and the enforcement. In May 2013 the Storting (Norwegian Parliament) adopted the first major revision of the 2004 Competition Act. The revised Competition Act includes many revisions to the procedural provisions, especially regarding merger control and significantly higher notification threshold levels. There are also changes to the procedures relating to leniency, personal liability, dawn raids, binding commitments and the NCA's ability to order "cease and desist" orders against alleged infringements of competition law. The behavioral prohibitions are unchanged since these already were harmonized with EU and EEA competition law. Entry into force will be January 1st, 2014.

¹ Grunnarbeid AS went bankrupt before the judgment.

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 A more efficient competition law

7. In February 2012, a proposal for a revised competition law was delivered to the Ministry of Government Administration, Reform and Church Affairs. The commission preparing the report proposed several changes to make the competition law more effective. On May 28th, 2013 the Storting (Norwegian Parliament) adopted the first major revision of the 2004 Competition Act, based on the Ministry's assessment and a public hearing round on the proposals. The revised Competition Act includes many revisions to the procedural provisions, especially regarding merger control. In addition to significantly higher notification thresholds, there are also changes to the procedures relating to leniency, personal liability, dawn raids and the NCA's ability to order "cease and desist" orders and binding commitments against alleged infringements of competition law. The behavioral prohibitions are unchanged since these already were harmonized with EU and EEA competition law. Entry into force will be on January 1st, 2014. More details will be provided below.

1.1.2 New Fining Regulations for Antitrust Infringements

8. New regulations on the calculation of fines for breaches of the anti-trust provisions of the Competition Act (the Regulation) entered into force on January 1st, 2012. The regulations bring the principles for calculation of fines in line with the methodology used by the EFTA Surveillance Authority and the European Commission. The NCA may impose fines of up to 10 percent of the undertaking's turnover. When calculating a fine, the NCA may under the new rules set the basic amount of the fine up to 30 percent of the value of sales in the market concerned, depending on the gravity of the infringement, and multiply that figure by the number of years of the infringement. In particularly severe cases, the fine can be increased by 15 to 25 percent of the value of sales in the market concerned. Another new feature in the amended regulations is that the NCA is required to state which factors have been decisive in determining the final amount of the fine. This implies a more transparent and predictable framework regarding the consequences of antitrust infringements.

1.2 Other relevant measures, including new guidelines

1.2.1 Airline loyalty program

9. In Norway, regulations have been in place since 2007 which prohibits bonus programs in domestic aviation. The regulations were instrumental in paving the way for Norwegian Air Shuttle ASA and competition in the domestic market.

10. The major distinction in the Norwegian aviation market is between those airline passengers who face a monopoly and those who face competition.

11. In a report presented to the Ministry in the beginning of 2012, the NCA recommended to continue the ban on frequent-flyer or loyalty programs for most domestic airline routes in Norway, but proposed to repeal the ban on the three largest city pairs, Oslo-Bergen, Oslo-Trondheim and Oslo-Stavanger, the background being that competition were sufficiently robust in these three busiest domestic air routes serving well over a million passengers annually. A full repeal of the ban on frequent flyer programs could lead to a significantly diminished schedule of flights and more monopoly routes.

12. The recommendation from the NCA was based on a competition economics analysis of the effects of the loyalty programs on competition in Norwegian air traffic. Based on this assessment, the

Authority also examined whether there is legal authority to maintain a prohibition within the framework of the Competition Act Section 14.

13. The Government shared the concern expressed by the NCA for competition in the aviation industry, particularly in rural areas, but considered that with two major players in the Norwegian market, the competition was much more robust than when regulation was introduced in 2007. Moreover, in a Reasoned opinion by the Efta Surveillance Authority issued in March 2013, it was concluded that the Norwegian regulation which bans air carriers from offering frequent flyer points on domestic air routes is in breach of the EEA agreement. Consequently, the Government decided to remove the prohibition of bonus programs entirely in the summer of 2013. However, the Government clearly stated that the use of legal measures should be considered again if market developments warrant this. Moreover, the NCA was asked to monitor the development in this market closely, and to demand information and use audit tools to ensure that airlines are not tempted to anticompetitive use of bonus programs.

1.3 Government proposals for new legislation

1.3.1 Revised Competition Act

14. On 28 May 2013 the Storting (Norwegian Parliament) enacted the first major revision of the 2004 Competition Act. The most important changes concern the merger control provisions. The notification procedure has been significantly altered and the thresholds have increased significantly in the new Act.

15. Under the current Norwegian competition law regime, concentrations are subject to notification if the undertakings concerned have a combined annual turnover in Norway exceeding NOK 50 million (approximately EUR 6.5 million). However, if only one of the undertakings concerned has an annual turnover in Norway exceeding NOK 20 million (approximately EUR 2.5 million), notification is not required.

16. These low thresholds force both market operators and the NCA to spend significant time and resources on a number of concentrations that do not have significant anti-competitive effects on the relevant markets. As mergers and acquisitions are prohibited from being implemented before they have been notified to and reviewed by the NCA, any concentration subject to notification has to be put on hold until the NCA finishes its proceedings. The regulations have, on the other hand, given the NCA an overview over transactions which potentially could harm competition in local markets.

17. Under the revised Act, the parties will now have to notify transactions where the parties concerned achieve a combined annual turnover above NOK 1 billion (approximately EUR 130 million) and where at least two of the parties concerned achieve annual turnover above NOK 100 million (approximately EUR 13 million) in Norway. It is, however, important to note that the NCA retains its competence to order notifications for transactions below the thresholds for a period of up to three months after a change of control or final agreement has been concluded, a competence which will allow the NCA to continue devoting close attention to competition in local markets.

18. To increase the efficiency of the procedure and time consumed to deal with the merger, the revised procedure places great emphasis on the parties' duty to propose remedies. Under the revised Act, it will be specifically stated that the NCA no longer is competent to suggest or impose remedial actions at its own initiative. Consequently, the procedure underlines the parties' ability to propose remedies as early as possible during the notification period. The main principle is that the NCA must clear a transaction as soon as possible on the conditions suggested by the parties or present a formal notice of intervention. To ease

the burden of the parties further, the NCA will be able to reduce the amount of information required by individual decision, in the same way as Short Form CO's under EU Merger Control rules.

19. In addition to freeing up the NCA's resources and contribute to increased control of those concentrations that actually may impede effective competition on the relevant markets, above or below the thresholds, undertakings in Norway can - under the new legislation - relate to notification rules more consistent with the rules in Norway's neighboring countries and the rest of Europe.

20. The Competition Act will extend the scope of the NCA's competence to issue "cease and desist" orders against behavior deemed to infringe Section 10 and 11 (Equivalent to Articles 101 and 102 TFEU) and where the behavior is believed to create irreparable damage to competition to also include violations of restrictions imposed by regulations. In addition, the NCA will also have the possibility to impose binding decisions regarding commitments suggested by the parties where the parties under investigation have proposed such commitments in order to stop further proceedings.

21. The revisions relating to the leniency framework introduce a marker system intended to closely mirror the European Commission's practice. The marker constitutes the only material change to the leniency conditions as previously defined under the Leniency Regulation, and which now is included in the Act.

22. The rules governing investigations of infringements of the Competition Act have also been further clarified after the revisions. One of the changes relate to the procedure for seizing evidence. Under the current regime the NCA may seize original documents and allow the undertaking to make copies. From now on the NCA shall only seize originals if the original contains material of evidentiary value and otherwise make copies of the material if further investigations are necessary.

23. As a final note it can be mentioned that the NCA with the revisions attains the legal competence to request the prosecution of individuals.

2. Enforcement of competition laws and policies

24. Norway's current Competition Act came into force on May 1st, 2004. 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 concentrations do not significantly restrict competition.
- Implement measures to increase the transparency of markets.
- Enforce Articles 53 and 54 of the EEA Agreement.
- Call attention to any restrictive effects on competition of public measures and, where appropriate, submit proposals aimed at furthering competition and facilitating market access by new competitors.

25. The NCA can impose administrative fines on businesses for breaches of provisions of the Competition Act.

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

26. For several years the NCA has had the detection of cartels and combatting illegal collusive tendering as its top priority. One key element in the strategy to achieve this goal has been to develop expertise and a high professional standard. Another key element is to be visible in society. This implies ia. to be clearly and strategically visible in the Media, provide trade and industry with information about the law in general and the prohibition regulations as well as the leniency program in particular.

27. The NCA has in 2012 also continued its collaboration with the major organizations for employers to increase knowledge about the Competition Act and how to effectively comply with the Competition Act.

28. Detection and deterrence of cartels will remain a top priority for the NCA. In addition, the work on abuse of dominance cases has been intensified, and an internal task force was established in this regard.

29. In 2012 the NCA secured evidence in two cases at 5 different locations. A total of 10 formal statements were taken in connection with investigations in five different cases. In addition the Authority assisted ESA in two dawn raids in Norway, one of which was at the request of the European Commission.

Investigative Work Activities 2006-2012

	2006	2007	2008	2009	2010	2011	2012
Securing evidence section 25 – cases/locations	2/4	2/6	3/5	2/7	4/19	4/9	2/5
Depositions (formal statements) section 24 – cases/locations	2/7	3/12	4/12	2/9	6/32	9/48	5/10

30. These ongoing cases draw heavily on the Authority's resources.

31. In addition to these investigations, the NCA has continued its review of agreements between grocery chains and their suppliers as well as the monitoring scheme relating to Tine's gross margins in the dairy sector. The main purpose of monitoring gross margins was to ensure that Tine's gross margins did not reach levels that could constitute a margin squeeze that is harmful to competition. The review and monitoring in 2012 revealed no specific conditions that would have provided a basis for further investigation by the agency.

32. Market monitoring of the wholesale market for electricity, in cooperation with the Norwegian Water Resources and Energy Directorate (NVE) is an ongoing activity. The purpose of the surveillance is to identify potential abuses of market power. However, no extended investigation of possible violation of the prohibition provisions was initiated in 2012.

33. It also appears that the resources spent on publicizing the leniency scheme is starting to pay off. Leniency was introduced by the Competition Act of 2004, but only two applications for leniency had been received until 2009. By the end of 2012, this figure had risen to 20, with more than half of the leniency applications being received in the last three years.

Applications for leniency 2007-2012

	2007	2008	2009	2010	2011	2012
Number of applications	2	0	3	6	3	6

34. Even though the threshold for seeking leniency appears to be relatively low, the Veidekke/NCC case in the asphalt industry alluded to below is a good example of a major case being the result of the leniency program.

2.1.1 An overview of some significant cases

35. Presented below is a brief summary of some significant decisions in the sphere of anticompetitive behavior in 2012.

- **Taxi companies fined.** In 2011, the NCA decided that three taxi companies should be fined for their illegal cooperation in connection with competitive tendering rounds advertised by the Oslo University Hospital. Two competing taxi dispatchers, Follo Taxisentral and Ski Taxi, collaborated through a jointly-owned company, Ski Follo Taxidrift AS, on submitting bids during two competitive tendering rounds during the autumn of 2010. These competitive tendering rounds applied to the transport of patients for the Oslo University Hospital, valued respectively at up to NOK 20 million and NOK 30 million (EUR 2.6 and 3.8 million). Ski Follo Taxidrift has been given the largest fine of NOK 2.2 million (EUR 0.3 million). Follo Taxisentral will have to pay a fine of NOK 400 000 and Ski Taxi a fine of NOK 250 000 (approximately EUR 50 000 and 32000). The decision was appealed by the parties, and not upheld by the District Court in its judgment in February 2013. The judgment has been appealed by the NCA.
- **Legal action against Norges Turbileierforbund.** In 2009, the NCA fined Norges Turbileierforbund (National Coach Owners' Association) NOK 400 000 (EUR 0.5 million) for encouraging its members to raise their prices. Several articles in the association's newsletter discussed raising prices, including suggestions regarding the size of the increase. In addition a price calculator showing how this could be done was made available to members. The association was also ordered to cease its illegal activity. The fine was upheld by Oslo District Court. The association has appealed the decision. However, in January 2012, the parties withdrew their appeal to the Court of Appeal, and the NCA's decision is thus legally binding.
- **Legal action against contractors in Steinkjer.** In 2009 the NCA fined contractors Gran & Ekran AS and Grunnarbeid AS 2 and NOK 5 million (approximately EUR 0.6 million and 0.2 million) respectively for having cooperated illegally on submitting separate tenders for the maintenance of five bridges in Steinkjer. The Authority considers that the two companies did not actually compete and the two bids were made with a view to increasing the price and giving the impression of competition. The fines were upheld by the District Court. Both companies appealed against the ruling. The Court of Appeal upheld the NCA's decision in 2011 in substance, but reduced the fine level significantly because the court found the infringement negligent and not intentional. The NCA appealed the judgment to the Supreme Court, which in October 2012 confirmed the NCA's decision, and underscored that fines should be high in order to have a preventive effect and lack of knowledge on Competition Law was not found to be an extenuating circumstance.
- **Notification of large fines for asphalt collusion.** In March 2013, the NCA decided to impose a fine of 140 million kroner (approximately EUR 18.8 million) on Sweden-based construction company NCC for its alleged participation in an asphalt cartel. The Norwegian construction company Veidekke, which had applied for leniency, was granted full immunity and thus escaped a fine of 220 million kroner (approximately EUR 29.5 million). The cooperation between Veidekke and NCC concerned bids for asphalt paving contracts in the counties of North and South Trøndelag in central Norway, and took place between 2005 and 2008. During that period, the two companies allegedly shared contracts advertised by Statens Vegvesen (Norway's public

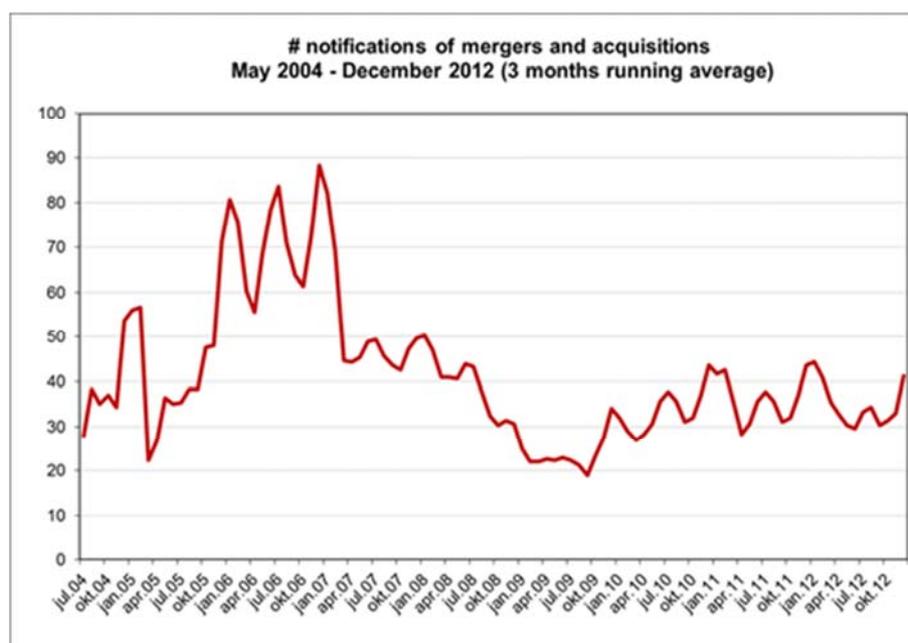
road administration) and by the city of Trondheim. In assessing the amount of the fine, the NCA considered several factors, including the value of the contracts affected by the alleged cartel and the gravity and duration of the infringement. The fine is the highest fine ever imposed by the NCA. NCC has appealed the decision.

- **Online hotel booking** In addition to these decisions, it can be mentioned that the NCA in 2012 has paid particular attention to online hotel booking. The conduct and distribution agreements of these booking services have been a concern both for the hotel industry and for the NCA.

One reason for not opening a formal investigation yet is that a substantial part of the Norwegian hotels have cancelled their distribution agreements, and are engaged in significant online marketing and booking services on their own websites. Since the question about price parity conditions is also part of the investigations in other jurisdictions, the NCA has decided to await further investigation at this time.

2.2 *Mergers and acquisitions*

36. After a decrease in the number of notified mergers and acquisitions in 2009, which can be explained by the financial crisis of 2009 and the low economic activity, the number of notifications has been steady again since 2010. The NCA received notification of 411 concentrations in 2012. By comparison, it received 460 notifications in 2011 and 412 notifications in 2010. Full notification was requested in 13 cases (11 in 2010), and three full notifications were sent voluntarily (instead of standardized notification).



*) The significant drop in notifications in 2007 is due to higher thresholds for notifications.

37. The NCA intervened in four concentrations in 2012:

- **Telenor – LOS;** Telenor Norway acquired all the shares in LOS Bynett and Bynett Privat from Agder Energi in 2011. The NCA began processing the acquisition in autumn 2011 and concluded in March 2012 that Telenor Norway could implement the acquisition on certain conditions. The main features involve selling/making accessible LOS Bynett's transport infrastructure in the

counties of Agder and sub-letting transport infrastructure in Vestfold. In addition Telenor must accommodate any reasonable requests for access for business customers within the area covered by LOS' access network. The NCA approved the transaction on August 6th, 2012, when all the conditions had been met.

- **Mekonomen – Meca;** The acquisition by Mekonomen of the car parts chain Meca, was approved by the NCA on certain conditions. Meca is a well-known automotive spare-parts chain commanding strong positions in Sweden and Norway. The conditions for approval were limitations on the use of mechanisms rewarding repair shops purchase of certain quantities of spare parts from Mekonomen, a reduction in termination deadlines for repair shops and spare parts stores that would like to swap chain affiliation, and limitations on the use of requirements on procurement targets or minimum quantities of spare parts. Mekonomen and Meca will continue to be operated as independent companies with their existing brands. The acquisition was also dealt with, and cleared by the Swedish NCA.
- **A-pressen - Edda Media;** Both companies have business activities within several media-related areas and are regarded as the second and third largest "media houses" in Norway.² The main areas of overlap between A-pressen and Edda Media are local and regional newspapers with circulation in the urban and rural areas in the South and South-West parts of Norway.³ The NCA examined whether the proposed acquisition would lessen the competition in the supply of content to consumers (reader market) and the supply of advertising (advertising market), the latter dealing only with advertising, excluding classified ad. Based on a diversion ratio analysis, the NCA found that the acquisition would substantially restrict competition in the advertising market in Telemark and Fredrikstad, and the reader market in Telemark. The NCA decided to allow the concentration with conditions, i.e. provided that A-pressen sold either Varden or Telemarksavisa in Telemark as well as Demokraten in Fredrikstad.
- **Plantasjen - Oddernes Gartneri;** In August 2012, the NCA decided to prohibit Plantasjen's acquisition of competitor Oddernes Gartneri in Kristiansand. Plantasjen has in recent years acquired a number of competing garden centers in various local markets and with its 58 stores, it is the largest player in the garden center market in Norway, measured by revenue. Plantasjen already had two stores in Kristiansand. Oddernes Gartneri is Plantasjen's largest and closest competitor in this area. In NCA's view, the acquisition would have led to a substantial restriction of competition in the garden center market in the Kristiansand area. The decision to block this merger was appealed to the Ministry. The Ministry upheld the Authority's decision to prohibit the acquisition.
- **Lemminkäinen Norge AS - Mesta Industri AS;** Finally, it can be mentioned that in 2011 the NCA issued a decision in a merger case in the asphalt market: Lemminkäinen Norge AS could acquire Mesta Industri AS on condition that a part of its industry in Northern Norway should be sold. Mesta Industri AS proposed a buyer. In June 2012, the NCA did not approve this buyer, because it was not sufficiently independent with respect to Lemminkäinen Norge AS. After Lemminkäinen's appeal to the Ministry, the Ministry upheld the NCA's decision in March 2013.

38. These interventions reflect that the NCA is concerned with competition in local markets and the possible restrictions in competition resulting from acquisitions by larger, national actors in local markets.

² The largest "media house" in Norway is Schibsted AS.

³ The transaction includes 80 titles, where 48 are owned by A-pressen and 32 are owned by Edda Media. These include mainly paid for titles, and a few free titles.

39. The table below presents an overview of the NCA's activities in the area of merger control in the period 2007-2012.

Cases received

	2007	2008	2009	2010	2011	2012
Standardized notifications of mergers and acquisitions	561	444	293	412	460	411

2.3 The Norwegian Complaints Board for Public Procurement (KOFA)

40. The Norwegian Complaints Board for Public Procurement (KOFA) is a national complaints body that enforces the Norwegian regulations on public procurement. The Board has 10 members (all lawyers), who are appointed by the Government. KOFA's decisions are advisory, and the body's main role is to offer the public authority and the tenderer a cheap and efficient decision which may contribute to solve the conflict. KOFA can also impose fines for illegal direct award of contracts where the contract is entered into before July 1st 2012. As a consequence of the implementation of Directive 2007/66/EC, the authority to issue fines for illegal direct procurement has been transferred to the civil courts.

41. For administrative purposes the Board's Secretariat comes under the NCA. Although KOFA and the NCA enforce two different sets of rules, their purpose is the same: The efficient utilization of society's resources. Both sets of rules are important in preventing financial crime, such as corruption. Many of the corruption cases uncovered in recent years involve the illegal appropriation of public funds and failure to put contracts out to tender. Over the years, there has been a substantial increase in the number of cases that KOFA received. As a measure to increase the threshold for complaints, the Ministry decided to introduce a filing fee from the 1st of July 2012, implying that complaints regarding illegal direct awards have a filing fee of NOK 1000,- and other complaints have a filing fee of NOK 8000,- (approximately EUR 125 and EUR 1000, respectively). As a consequence, the number of cases received has decreased with about 60 percent.

42. Case statistics for the period 2003-2012 are presented below:

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Complaints	266	288	268	152	153	216	277	407	332	237
Decided	182	250	264	176	217	171	230	280	293	253
Rejected	77	106	137	50	48	43	50	84	100	92
Violations	52	80	71	77	118	66	112	123	86	82
Non-violations	24	10	27	31	38	40	36	30	40	42

43. In 2012 KOFA received 237 complaints and dealt with a total of 253 cases, including 64 cases which were potentially involving fines, *ie.* illegal direct procurement.

44. In 2012 the Complaints Board received 49 complaints about illegal direct procurement. Illegal direct procurement is procurement that is not advertised according to the public procurement regulations. Infringements on the duty to advertise are regarded as the most serious breach of the regulations because such procurement completely evades the requirement for competition, which is the main purpose of the procurement regulations. KOFA issued in total 14 fines to different public authorities in 2012 for illegal direct procurement. 8 of the fines were given to 8 municipalities on the west coast of Norway for illegal direct award of sanitation services. In total KOFA issued fines for approximately NOK 10.3 million in 2012 (EUR 1.3 million).

45. For the financial year 2012 KOFA's budget was approximately NOK 10.7 million (approximately EUR 1.4 million). In the same period, total revenue from imposed penalties amounted to approximately NOK 10.3 million (approximately EUR 1.3 million).

46. **Advocacy.** There is still a need for information on how the public procurement rules should be understood and used, and KOFA is experiencing great demand for guidance. KOFA and the NCA are working together to increase awareness of both the procurement rules and the provisions of the Competition Act on illegal collusive tendering among public awarding bodies. However, responsibility for guidance on the public procurement rules in lies with the Agency for Public Management and eGovernment (Difi).

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

47. The NCA holds regular meetings for information and contact purposes 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 and the Agency for Public Management and eGovernment.

48. In addition to an agreement with the Norwegian Post and Telecommunications Authority, the NCA has cooperation agreements with the Consumer Ombudsman and the Norwegian Consumer Council. The three institutions have regular cooperation on specific cases, in addition to regular contact meetings twice a year.

49. Regular cooperation meetings have also been set up for discussion of the grocery markets by the Consumer Council, the Consumer Ombudsman, the National Institute for Consumer Research and the NCA.

3.2 International cooperation

50. The NCA prioritizes international cooperation, not the least through the Nordic network, the ECN, ICN and the OECD, and aims to be an active contributor to these networks. In 2012 the NCA hosted two major meetings on international cooperation. In June 2012, 50 participants from 27 nations from the European Competition Network Cartel Working Group (ECN CWG) met in Bergen. The main topic for the meeting was the ECN's Model Leniency Program. In September, the NCA hosted the annual joint meeting of competition authorities in the Nordic countries. About 70 participants from Greenland, the Faroe Islands, Sweden, Denmark, Finland and Norway were assembled in Bergen to discuss common issues.

3.3 Expressing competition concerns related to existing or proposed regulations

51. According to section 9 of the Competition Act, the NCA shall supervise competition in the various markets, among others by implementing measures to promote market transparency and by calling attention to any restrictive effects on competition of public measures (section 9e).

52. Where appropriate, the NCA can submit proposals aimed at strengthening competition and facilitating access to the market by new competitors. The NCA has the right to request a response from the public body responsible for the measure to be submitted within a deadline specified by the NCA. The response must include inter alia a discussion of how the competition concerns will be addressed.

53. In 2012, concerns under section 9e in the Competition Act were raised related to effects of the statutory pension scheme for nurses ("nurse pension scheme"), and how this can lead employers spending more than necessary to provide occupational pension for both nurses and other public employees.

54. The NCA specifically asked the Ministry of Labour to consider action to abolish the Royal resolution of June 22nd, 1962, as well as setting the operation of the nurse pension scheme out to tender. In the event that the Ministry did not find reason to implement the suggested actions, the Authority asked the Ministry to account for how the competition concerns would be taken care of.

55. Moreover, the NCA is often consulted as a hearing body by 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.

56. In 2012, the NCA produced 12 hearing statements expressing concerns related to consequences for competition of proposed laws and regulations. The Authority i.a. expressed its concerns related to the recommendations in a report commissioned by the Ministry of Culture, which called for a continued exemption from the Competition Act for book sellers and publishers. However, the Authority stated that it recognizes that measures addressing important policy goals in the cultural area might be necessary, but underlined that these must be targeted. The Authority argued that imposing RPM by law in this sector has negative effects on competition and innovation.

3.4 *Visibility, transparency and awareness of consumers*

57. Throughout the year, the NCA has worked to increase awareness among various stakeholders, both in order to prevent and to detect competition crimes. Our webpage www.kt.no is an important channel for information directed towards the public, business and media, to further knowledge of competition law and the NCA's enforcement powers. The webpages had around 300,000 unique visitors in 2012. In addition, the NCA was referred to in the media 5146 times, an increase of 45 percent compared to 2011.

58. The NCA shall, according to the law, also supervise competition in the various markets, i.a. by implementing measures to promote market transparency. The NCA considers it important that consumers must have sufficient information for the demand side of the market to work efficiently.

59. A large amount of visits to the website of the Authority are due to the electricity price comparison service on the NCA's website, which dates back to 1998. The electricity price comparison service makes it easier for consumers to compare electricity prices and check out the market to see if it is worth changing electricity supply contract or electricity supplier. The Authority's database lowers the costs of finding a cheaper supplier. Lower search costs combined with lower switching costs are factors that the NCA believes encourage greater competition in the electricity market. The service is very popular, in particular in times when electricity prices are high. Around 400,000 visits (220,000 unique visits) were made to the electricity price comparison service in 2012. This is a decrease of more than one third compared to 2011, which can be explained by comparatively low electricity prices throughout the whole year.

60. However, since the operation and maintenance of the website is outside the areas which the NCA currently prioritize, a process was initiated in 2012 to consider the possibilities for transferring the responsibility for the service to the Norwegian Consumer Council.

4. Resources of the competition authorities

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

4.1.1 Annual budget

61. In 2012, the NCA had a budget of 90.5⁴ million Norwegian kroner (approximately 12.1 million EUR). This represents a small increase in real terms compared with the corresponding figure in 2011.

4.1.2 Number of employees

62. As at 31st December 2012, the NCA had a total of 113 employees, including those on leave.

63. The NCA has a relatively young and new workforce. In 2012 the average age was 38 years. Regarding time in service, an increasing number of employees have worked at the NCA more than five years, but many have also been recruited directly from universities and colleges so there remain many with short experience at the Authority.

64. Among all economists and lawyers working in professional positions, 17 percent have been employed for less than two years and 42 percent have been employed for more than five years. This is a considerable increase since the period immediately after the relocation to Bergen.

65. In 2012, the turnover was 15 percent, compared to 14 percent in 2011 and 2010.

66. The table below gives an overview of the distribution of employees according to gender and position as on December 31st, 2012.

Distribution of positions and gender

Position	Total	Women	Men
Managers	14	7 (50 %)	7 (50 %)
Senior advisers	47	18 (38%)	29 (62 %)
Advisers	35	25 (71 %)	10 (29 %)
Higher Executive Officers	13	9 (69 %)	4 (31 %)
Executive Officers	2	0 (0 %)	2 (100 %)
Trainees	2	1 (50 %)	1 (50 %)
Total (including trainees)	113	60 (53 %)	53 (47 %)

67. The NCA has many employees with higher education. 84 percent of all employees in the NCA have higher education. 70 percent have higher education as lawyer or economist. In 2012, the Authority had nine employees with a Ph.D.

⁴ This figure excludes the budget for the Norwegian Complaints Board for Public Procurement (KOFA). As noted earlier on, KOFA had a budget of approximately 10.7 million Norwegian kroner in 2012.

4.1.3 *Human resources (person-years) applied to:*

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

69. The NCA started in January 2009 registering resource use. Compared to 2011 and especially 2010, the agency allocated a larger share of its resources to mergers (almost 50 percent, compared to 35 percent in 2011 and around 25 percent in 2010). Around 40 percent of the professional staff resources were allocated to assessing anti-cartel and dominance related cases. Advocacy and international cases represented the remaining share of the resource use.

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

5.1 *Effects of the loyalty programs on competition in Norwegian air traffic*

70. In a report presented to the Ministry of Government Administration, Reform and Church Affairs in March 2012, the NCA recommended continuing the ban on frequent flyer or loyalty programs for most domestic airline routes in Norway, but is proposing to repeal the ban on the three largest city pairs, Oslo-Bergen, Oslo-Trondheim and Oslo-Stavanger. The NCA considers that the competition is sufficiently robust in these three busiest domestic air routes to recommend that they are excluded from the prohibition on earning points in loyalty programs. The major distinction in the Norwegian aviation market is between those airline passengers who face a monopoly and those who face competition. A full repeal of the ban on frequent flyer programs could lead to a significantly diminished schedule of flights and more monopoly routes. However, each of the three routes where the NCA suggests that the ban can be removed serves well over a million passengers annually. The NCA considers it unlikely that the airlines will reduce their capacity significantly on these routes if earning loyalty points is allowed. The recommendation from the NCA is based on a competition economics analysis of the effects of the loyalty programs on competition in Norwegian air traffic. Based on this assessment, the Authority also examined whether there is legal authority to maintain a prohibition within the framework of the Section 14 of the Competition Act.⁵

5.2 *Competition in the fuel market*

71. The Norwegian fuel retail market is characterized by few actors, a high percentage of manned petrol stations and a relatively large number of petrol stations located in rural areas. In the Norwegian market there are five retail chains: Statoil, Shell, Uno-X, Esso, and St1. Best, an association of independent retailers, has a supply agreement with Statoil.⁶

72. It has been argued that fuel prices in Norway are considerably higher than in other comparable countries. In addition to the negative impact on the final fuel prices which the consumers face, higher fuel prices also induce higher transportation costs and thus a general increase in prices that affects the Norwegian economy as a whole.

⁵ This section of the Competition Act states that if it is necessary to promote competition in the markets, regulation may be implemented that intervenes against terms of business, agreements or actions that restrict or are liable to restrict competition contrary to the purpose of the Act.

⁶ In 2012, the volume of sales in the fuel retail market was about 3 000 million liters; the correspondent value of sales was almost 42 000 million NOK (approximately 5 600 million EUR. The yearly exchange rate for 2012 is estimated by the Central Bank of Norway as 1 EUR = 7,4744 NOK).

73. Moreover, in 2008, there was a major media focus on gasoline prices and the observed pricing patterns. Fuel prices rose sharply on Monday afternoons and fell gradually throughout the week, reaching their lowest level during the weekends and Monday mornings. The Authority's investigation of the market revealed no indication that the weekly price pattern in the fuel market was due to collusion among fuel chains or among retailers.

74. Consequently, the NCA monitors the fuel retail market closely and has conducted several sector inquiries in this market. The first larger sector inquiry was completed in 2010.⁷ In 2012, the NCA started a new sector inquiry. The purpose of the project was to i) compare the gross margins of the Norwegian fuel retail market with gross margins in other countries, ii) conduct an ex post evaluation of a large merger in the Norwegian fuel retail market, and iii) assess the level of local and regional competition in the Norwegian fuel retail market.

5.3 Digital markets

75. In 2011, the NCA started a project to look more closely at the challenges of the digital economy for competition. The project is divided into several sub-projects and will continue over several years. In 2012, two projects were launched - one focusing the TV market and the other about on-line sales and portals. The NCA had a written contribution on vertical challenges related to online sales to the February 2013 meetings of the Competition Committee of the OECD.

⁷ The results are documented in the report «Det norske drivstoffmarkedet» (The Norwegian fuel market) which is available on http://www.konkurransetilsynet.no/ImageVaultFiles/id_4607/cf_5/Det_norske_drivstoffmarkedet.PDF