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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN NORWAY

-- 2013 --

17-18 December 2014

This report is submitted by Norway to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 17-18 December 2014.

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1. Executive summary

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

2. On the cartel side, the NCA has several cases under investigation. In 2013, the NCA secured evidence in one dawn raid in three different locations. In addition, the Authority carried out one dawn raid in Norway on behalf of the European Commission. In the beginning of 2013, the NCA imposed an all-time-high fine for collusion in the asphalt market. The fine was not accepted and the asphalt company NCC brought the case before the Oslo District Court. The Court reduced the fine from NOK 140 million (approximately EUR 17.5 million) to NOK 40 million (approximately EUR 5 million), as it did not agree with the basis for the Authority's calculations, i.ea. regarding affected turnover and parent company liability. Both the NCA and NCC have appealed the District Court's decision. The appeal case will expectedly be handled by the Court of Appeal in 2015.

3. In the abuse of dominance area, the NCA established a task force for identifying potential abuse cases. Using a task force to identify potential cases has proven very useful, and has resulted in new investigations. The NCA intends to continue to use this focused approach in the future to attain a better balance between complaints and ex officio cases. Moreover, the NCA continued investigating a potential abuse of dominance by the largest Norwegian telecom operator throughout 2013. The NCA carried out the dawn raid in this case at the end of 2012. One significant challenge in the case has been to clear material related to in-house counsel's legal advice, which is protected by the legal professional privilege from the electronic documents seized during the dawn raid.

4. Related to merger control, the NCA received notification of 391 concentrations in 2013. Full notification was requested in five cases. The NCA intervened in two concentrations: one in the laundry sector and one in the media sector. Two mergers were referred from the European Commission: the Norwegian part of a merger in the health and fitness sector between SATS and Elixia, and Orkla's acquisition of Rieber. The former was approved in February 2014 after approval of the proposed remedies. In the latter, the Authority did not find grounds to intervene.

5. Many of the important cases handled in 2013 have been in the grocery sector:

- In the beginning of the year, it became known that two of four major actors in the groceries market, NorgesGruppen and ICA Norge, had entered into an agreement on joint purchasing and distribution operations. The NCA decided to block the agreement temporarily. In February 2014, the NCA sent a statement of objection informing the parties of its preliminary conclusion that the agreement infringed Norwegian antitrust rules. However, NCA's work on the case was put aside in the fall of 2014 when Coop, i.e. the third of the four major actors in the groceries market, announced its plans to acquire ICA Norge.
- In the beginning of 2014, the NCA decided to impose a fine of NOK 25 million on NorgesGruppen (approximately EUR 3 million) for breaching the competition law's standstill obligation. When NorgesGruppen took over the leases of 13 former ICA-Maxi premises, it was aware that this could be a violation of the standstill obligation, but nevertheless chose to put into effect the transaction. The NCA decided to impose a substantial fine to attain a sufficient deterrent effect, thereby contributing to an efficient merger control regime in Norway. NorgesGruppen has accepted the fine.

- The governmentally appointed commission on power relations in the food supply chain delivered its report with proposals for new legislation on fair trading practices. In its hearing statement, the NCA argued against the proposed new code of conduct regulation.

6. From 1 January 2014, the first major revision of the 2004 Competition Act came into force. The background for the revisions was to achieve a more effective competition law. One of the measures in this regard is significantly higher thresholds for merger notifications.

7. On the policy side, the NCA has taken steps towards more soft law enforcement to resolve anticompetitive conduct. Important measures have been market investigations resulting in public reports, and actively, and sometimes publicly, warning parties that are in risk of breaching the competition law.

8. One of the market studies conducted in 2013 was a review of car warranty conditions. The NCA obtained warranty terms from the 19 largest car importers in Norway. This resulted in several findings of misleading, contradictory or unclear warranty conditions that make car owners uncertain as to whether they will maintain the warranty if they choose an independent repair shop. The NCA clearly states in the report that when the car owner pays for the repairs, then the car owner also decides what repair shop to use. Because of this review, the majority of the car manufacturers/importers have changed their warranty conditions.

9. The NCA also applied a soft law approach in reacting to a harmful practice of signalling in the banking sector. As a response to stricter capital claims, a number of banks publicly warned that they would have to raise interest rates. Some also stated how much. Instead of starting a full-fledged investigation, the NCA warned the major players and their federation that this signalling potentially was an illegal practice. As a result, the banks are now much less open about their plans to raise interest rates.

10. This soft law approach is also facilitated by the introduction of commitments in the revised competition act to be implemented in 2014.

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

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

2.1.1 Revised Competition Act.

11. In May 2013, the Storting (Norwegian Parliament) enacted the first major revision of the 2004 Competition Act. The revision entered into force 1 January 2014. The most important changes concern the merger control provisions. The notification procedure has been altered significantly, and the thresholds have increased significantly in the new Act.

12. Under the revised Act, the parties have to notify transactions where the parties concerned achieved a combined annual turnover in Norway above NOK 1 billion (approximately EUR 125 million), and where at least two of the parties concerned achieved annual turnover in Norway above NOK 100 million (approximately EUR 12.5 million). Before 2014, the thresholds were NOK 50 million (approximately EUR 6.3 million) and NOK 20 million (approximately EUR 2.5 million), respectively.

13. However, 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 after final agreement has been concluded. This competence allows the NCA to continue devoting close attention to competition in local markets. In addition, the NCA imposed an obligation to notify all acquisitions, also those involving companies with annual turnovers below the thresholds, upon ten companies in different markets with high concentration. The information required for these notifications is at a

bare minimum; thus, this does not put the same burden on companies as the previous obligation to notify with the lower thresholds.

14. In order to increase the efficiency of the procedure and to reduce the case handling time in merger cases, the revised procedure places great emphasis on the parties' duty to propose remedies. The revised Act specifically states 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 is 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.

15. An important consequence of these changes are freeing up the NCA's resources and thereby contributing to increased control of those concentrations that actually may impede effective competition on the relevant markets, above or below the thresholds. Another positive effect is that undertakings in Norway can relate to notification rules that are more consistent with the rules in Norway's neighbouring countries and the rest of Europe.

16. The revised Competition Act extends the scope of the NCA's competence to issue "cease and desist" orders against behaviour deemed to infringe Section 10 and 11 (Equivalent to Articles 101 and 102 TFEU). If the parties under investigation propose satisfactory remedies, the NCA has the possibility to impose binding decisions regarding commitments suggested, and thus stop further proceedings. The behavioural prohibitions remain unchanged since these already were harmonised with EU and EEA competition law.

17. The revisions relating to the leniency framework introduce a marker system intended to mirror the European Commission's practice closely. 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. There will still be a criminal as well as an administrative track regarding personal sanctions; thus, the revised Act does not provide a general protection against criminal prosecution for the management in a company. The rationale is that such a protection would conflict with fundamental principles of Norwegian criminal law. However, a provision has been adopted where criminal prosecution of violation of the competition rules is conditioned upon the NCA's petition. In addition, criminal sanctions for companies have been abolished in the revised Act in their entirety, as such sanctions are considered redundant next to administrative fines. Moreover, the revised Act also guarantees non-disclosure of applications for leniency. This provision was included to prevent the risk of private litigation being a disincentive to potential leniency applicants.

18. As a final note on the revisions, it can be mentioned that the rules governing investigations of infringements of the Competition Act have also been clarified further after the revisions. One of the changes relates to the procedure for seizing evidence. Previously, the NCA could seize original documents and allow the undertaking to make copies. From 1 January 2014, the NCA shall only seize originals if the original contains material of evidentiary value. Otherwise, the NCA makes copies of the material if further investigations are necessary.

2.2 Other relevant measures, including new guidelines

2.2.1 Airline loyalty program.

19. In the summer of 2013, the Government decided to remove **the ban on frequent-flyer or loyalty programs for domestic airline routes in Norway**. However, the Government clearly stated that the use of legal measures should be reconsidered if market developments warrant this. Moreover, the NCA was asked to monitor the development in this marked closely, and to demand information and use audit tools to ensure that airlines are not tempted to anticompetitive use of

bonus programs. The NCA has therefore obliged SAS Group AB and Norwegian Air Shuttle ASA to send necessary information in order to carry out market monitoring.

2.2.2 *Guidance.*

20. During 2013, the NCA has worked on several notices in order to give guidance on the understanding of the Competition Act:

- A guidance on binding resale prices
- A general guidance on exchange of information and competition regulations, following requests from actors in the fuel retail market
- A guidance on project co-operation agreements

21. The NCA is currently working on a guidance on the assessment of fines in order to ensure transparency and objectivity. The NCA will base its notice on comments submitted during a consultation round that was carried out, and the new regulations that have entered into force, which is based on the EU/EEA fining guidelines.

2.3 *Government proposals for new legislation*

22. In 2013, the NCA sent two written hearing statements concerning legislation propositions with direct relevance for competition in the affected markets.

23. In March 2013, the NCA submitted its comments to the Ministry of Culture on the proposed bill on the sale of books, also called the «book law». The proposed «book law» would provide a permanent legal basis for RPM in the book market, previously provided by the time-limited regulations exempting the agreement between the major publishers and retailers from the stipulations in the competition law. In its hearing statement, the NCA recognised that cultural policy objectives linked to breadth, diversity, quality and availability are important. However, the NCA also argued that allowing for RPM in the book market is a very imprecise tool for achieving the cultural policy objectives, which weakens access to new literature for lower income groups, and prevents the industry from adapting to an evolving market. Thus, the NCA's position was that a fixed-price scheme in addition to actually working contrary to cultural policy objectives of accessibility for new literature also could stifle innovation and further digitisation of the book market. Furthermore, the NCA argued that e-books should not be subject to any fixed price scheme, and not become part of a regulated supply chain that helps to protect paper books. Finally, the NCA concluded that more targeted measures that stimulate both the supply and the demand side of the market directly, such as today's purchasing system for the libraries, should be employed and further developed.

24. The new government that entered into power in the fall of 2013 decided to shelve the proposed «book law», and instead prolong the existing exemption regulations, but only for two years.

25. The Ministry of Climate and Environment circulated a proposal for new planning regulations for the localisation of retail malls and commercial activities. The NCA sent its comments on the proposed planning regulation to the Ministry of Climate and Environment in October 2013. The NCA concludes that the proposed regulation will make it harder to establish malls outside city centres, thus constituting a barrier to entry. In its submission, the NCA asked the Ministry to consider less anticompetitive measures that nevertheless achieve the purpose of the planning regulations. If the NCA's proposal is adopted, competitive considerations should be included as an independent positive factor in the county governor's assessment of whether to allow entry.

3. Enforcement of competition laws and policies

26. According to the Competition Act, the primary responsibilities of the NCA are as follows:

- Monitor adherence by businesses and industry to the Competition Act’s prohibitions against competition-restricting co-operation 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.

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

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

28. For several years, the NCA has given the detection of cartels and combatting illegal collusive tendering 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 i.e. being clearly and strategically visible in the media, provide trade and industry with information about the Competition Act in general and the prohibition regulations as well as the leniency program in particular.

29. The NCA has continued its collaboration with the major organisations for employers in order to increase knowledge about the Competition Act and to induce firms to comply with the Competition Act. The NCA also has meetings with individual undertakings to provide guidance. In addition, delegates from the NCA regularly make presentations about the Competition Act and relevant cases, e.g. on conferences organised by industry or trade organisations.

30. 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. An internal task force was established in 2012. The task force identified markets where abuse of dominance was most likely to occur; within these markets, some particularly promising cases were singled out for further scrutiny.

31. In 2013, the NCA secured evidence in one case at three different locations. Moreover, 20 formal statements were taken in connection with investigations in four different cases. In addition, one dawn raid in Norway was carried out on behalf of the European Commission. The Authority also gathered information at two locations in accordance with section 24 of the Competition Act, implying that the NCA requests information on the spot, but without the right to search the premises.

Investigative Work Activities 2006-2013

	2006	2007	2008	2009	2010	2011	2012	2013
Securing evidence section 25 – cases/locations	2/4	2/6	3/5	2/7	4/19	4/9	2/5	1/3
Depositions (formal statements) section 24 – cases/locations	2/7	3/12	4/12	2/9	6/32	9/48	5/10	4/20

32. These ongoing cases continue to draw heavily on the Authority's resources, and even more cases have been opened in 2014.

33. In addition to these investigations, the NCA 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 has been to ensure that Tine's gross margins do not reach levels that could constitute a margin squeeze that is harmful to competition. The review and monitoring in 2013 revealed no specific conditions that would have provided a basis for further investigation by the agency.

34. Market monitoring of the wholesale market for electricity, in co-operation with the Norwegian Water Resources and Energy Directorate (NVE) is another 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 2013.

35. The monitoring of the development of the domestic air transport market is mentioned previously in this report.

36. It also appears that the efforts to increase the knowledge of the leniency scheme the last five years have been successful. Leniency was introduced by the Competition Act of 2004, but only two applications for leniency had been received until 2009. By the end of 2013, this figure had risen to 22.

Applications for leniency 2007-2013

	2007	2008	2009	2010	2011	2012	2013
Number of applications	2	0	3	6	3	6	2

37. 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.

3.1.1 An overview of some significant cases

38. Presented below is a brief summary of some significant decisions and case developments in the sphere of anticompetitive behaviour in 2013.

3.1.1.1 Taxi companies.

39. In 2011, the NCA fined three taxi companies for illegal co-operation in connection with competitive tendering rounds advertised by the Oslo University Hospital. The decision was appealed by the parties, and was not upheld by the District Court in its judgment in February 2013. The judgment has been appealed by the NCA. The case should have been handled by the Court of Appeal in spring 2014, but the court case had to be postponed for practical reasons.

3.1.1.2 Asphalt.

40. As in 2012, an extensive co-operation between the companies Veidekke and NCC was among the major cases dealt with by the NCA in 2013. In March 2013, the Competition Authority decided to impose a fine of NOK 140 million (approximately EUR 17.5 million) on NCC AB and NCC Roads AS for colluding with Veidekke during the period 2005-2008. Veidekke received a fine of NOK 220 million (approximately EUR 27.5 million). Veidekke applied for leniency by providing the NCA with information that led to the case. Thus, the company was exempted from paying the fine of NOK 220 million. The collusion included market sharing, price fixing and bid rigging as well

as the exchange of other strategic information in connection with asphalt tenders in mid-Norway. The companies did not accept the fine and brought the matter before the Oslo District Court. The Authority's view that NCC Roads AS is held liable for employees' actions was supported, but the Court reduced the fine from NOK 140 million to NOK 40 million (approximately from EUR 17.5 million to EUR 5 million) as it did not agree with basis for the Authority's calculation, i.e. regarding affected turnover. Also, the court found no grounds for holding the parent company NCC AB responsible for the infringement. The NCA has appealed the District Court's decision in the asphalt case to the Borgarting Court of Appeal. The appeal concerns both the application of the law and the assessment of the evidence. NCC has also appealed the Court's decision. The court case will expectedly be handled in the Court of Appeal in 2015.

3.1.1.3 Groceries.

41. In the first half of 2013, the NCA temporarily suspended the co-operation agreement on joint purchasing and distribution operations between the two grocery chains NorgesGruppen and ICA. In order for the Authority to temporarily suspend co-operation, there must be a risk of irreversible and irreparable harm and reasonable grounds to believe that the co-operation is illegal. The NCA concluded it would be detrimental to competition in the grocery market if ICA's wholesale operations were closed down, and if a market participant got access to strategic information about a competitor. In December 2013, the two other competing actors in this market, i.e. Rema 1000 and Coop, announced that they had signed an agreement on joint purchasing that would enter into force if the NCA allowed the agreement between NorgesGruppen and ICA. The NCA continued its investigations while taking into account the possible effects of this new development. In March 2014, the NCA issued a statement of objection with the preliminary conclusion that the agreement between NorgesGruppen and ICA was in breach of the Competition Act. However, before the NCA could finally conclude the case, Coop announced in the autumn of 2014 that it would acquire ICA. The proposed acquisition will imply that the number of competitors is reduced from four to three. Thus, the NCA suspended its work on the assessment of the co-operation agreement to focus on a thorough investigation of the competitive effects of the latest developments in the consolidation in the retail grocery market.

3.1.1.4 Online hotel booking.

42. National competition authorities in other countries have opened investigations into online hotel booking. Also in Norway, the conduct and distribution agreements of these booking services have been a concern both for the hotel industry and for the NCA. In September 2012, the Norwegian press reported that the major online platforms for hotel bookings had obtained an increased market share in Norway. It was also revealed that the hotels had to pay a commission to the web portals of up to 30 per cent. Norwegian hotels claimed that the level of commission was too high, and that the web portals represent a costly intermediary. The press also referred to a statement from one of the hotel groups claiming that the distribution agreements could represent an infringement of Norwegian competition law. The distribution agreements contained a price parity clause. Price parity agreements mean that the consumer will face the same price from all distributors of hotel bookings.

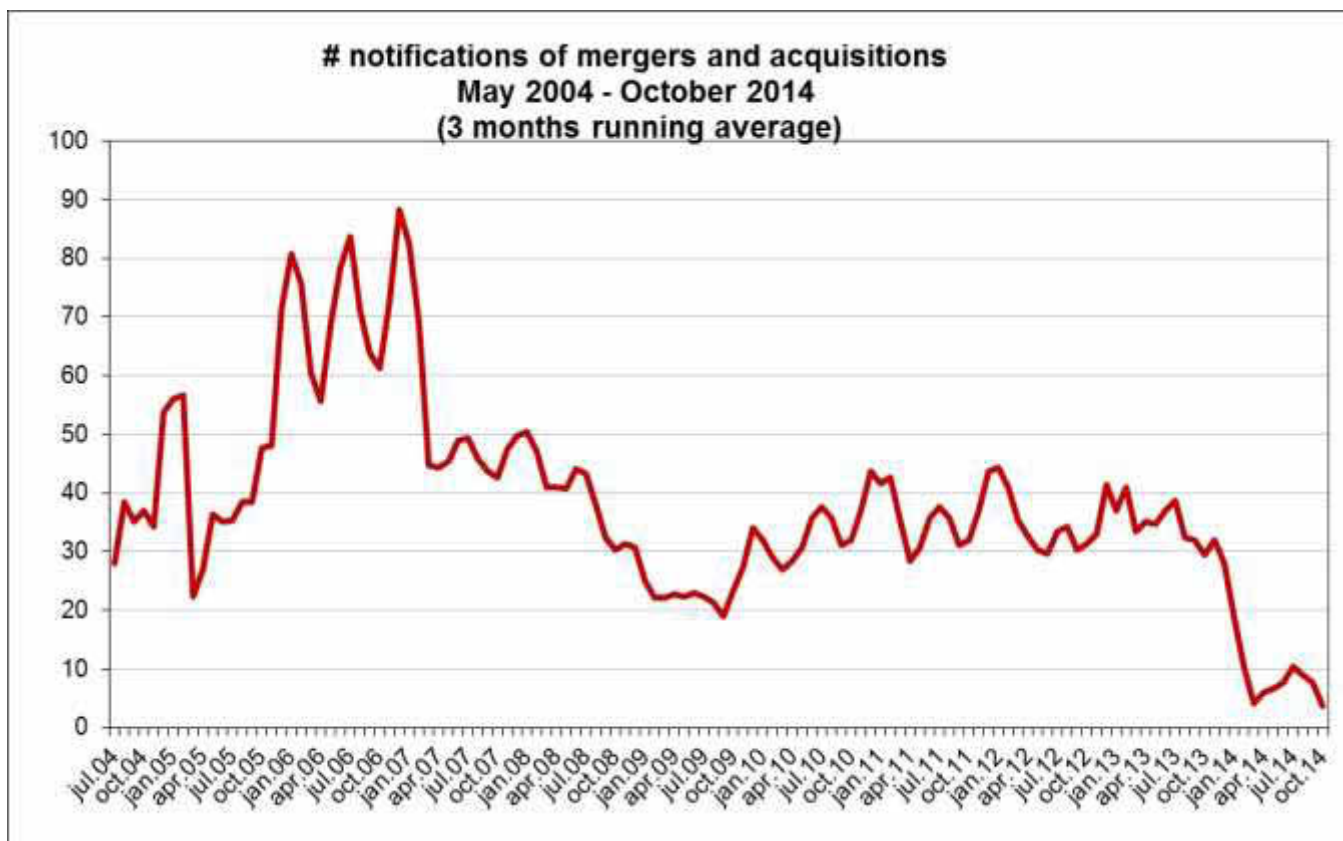
43. The NCA arranged meetings with the Norwegian hotel chains to receive information on the nature of the hotel booking website services and price setting agreements.

44. However, before a formal investigation was opened, some of the major Norwegian hotel groups cancelled their distribution contracts with Hotels.com. In total 320 hotels, covering more than half the Norwegian hotel market ended their contracts in 2012. After the cancellations of the distribution agreements, the Norwegian hotels claim to have increased their sales campaigns on their own web sites. The main focus in the marketing activity was to guarantee that the lowest hotel accommodation prices would be obtained from the hotels own web sites.

45. Price parity conditions are also part of the investigations in other jurisdictions. The NCA has for the reasons alluded to above, decided to await further investigation at this time, but will continue to follow the development of the online hotel booking market closely.

3.2 *Mergers and acquisitions*

46. The number of notifications of mergers and acquisitions has been a bit lower as in previous years. The NCA received 391 notifications in 2013. By comparison, it received 411 notifications in 2012 and 460 notifications in 2011. Full notification was requested in five cases (13 in 2012), and four full notifications were sent voluntarily (instead of standardised notification) (3 in 2012).



The significant drop in notifications in 2007 is due to higher thresholds for notifications. The second significant drop is due to the recent increase of thresholds in 2014.

47. The NCA intervened in two concentrations in 2013:

48. The NCA decided to prohibit the merger between Nor Tekstil and Sentralvaskeriene. The reason was that the merger would restrict competition in the laundry market significantly. In Southern and Eastern Norway, the parties were clearly the largest players in the rental and cleaning of so-called flat cloth, i.e., linen, towels and the like, to industrial customers such as hotels and hospitals. The NCA found that the merger would lead to higher prices and poorer service and quality in the rental and cleaning of textiles. Higher prices would have been, to some extent, passed on to consumers, which in this case are hotel and restaurant guests, as well as the public through publicly funded health care and municipal services.

49. The Competition Authority decided to prohibit Retriever Norge AS' proposed acquisition of its competitor Innholdsutvikling AS. The reason was that the acquisition would lead to a significant restriction of competition in the market for media monitoring that includes press clippings

from print newspapers. An acquisition would have reduced the number of competing players in this market from three to two. The NCA believes that this would have weakened competition and thus would have led to more expensive services for customers.

50. Two mergers were transferred from the Commission to the NCA in 2013: The Orkla-Rieber merger was first filed to the European Commission but the Commission referred the Norwegian part of the case to the NCA. The case was challenging because the theories of harm were related to conglomerate effects of the merger. Though the authority was worried for adverse effects of the merger on consumers, sufficient evidence was not found to block the merger.

51. The Norwegian part of a merger in the health and fitness sector between SATS and Elixia was also transferred to Norway. SATS-Elixia was approved on conditions in the beginning of 2014. This was the first time that the NCA made a decision of approval of remedies proposed by the parties, following the new rules of the revised Competition Act.

52. In addition, the NCA followed up two mergers that previously had been approved on conditions. In both cases an external administrator was appointed to make sure conditions were met.

3.2.1 Mekonomen – Meca;

53. The acquisition by Mekonomen of the car parts chain Meca, was approved by the NCA on conditions. The administrator that was appointed sends reports to the NCA regularly. So far, there has not been identified any breach of the conditions.

3.2.2 Lemminkäinen Norge AS - Mesta Industri AS;

54. 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. Lemminkäinen Norge AS proposed a buyer, but by a decision in June 2012, the NCA did not approve this buyer on the grounds of the buyer not being 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. An administrator was appointed to sell the asphalt business in question, but did not succeed. The final outcome of the case in 2014 was that another part of the asphalt business, in the same geographic area, has been sold.

55. The table below presents an overview of the amount of merger notifications received in the period 2008-2013.

	2008	2009	2010	2011	2012	2013
Notifications of mergers and acquisitions	444	293	412	460	411	391

56. As the graph above shows, the amount of notifications has gone down drastically after the increase of thresholds in the revised Competition Act that entered into force 1 January 2014. In order to still be able to follow developments in highly concentrated markets, the NCA, as mentioned earlier in this report, obliged ten actors to notify all acquisitions in certain markets. So far in 2014, one more actor was imposed this notification. The NCA will consider continuously whether there are more markets where a closer monitoring is necessary to protect competition. After 1 January 2014, the NCA also imposed one actor to notify a certain acquisition within three months after the agreements was signed. The acquisition was not stopped, but the NCA needed more information to be able to consider the effects on competition thoroughly enough.

57. In 2013, the NCA fined three companies according to Competition Act Section 19 for not notifying the NCA of an acquisition before this acquisition was carried out. These fines sum up to NOK 800,000 (approximately EUR 100,000). Several other companies were given notice in 2013 that the NCA considered fining them for breaching the standstill obligation of Competition Act

Section 19. One of them was NorgesGruppen for taking over and continuing the grocery business in grocery stores previously owned by competitor ICA Norge. NorgesGruppen was aware that this could be a violation of the standstill obligation, but nevertheless chose to put into effect the transaction. For the fine to have sufficient deterrent effect, and thereby contribute to an efficient merger control regime in Norway, the NCA responded with a substantial fine of NOK 25 million (approximately EUR 3 million), which was given in 2014. Although NorgesGruppen did not agree with the decision, it decided to accept the fine.

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

58. The Norwegian Complaints Board for Public Procurement (KOFA) is a national complaints body that enforces the Norwegian regulations on public procurement. The Board's members are all lawyers (10 members in 2013), who are appointed by the Government. KOFA's decisions are advisory. The body's main role is to offer the public body and the tenderer a low-cost and efficient body to resolve conflicts on alleged violations of the procurement rules.

59. Until recently, KOFA could also impose fines for illegal direct award of contracts. However, 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.

60. The NCA has the administrative responsibility for the Board's Secretariat.

61. Before 2012, there was a steady and substantial increase in the number of cases that KOFA received. With limited resources, the case backlog increased significantly. As a measure to increase the threshold for complaints, the Ministry decided to introduce a filing fee from 1 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). Consequently, the number of cases received decreased in 2012, and even more so in 2013. The number of cases received in 2013 was even lower as before the increase in the years 2008-2011.

Case statistics for the period 2003-2013 are presented below:

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Complaints	266	288	268	152	153	216	277	407	332	237	144
Decided	182	250	264	176	217	171	230	280	293	253	211
Rejected	77	106	137	50	48	43	50	84	100	92	59
Violations	52	80	71	77	118	66	112	123	86	82	69
Non-violations	24	10	27	31	38	40	36	30	40	42	64

62. In 2013, KOFA received 144 complaints. Due to the decrease in incoming cases and more resources, KOFA could significantly shorten the backlog of cases that had stayed open from previous years. KOFA closed 211 cases, including 69 cases which were potentially involving fines, i.e. illegal direct procurement.

63. Illegal direct procurement is procurement that is not advertised according to the public procurement regulations. Infringing the duty to advertise is regarded as the most serious breach of the regulations. In 2013, the Complaints Board received 13 complaints relating to illegal direct procurement. KOFA issued in total 10 fines to different public authorities in 2013 for illegal direct procurement. Among these, seven of the fines were given to municipalities. In total, KOFA issued fines for approximately NOK 17 million in 2013 (EUR 2.1 million).

64. For the financial year 2013, KOFA's budget was approximately NOK 11.1 million (approximately EUR 1.4 million). This includes 0.7 MNOK that KOFA was granted during 2013 for the improvement of its website, and especially the search possibilities on the website's case archive.

In the same period, total revenue from imposed penalties amounted to approximately NOK 2.9 million (approximately EUR 0.4 million).

3.3.1 Procurement advocacy.

65. There is still a need for information on how the public procurement rules should be understood and employed, and KOFA is experiencing a great demand for guidance. However, responsibility for guidance on the public procurement rules lies with the Agency for Public Management and eGovernment (Difi). Nevertheless, 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.

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

4.1 Co-operating bodies

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

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

4.2 International co-operation

68. For the NCA, international co-operation has a high priority, not least through the Nordic network, the ECN, ICN and the OECD. The NCA aims to be an active contributor to these networks. In addition, the NCA has regular contact with the EFTA Surveillance Authority on ongoing cases with a cross-border dimension.

69. In 2013, a working group from the Nordic competition authorities published a report on how effective competition policy and effective competition authorities can contribute to address future challenges to economic growth and welfare in the Nordic countries. The title of the report is "A Vision for Competition – Competition Policy towards 2020", and it can be accessed at the NCA's website: www.kt.no.

70. The NCA sent four written contributions for OECD-meetings in 2013: Roundtable on vertical restraints for on-line sales, roundtable on competition on road fuel, roundtable on competition issues in food chain industry, and the last one on waste management services.

4.3 Expressing competition concerns related to existing or proposed regulations

71. 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).

72. In 2013, the NCA produced 16 hearing statements expressing concerns related to consequences for competition of proposed laws and regulations. Two of these hearing statements were presented in section 1.3 (Government proposals for new regulations), namely the NCA's consultation on the book law as well as its reply to entry regulations of commercial activities and

retail malls. By acting as a hearing body, the NCA ensures that the competition perspective is given due consideration when new policies are being adopted.

73. More generally, the NCA has expressed concerns regarding regulatory initiatives in a number of sectors, as well as exemptions from the competition law. The NCA has called for a review of anticompetitive regulations and a stronger prioritisation of competition as a key tool to raise productivity in the Norwegian economy.

74. In the fall of 2013, a new government came into power. Based on the new government's inaugural address to the Norwegian Parliament, where the importance of competition is strongly emphasised, the NCA is hopeful that competition will have ground that is more fertile in the years to come.

75. In 2014, the government also established a committee with a mandate to propose measures to strengthen productivity and growth in the national economy. The NCA's Director General Christine Meyer was appointed as a member of this Productivity Committee.

76. Moreover, in its letter of assignment, the new government asked the NCA to start work with the aim to identify regulations in the services sectors that might be harmful to competition.

4.4 *Visibility, transparency and awareness of consumers*

77. Throughout 2013, the NCA has worked to increase awareness among various stakeholders, both to prevent and detect competition crimes. Our webpage is an important channel for information directed towards the public, business, lawyers and media, to further knowledge of the Competition Act and the NCA's tasks and enforcement powers. The NCA's website has been annually assessed by the Norwegian Agency for Public Management and eGovernment (Difi) in its rating of public sector websites. In 2013, the NCA's website received 5 out of 6 stars. The webpages had around 325,000 visitors in 2013. In addition, the NCA was referred to in the media 7536 times, compared to 5146 times in 2012.

78. The NCA regularly conducts an extensive 'Reputation survey'. The survey captures aspects relating to how different groups of professionals (e.g. business managers, lawyers, media) perceive the NCA along important criteria. A new 'Reputation survey' was conducted in 2013. An external bureau conducted the survey by interviewing 301 persons in leading management positions in several trades and industries, as well as 80 lawyers. Some key results of the Reputation Survey 2013 (some compared to the 2011 survey results):

- An increase in lawyers' knowledge of the NCA (increased from 59% (2011) to 74%)
- An increase in the share of lawyers having a very positive impression of the NCA (increased from 54% (2011) to 75%).
- An increase in the share of business managers having a very positive impression of the NCA (increased from 33% (2011) to 39%).
- The knowledge of the leniency program has continued to increase.

79. The NCA shall, according to the law, also supervise competition in the various markets, i.e. by implementing measures to promote market transparency. One such measure was the NCA's electricity price comparison web site, which dates back to 1998. The electricity price comparison service makes it easier for consumers to compare electricity prices, thus check if it is worth changing electricity supply contract or electricity supplier, and makes it easier to switch supplier. The service is very popular, in particular in times when electricity prices are high. Around 416,000 visits (244.000

unique visits) were made to the electricity price comparison service in 2013. This is a small increase compared to 2012, but still a decrease compared to 2010 and 2011, when electricity prices were higher.

80. However, with limited resources, operation and maintenance of the website, as well as answering questions from the public relating to electricity contracts etc. have not been activities the NCA could prioritise. Thus, a process was initiated in 2012 to consider the possibilities for transferring the responsibility for the service to the Norwegian Consumer Council, which has such price comparison tools as one of their core areas. In 2014, the government reallocated money in its revised national budget for this purpose, and the Norwegian Consumer Council has now started developing a new and modern electricity price comparison portal. The portal is expected to be launched mid-2015.

5. Resources of the competition authorities

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

5.1.1 Annual budget

81. In 2013, the NCA had a budget of 97.9 million Norwegian kroner (approximately EUR 12.2 millions).¹

5.1.2 Number of employees

82. As on 31 December 2013, the NCA had a total of 116 employees, including those on leave.

83. The NCA has a relatively young and new workforce. In 2013, as in the year before, the average age was 38 years. Regarding time in service, an increasing number of employees have worked at the NCA for more than five years. Yet, many have been recruited directly from universities and colleges. Thus, there still are many employees with short experience at the NCA.

84. Among all economists and lawyers working in professional positions, the average tenure was 4.83 years in 2013. This is a considerable increase since the years immediately after the relocation from Oslo to Bergen initiated in 2004.

85. In 2013, the turnover reduced to 11 per cent. In 2012, the turnover was 15 percent, whereas in 2011 and 2010 the turnover was 14 per cent. In the last years' rating from Global Competition Review (GCR), the reduction in turnover and the increased stability of the NCA's workforce have been considered as very positive by the external parties that GCR interviewed.

86. The table below gives an overview of the distribution of employees according to gender and position as on 31 December 2013.

Distribution of positions and gender					
Position	Total	Women		Men	
Managers	15	7	(47 %)	8	(53 %)
Senior advisers	45	20	(44%)	25	(56 %)
Advisers	39	27	(69 %)	12	(31 %)
Higher Executive Officers	13	10	(77 %)	3	(23 %)
Executive Officers	2	1	(50 %)	1	(50 %)
Trainees	2	1	(50 %)	1	(50 %)
Total (including trainees)	116	66	(57 %)	50	(43 %)

¹ This figure includes the budget for the Norwegian Complaints Board for Public Procurement (KOFA). KOFA had a budget of approximately 10.4 million Norwegian kroner (approximately EUR 1.3 million).

87. The NCA has many employees with higher education. Of all employees in the NCA, 84 per cent have higher education, whereas 71 per cent have higher education as lawyer or economist. In 2013, the NCA had nine employees with a Ph.D.

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

5.1.3.1 Enforcement, merger, and advocacy.

88. The NCA is organised by sector. Thus, the case handlers are organised in market departments with responsibilities toward specific markets. All case handlers work with all types of competition cases within the markets allocated to them. In addition, the NCA has an investigations staff with approximately five staff members dedicated to cartel investigations and anti-cartel networking only. The investigations staffs support the market sections in cartel cases. Specialised legal and economic support and quality assurance is provided by the legal director's team and the chief economist's team.

89. The NCA started using an internal activity-monitoring tool in January 2009. Reports on resource allocation show that, whereas the NCA used a larger share of its case handling resources on merger cases in 2012, anti-competitive behaviour cases received comparatively more attention in 2013. Percentage of total case handling resources used on different case types can be summarised as follows:

Mergers: 20 %, Cartel: 45%, Dominance: 15%

90. The remaining 20 % of the case handler resources are dedicated to e.g. international cases and advocacy matters.

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

91. Two reports were published in 2013, both of which were mentioned previously due to its relevance for guidance.

6.1 *Report on retail fuel prices.*

92. The NCA has completed a sector inquiry in the retail fuel sector. The report's findings were published in March 2014. The dataset used in the project covers the period 2005 to the beginning of 2012 and contains pump (retail) prices and sales volumes for petrol and diesel, for all petrol stations in Norway. Furthermore, the NCA has obtained extensive information about each filling station, including information about location, date of entry / exit, if the station is manned or unmanned, ownership and operation conditions, etc. In addition, data from Statistics Norway (SSB) and Svenska Petroleum & Biodrivmedel Institutet (SPBI in Sweden) were analysed.

93. One purpose of the inquiry was to improve the NCA's knowledge of the market, through amongst other means, analysing the change in gross margins in Norway compared to Sweden. The main conclusion was that there has been a significant increase in gross margins in Norway compared to Sweden after 2006. Another finding is that there has been a move from one price peak to two price peaks per week in pump petrol prices. It seems clear that this move has contributed to increased industry profits.

94. The findings also indicate that national competition has weakened. The price cycle of two peaks per week and the increase in recommended retail price are present in the whole country. In general, the increase in gross margins may indicate that competition in the Norwegian retail fuel market is restricted. The published report, together with the attention of the media around the report, aims to increase consumer awareness. Consumers with knowledge about the pattern of two price

peaks have the ability to adapt to this pattern, and may choose to fill up their tanks on days with lower prices.

95. The findings in this report support a continued monitoring of the retail fuel market. Moreover, in its advocacy efforts, the NCA will focus on measures aimed at limiting increased market concentration, measures that can lower barriers to entry as well as measures aimed at hindering co-ordination.

6.2 Report on car warranty.

96. In autumn 2013, the NCA issued the report “Your car - your choice of auto repair shop.” The report revealed that vague and misleading warranty terms created uncertainty among car owners, and restricted competition in the market. Warranties with conditions for the car owner having repairs and maintenance carried out within the authorised repair networks of the car manufactures may be caught by the Competition Act Section 10, first paragraph (EEA agreement Art. 53 (1)). The NCA had a twofold aim in conducting this market investigation. Firstly, to inform the consumers of their rights of a free choice of repair shop and secondly, to inform car manufacturers/importers about warranties that potentially could be in conflict with the Competition Act. During the market investigation, the NCA had meetings with several players in the automotive industry. As result of this review, the majority of the car manufacturers/importers have changed their warranty conditions to be in accordance with the competition law.

97. The NCA also started a market inquiry on housing development. This work was continued in 2014, and a report on the inquiry will be published in 2015.

98. Another market in focus is the banking market. The NCA started a sector inquiry in 2014, which also will result in a report in 2015. Related to the NCA's work relating to the banking market, it can be mentioned that in 2013, certain executives in the banking market publicly announced planned rate hikes on television and radio and in newspapers. In meetings with representatives from the banks and the trade association, the NCA expressed its concerns that such public signalling statements not only harms competition; they may also be a violation of competition law as market participants tacitly adapt to price information that is publicly communicated by their competitors. As a result, the banks are now much less open about their plans to raise interest rates. The NCA follows the banks' statements about future prices closely, and will continuously assess whether the statements are in conflict with the Competition Act.