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NORWAY - REPORT ON COMPETITION LAW AND INSTITUTIONS (2004)

The attached report updates information on the current state of competition policy in Norway. It was edited after the Competition Committee discussion (Item VII) in October 2004, which compared experiences on ten countries. It is circulated FOR INFORMATION.

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**UPDATED REPORT ON COMPETITION LAW
AND INSTITUTIONS (2004)**

NORWAY

1. Norway's competition policy was reviewed in 2003 in the context of the regulatory reform project. The Competition Committee review was held in February 2003, and the competition policy report appeared in September 2003, although the complete regulatory reform report was not published until March 2004. A special chapter on product market competition was included in Norway's 2004 *Annual Survey*, also published in March 2004. This update is derived principally from the contribution to the EDR Committee report.

2. Norway's competition law has evolved through several stages. Norway adopted its first general competition law in 1926. The modern era of Norwegian competition policy dates from 1993, when the law adopted efficiency as the goal of competition policy and established the Norwegian Competition Authority (NCA) as the enforcement body. The law was substantially revised again in 2004, to conform the substantive rules to EU area norms, add merger notification, and create a new administrative fine sanction as an alternative to enforcement through criminal procedures. This legislation was under consideration when the 2003 Report was being prepared, and thus many of the recommendations in that report dealt with issues that the legislation has addressed.

Substantive law

3. Norway's substantive law is moving toward the full EEA-EU system. Norway already used the European approach of prohibiting restrictive agreements, subject to possible exemptions. The last step, included in the 2004 legislation, adopted the "prohibition" approach to abuse of dominance, in time for the modernisation of the European enforcement process in 2004. Not all the steps were implemented immediately, though: the modernisation of EU enforcement and the revised EU merger regulation into the EEA agreement were not incorporated into the EEA Agreement as of the 1 May target date because not all had made the needed changes to national legislation. As a result, the parts of Norway's new law providing for application of the EEA competition rules did not come into effect either.

4. The statement of purpose in the 2004 law changes the order of the concepts and adds one new, important one. In the 1993 law, the stated purpose was efficient allocation of resources, achieved by providing the necessary conditions for effective competition. Now, promoting competition itself is the principal objective, and efficient use of society's resources is treated as a consequence of that. (Sec. 1) The legislature insisted on adding a clause to the government's bill, instructing that "when applying this Act, special consideration shall be given to the interests of consumers." The 2003 Report noted a need to firm up the connections between competition policy and supporting policies and interests, notably consumer policy. Reassigning some of the NCA's price and market surveillance functions to others simplified the NCA's tasks and clarified its policy goals.

5. The new language prohibiting restrictive agreements differs from what Norway already had on the books in detail and phrasing, but probably not in overall effect. The new law replaces all of the previous law's specific and virtually *per se* rules about collusive tendering and market division with the

EEA-EU prohibition and exemption criteria. The special provision in Norway's law about violations achieved through associations has also been removed; presumably, such agreements could now be reached applying the new general prohibitions. The 1993 law's obscure proviso permitting joint action concerning the level of "normal cash discounts" and setting a focal point of 3% as the accepted standard has also been repealed. The NCA's biggest enforcement success, 4 years ago, was a fine against ABB and Siemens for price fixing, market sharing, and bid rigging in supplying equipment to hydropower stations. In a promising sign of stepped-up attention to horizontal cartels, the NCA referred another large bid-rigging case, in construction, in mid-2003.

6. Norway's law had provided only for "intervention" against abuse of dominance, leading to a prospective remedy but not to any penalty for violation. This method is appropriate for dealing with ambiguous conduct, but it under-deters serious abuses. The EEA prohibition against abuse of dominance could already be applied to conduct in Norway with a community dimension, and the potential application of ESA sanctions probably had a greater impact on business behaviour than the risk of an intervention from the NCA. To make enforcement of Norway's law more credible, the 2003 *Report* recommended that it should prohibit abuse of dominance.

Box 1. Abuse of dominance prohibition

Incorporate European prohibitions, but retain flexibility.

Achieving closer substantive harmonisation with European competition law was an important task of the Committee that recommended the changes to Norway's law. One reason for harmonisation is simplification, for business and for the enforcement agency. Incorporating the EEA-EU versions of the prohibitions against restrictive agreements and abuse of dominance would also prepare for decentralised enforcement. The 2004 law has taken these steps. Section 11 prohibits abuse of dominance, using concepts and terms familiar from European jurisprudence.

The 2003 *Report* also suggested that Norway might retain the process for intervention as a supplement, because it is familiar, flexible, tied directly to the policy goals of the law, and potentially faster. Although cases about abuse of dominance typically deal with the same kinds of problems that would draw "intervention" from the NCA, the concept of abuse of dominance in EEA-EU law is more narrowly defined than the general, purpose-based provisions for intervention under Sec. 3-10 of Norway's 1993 Competition Act. Because it appeals directly to the policy purpose of the law, such a general rule can be a resource for dealing with new situations. Even if that process may not lead to a clear remedy, it provides a context for examining new problems and testing the possibility of solutions. It might, for example, be a vehicle for applying competition principles where exposure to market conditions is a novelty, such as the newly commercialised operations of government offices.

Norway's new law has dropped the general provision about intervention by the NCA in an enforcement context, but it preserves it as the basis for regulation. Using language that parallels the old Sec. 3-10, the 2004 provides that, where necessary to promote competition, "the King may by regulation intervene against terms of business, agreements or actions that restrict or are liable to restrict competition contrary to the purpose of the Act." (Sec. 14)

7. Moving slowly to prohibit abuse of dominance may have reduced the exposure of the state-owned firms that have dominant positions, particularly in infrastructure. In principle, the competition law applies without regard to ownership, though, and the NSA intervened under the previous law about the conduct of state-owned firms such as Telenor. Regulators handle competition-related issues in some infrastructure sectors, and the NCA has co-operation agreements to co-ordinate enforcement with the Post and Telecommunications Authority, which regulates telecoms, and NVE, which regulates the electric power grid. There has not been enough time since the new law was adopted to demonstrate whether its prohibition is a more effective tool for dealing with network industry abuses.

8. The new law establishes a mandatory merger notification regime. It also provides broadly for intervention in merger decisions for reasons other than competition policy; the government may override NCA decisions about mergers based on “public principles or interests of major significance.” Sec. 21.

Box 2. Merger review scope

Confirm the scope of merger review powers.

The principal uncertainty about merger review noted in the 2003 Report was whether it covered dispositions of state holdings through privatisation. In practice, the NCA has had an opportunity to review proposals. But the general language of the 1993 law, that applications of the competition law “must not conflict with decisions passed by the Storting,” might undermine the NCA’s power to take action if a disposition pursuant to legislative authorisation appears to threaten competition. That is not a necessary reading of the statute, but it might be better to make clear that a law providing for disposition of state assets does not amount to legislative “authorisation” overriding the Competition Act.

The general proviso that the 2003 Report was concerned about has been rephrased in the 2004 law. On the other hand, the law does not include the suggested clarification. Rather, there is now a general provision about the application of several laws to the same conduct, simply calling for the government to issue rules assigning jurisdictions. It may still be unclear how competition policy merger control would apply to a disposition authorised by legislation.

The 2003 Report suggested some other aspects of Norway’s merger regime that might also be examined, particularly the adoption of mandatory pre-merger notification, to avoid problems in implementing post-merger remedies. The 2003 Report did not identify any significant transactions that had escaped attention or remedy under the previous system. But developments in the retail sector suggest this is a close call. Tolerance of co-operative arrangements and a wave of large-scale restructuring have left Norway with only 4 supermarket retailing groups. More vigilant merger control might have prevented development of such a concentrated market; the NCA has now made clear that no more combinations are likely to be approved. The new law makes pre-notification mandatory.

Norway’s substantive standard differed from the EU’s standard, being phrased in terms of effect on competition rather than in terms of dominance. The 2003 Report did not recommend changing that. Norway is not the only European jurisdiction to use a different standard, and Norway’s standard may have advantages over a dominance-based standard, particularly where the competition problem is oligopoly. The 2004 law continues to apply the previous test, of whether the concentration “will create or strengthen a significant restriction of competition, contrary to the purpose of the Act.” Sec. 16. This still differs slightly from the new EU standard, by not mentioning dominance explicitly.

9. Market-surveillance powers recall the era when the NCA was the Price Directorate. A section of the Competition Act requires price transparency, and the NCA once engaged in extensive price surveys and monitoring to ensure compliance. The NCA still issues survey reports about retail supermarket prices. The process might encourage competition among the small number of national chains—but it may inform the competitors, too, about how close they are to the industry consensus. The 2003 Report suggested that, in the process of cleaning out the competition rules, it would be advisable to remove provisions that imply direct price monitoring and control. In the new law, the provisions about labelling and transparency have been reduced to a single paragraph that supports the NCA’s power to impose information-based rules and remedies “if necessary to promote competition.” (Sec. 23).

Institutions

10. The NCA has decisional independence. The Ministry of Labour and Government Administration provides the administrative framework for the NCA, but the Minister cannot instruct NCA about individual cases. This point was made explicit in the 2004 legislation; previously, the Ministry in theory had the legal power to instruct the NCA about a particular decision or to take the decision itself. The government may order the NCA to deal with a case, but it cannot tell the NCA how to decide it.

11. The Ministry has the power to overrule NCA decisions that are “invalid,” even if the parties do not appeal. Presumably, the Ministry has to make a colourable and perhaps appealable showing that the decision was not correct under the Competition Act. In the past, not only were many of the NCA’s enforcement decisions subject to appeal to the Ministry, but the Minister could decide the appeal on grounds other than competition policy goals. NCA decisions had been overturned in order to promote jobs or regional policies. Although the Ministry’s most recent appeal decisions concentrated on competition issues, the parliament has been intervening too. After the NCA prohibited the leading, state-owned electric power firm from acquiring dominating interests in 2 other producers, the Ministry permitted one of the acquisitions, conditioned on the sale of other generating capacity, while rejecting the appeal of the other. But the parliament then enacted a revised rule for mergers and called on the Ministry to reconsider the decisions. The rule, which is included in the 2004 law (sec. 16), restates standard analytic principles, though: a merger is not to be challenged if there is a well-functioning Nordic or European market and the merger does not adversely affect Norwegian customers. The Ministry decided that these new criteria did not require reconsideration of the previous decisions. The result in these cases was substantially the same as the NCA’s original actions, but the process left the public impression that political pressures may have affected the outcome. The appeal criteria have been clarified and the process has been improved, but competition considerations may still be pushed aside by other interests. An issue that seemed to underlie a recent controversy (although in the end it did not play a role in the formal decision-making) was keeping a major bank headquarters in Norway.

12. An avenue for appealing decisions about competition issues, not only those by the NCA but also by sectoral regulators, that was completely independent of the government would overcome concerns that particular decisions could be affected by political considerations or by solicitude for the interests of state-connected firms. Acknowledging the advantages of an independent appeal route, the government had planned to create an independent appeal body, as recommended by a study committee (and by the 2003 OECD Regulatory Reform report and the 2004 EDRC review), but it agreed not to submit that proposal to the Parliament before the next election.

13. Although the new law puts some limits on the Ministry’s power to override NCA actions, it makes explicit that there are few limits on the government’s power to do so. “In cases involving public principles or interests of major significance”, the government may approve conduct that violates the law, reverse NCA enforcement decisions, authorise mergers that the NCA has rejected, or determine whether a merger should be authorised. (Sec. 13, 21) The only limits on this power are whether the principles or interests that the government asserts are “public” and of “major significance.”

Box 3. Independent appeal route

Reform the decision process, to end political intervention in particular decisions.

Providing for an expert-based appeal body, outside the political system, was a principal task of the Committee that examined improvements to the Competition Act. Even though the process of appealing to the Minister is transparent and the Minister’s reasoning must be publicly explained, the prospect that decisions can be overridden by political considerations inevitably undermines the coherence and consistency of competition policy. The 2003 Report observed that rules to circumscribe the scope of discretion by limiting the basis for appeal or decision would likely fail to distinguish the special cases from the ordinary ones consistently. On the other hand, if an appeal body appears to disregard other policies too much, those policies would reappear through a proliferation of legislated exemptions, which would undermine consistency and coherence too. Independence and long-term consistency with government policies can be balanced through the design of the institution and the appointment process. Norway has models of non-political appeal structures to draw upon, in media and immigration matters. Providing for a collegiate body in the process would be a return to Norway’s historic practice in some competition matters (as well as its current practice at the Market Council for unfair competition matters).

The modest changes that the 2004 law has made in the process do not end the prospect of political intervention in particular decisions, and fall far short of establishing an independent, expert avenue for appeal of competition enforcement decisions. The

statutory standard of “validity” for the Ministry’s reversal of NCA decisions should ensure that such appeal decisions (and *ex officio* decisions in the absence of appeal) are justifiable in terms of the Competition Act’s rules. But the government retains the power to intervene for any other policy reasons. Evidently, the parliament was not persuaded that competition issues should be free from political intervention and influence.

To ensure consistency of competition policy, it would be best to create an independent body to decide appeals not only from NCA actions but also from decisions of other regulators that involve competition matters. There had been plans to create a non-political appeal route from the telecoms regulator. Consistency, as well as efficiency, would be promoted by using the same body for appeals from both regulators. Examples of specialist appellate bodies in other countries that cover sectoral regulators as well as competition law include the Competition Commission in the UK and the Antimonopoly Court in Poland.

14. As part of the agreement about the 2004 legislative package, the NCA and regulatory bodies will be moved out of Oslo. The NCA is going to Bergen. To replace the inevitable staff losses, the NCA may find needed expertise in the faculty and graduates of Bergen’s law and business schools. But the move will not necessarily slow down the “revolving door” to the private sector, particularly if specialist legal and consulting firms follow the NCA there. And it remains to be seen whether a single office in the second-largest city will be more adept at handling local and regional problems, just because it is no longer in a place that tends to see national ones. Dispersing authorities around the country could impede inter-agency contacts, particularly the informal contacts that can be particularly efficient means of promoting policy consistency.

15. Sanctions that may be applied against violations have been modified substantially. Before, financial penalties could only be imposed through criminal processes. In theory, intentional or even negligent infringement of the prohibitions is subject to fine and, for individuals, to imprisonment up to 3 years (6 years, if there are aggravating circumstances). To impose these sanctions, the NCA must refer the case to the prosecutor for economic and environmental crime, Økokrim. Since 1986, the NCA has referred an average of about 2 cases per year for prosecution. The process is cumbersome and ineffective, in part because Økokrim must often re-do much of the NCA’s investigation in order to create a record that can withstand constitutional and human rights challenges. Økokrim’s resources are stretched and its priorities are complex, so the cases pile up. Taking action against allegations of price-fixing in electrical equipment took 2 years.

16. Neither the criminal sanctions against prohibited conduct nor the orders following discretionary interventions have been effective sanctions. Fines have been far below the level that would be expected to deter. In the ABB-Siemens case, the firms’ turnover in the market at issue during the course of the conspiracy was 75 times greater than the fine (EUR 2.5 million). Fines against individual decision-makers, although not infrequent (79 individual fines in 15 years), have been light, and no individual has been sentenced to prison. Both problems appear to result from the reliance on criminal process for enforcement. One reason for pursuing criminal cases was that the criminal case was a necessary predicate for an order to disgorge the profits from a violation. Yet the threat of disgorgement was rarely carried out either. In any event, the threat of a disgorgement order alone is not likely to deter misconduct. A would-be violator might be willing to take the chance that it would not be caught and required to relinquish its gains. In non-criminal matters, the only consequence of violating a statutory prohibition was an order to stop doing it. Injured parties can sue for damages, and that process has proved more successful. Customers who followed the ABB-Siemens case with claims for damages reportedly settled for nearly EUR 7 million.

17. Instruments for ensuring compliance needed to be strengthened. One option is to make the criminal process more effective. That will require more resources and a higher priority to prosecuting competition cases at Økokrim. In addition, leniency and whistle-blower programmes are needed. Actually imposing jail sentences, as the law already permits, would persuade individuals to seek leniency in exchange for giving evidence. But the powers that are already available are seldom used. The courts and

the public need to be persuaded that the harm done by anti-competitive conduct is serious enough to call for correction, prevention, and even punishment. Increasing the possible fine, by setting criteria such as those used by the EU to relate the size of the fine to the impact of the violation, would enable and encourage the courts to up the ante. Narrowing the scope of criminal liability, to cover only hard-core, clandestine, horizontal collusion might also help persuade the courts to punish them more severely. If the criminal process nonetheless cannot be made to work, an alternative is needed that leads to significant sanctions through civil or administrative processes.

Box 4. Effective sanctions

Design enforcement processes that can impose effective sanctions.

The 2003 Report recommended serious consideration of a non-criminal, administrative financial sanction. As an alternative to the criminal process, a 2003 committee report recommended empowering the NCA to issue fines against companies that violate prohibitions. Presumably, such administrative fines would be demanded after a simpler process, subject to lower burden of proof. Whether it would be a more significant deterrent depends on how it fares in the inevitable appeals, testing both how this novelty fits into the Norwegian legal system and how large a sanction the judges will actually permit the NCA to demand. Dividing responsibility between the NCA and Økokrim can lead to delay and duplication. The NCA could handle administrative matters itself from start to finish.

The 2004 Act provides for administrative fines for violations of the basic prohibitions (restrictive agreements and abuse of dominance) and the merger notification and control provisions. Administrative fines may also be imposed to enforce compliance with orders and investigative processes. The fines are to be determined and assessed by NCA, and they are not appealable; to challenge the NCA's decision, the party must go to court. The law itself does not set limits on the level of fines. It lists the factors to consider in setting them: the offender's turnover, the gravity and duration of the violation, and implementation of leniency.

The NCA's powers of financial "sanction", to confiscate the gains from a violation, were almost never used, in part because it is difficult if not impossible to compute those gains precisely enough. Calculating a sanction to deter, based on turnover and other relevant factors, could be more straightforward, and consistent with common experiences in other European jurisdictions. The new law has eliminated the provision for confiscation of gains.

The criminal process is still available. The standard for criminal conduct has been revised slightly; criminal penalties can be imposed if the violation is done intentionally or through "gross" negligence, and longer sentences could be imposed where there are "severely" aggravated circumstances. The exact function of the 2 new words is unclear, but they do reinforce the position, that these criminal measures are to be reserved for the most serious violations.

18. New enforcement powers may be particularly useful against abuse of dominance (although the law does not limit their application to those cases). Structural measures such as divestiture are now authorised, but only if there is no behavioural remedy that would be equally effective or less burdensome. And the NCA may also order interim relief, where there are reasonable grounds to believe the law has been violated, there is a risk of lasting damage to competition, and the damage or inconvenience to the party subject to the order would not be disproportionate. (Sec. 12). These tools correspond to measures that are now available to the European Commission under the new enforcement regulation.

19. Leniency now authorised. In setting either administrative or criminal fines, consideration is to be given to whether the undertaking assisted the authorities in detecting a violation. Based on this statutory foundation, details of a leniency program are left to implementing regulations. (Sec. 31).

20. Aspect of the law affecting private initiatives have been modified, to uncertain effect. Violations are no longer treated as invalid between the parties under civil law. But it may be that this same result is achieved through other legal principles. Injured parties may still bring private lawsuits. Third parties now have clearer powers to get information to support private suits, and the parties that provided the information have a clearer process for defending their interests. (Sec. 27)

21. The 2004 law tries to bring the NCA fully into the new European enforcement system, by authorising the NCA to enforce Articles 53 and 54 of the EEA agreement. (Sec. 9(c)) But this power did not become effective along with the other parts of the law, because not all of the national governments had taken the necessary implementing steps in time.

Coverage of competition law and policy

22. The 2004 law changes the terms used to describe the relationship between competition law and other laws and decisions. The results of the new language are probably about the same as before. A regulation, but not simply a decision by a ministry, may exempt an industry or market from any part of the law. (Sec. 3) Application of several laws to the same conduct is to be sorted out by regulations delineating different authorities' responsibilities. (Sec. 4) The language ensuring coverage of government entities has also changed, but again the effect may be unchanged. The 1993 law stated unambiguously and explicitly that it applied to any commercial activity, including that "carried out by central or local government authorities." But the King, not the NCA, was responsible for decisions through "intervention" against conduct of municipal or county bodies. (1993 act, sec. 3-10) The "intervention" process has been abolished, but the clause making the application to government bodies explicit has also been eliminated. Instead, a definition of "undertaking" is added, taken from the previous law's definitions, providing now that the competition law applies to public as well as private entities that exercise commercial activities. (Sec. 2)

Box 5. Public sector issues

Encourage competition and market discipline in the public, and publicly-owned, sectors.

The 2003 Report supported Norway's program to focus attention on how government involvement can distort competition and on how market methods can improve the efficiency of government services, while advising that the goals should be clearly understood. Procurement methods that lead to unintended monopolies should be reformed, but efficiencies should not be discarded in the process of trying to make more business available to smaller participants. To some extent, aspects of market discipline might be achieved without changing the nature of the providers, by enabling greater consumer choice in areas such as health care and education. For services that involve private sector providers too, the process of reorganising public service providers should not give them inefficient advantages or disadvantages. These distortions can result not just from formal or informal preferences in getting business through long-standing relationships, but also from how the new entities are capitalised. The same issue is raised in the debate over the appropriate scope and role of state ownership in other economic sectors. Substantial state holdings in a private firm inevitably raise questions about the extent, and value, of an implicit public commitment to provide further support, which can shift the competitive balance, as well as about the risk that the state might intervene through regulation to forestall threats to its investment. Eliminating the most obvious of those risks by eliminating the state's holdings in business firms that do not have a significant public-interest role is well-advised.

There have been no significant changes since the 2003 Report in the public ownership situation. The ownership function for most, but not all, companies in which the government has an interest had already been transferred from ministries with a regulatory function to the Ministry of Trade and Industry. The 2003 Report noted that in moving from regulation toward competition, Norway has typically retained a measure of public control, through ownership if not through regulation. The state retains key ownership or control positions in the principal firms in telecoms and electric power. In transport the pattern is similar, of reforms in principle accompanied by continued state involvement which affects competition in fact. To promote competition principles, the Ministry and the NCA have already challenged national icons such as Statkraft, Telenor, and SAS. The risk that firms connected to the state will continue to dominate liberalised markets calls for continued vigilance to ensure that competition can be sustained. Implicit (or even explicit) public backing for major firms presents a challenge to other market participants that do not enjoy similar support.

23. Competition is absent or dampened in some surprising areas. Prices may be fixed for books, only the state-owned monopoly may sell alcoholic beverages, and local municipalities may monopolise cinemas. Although these constraints appear durable, Norway has relaxed or dropped some other commonly found ones, such as self-regulation of professional rates and controls on pharmacy ownership and location.

Exemptions continue for agriculture and fisheries; the 2004 law provides for these regulations explicitly. (Sec. 3) The book pricing system, permitting publishers and booksellers to set and agree on prices, is due to expire at the end of 2004. The NCA continues to argue, most recently in a report issue 14 April 2004, that cultural goals could be achieved through less anti-competitive means.

Box 6. Anticompetitive Regulation

Reconsider and reduce sectoral protections against entry and competition.

The 2003 Report called attention to some remaining regulatory constraints on competition that are difficult to justify, notably the local government monopoly over movie theatres and continued controls on entry into inherently competitive services such as express buses and taxis based on a demonstration of unmet demand. In retail trade, Norway had proposed a modest move toward greater freedom of customer choice, by removing some controls on opening hours. Rules controlling which stores may open on holidays, which may have more of an impact, will remain in place, though.

No changes in these regulations are reported since the 2003 Report.

Advocacy and policy studies

24. The NCA has devoted a very high proportion of its resources to advocacy about competition issues in regulatory settings. The NCA makes about 100-120 submissions and opinions each year on the competition implications of government regulations and actions. The statutory authority for the NCA to call attention to how other government actions affect competition has been expanded. Now, the public body addressed may be required to make a public response explaining how the competition concerns will be addressed.

Box 7. Regulatory reform process

Complete the review of existing regulations to identify constraints on competition.

In many countries, a project like the one announced in early 2002, to perform a government-wide review of the regulations in place, would be a Herculean task. Doing it thoroughly may be more important than doing it quickly, at least in the absence of crisis. Norway has done similar reviews before, though, and thus there may be fewer anti-competitive skeletons in its regulatory closets. At least, they may be easier to find.

This review was evidently completed, but the prospects for further action are unclear. There will be follow-up, particularly concerning professional services, by a government-wide working group in 2005. The project had been promoted by the Ministry of Labour and Government Administration, which was widely seen to be the principal driver of further reform in Norway. As the result of a government reorganisation in 2004, this ministry will be known in the future as the Ministry of Modernisation. The 2003 Report noted that prospects for further integration of competition into regulation are mixed, reflecting the mixture of values and interests at stake, as well as the less-than-doctrinaire commitment to the principle of market competition. State involvement in the economy has been the pattern in Norway for a long time. Issues of equity and regional support have been as important as efficiency and competitiveness. Moreover, Norway does not face a crisis that demands fundamental change. On the contrary, its resource-based wealth provides insurance against shocks and reinforces the status quo. But Norway may be receptive to improving the efficiency of public institutions, looking to the day when oil wealth may not be enough to maintain the services that the public demands. One means of doing so could be to encourage market-based methods of delivering those services.

Conclusions

25. In reviewing the role and nature of the competition policy institutions, Norway has given its enforcement agency potentially important new sanctioning powers, but it has declined the opportunity to create true decision-making independence by providing a non-political avenue of appeal from NCA decisions. The Ministry remains the avenue of appeal, although the grounds for Ministerial reversal may be limited to interpretations of the competition law itself, rather than the invocation of other policies. But the government may still do so, in deciding particular cases as well as in setting general policies. Removing the potential to invoke other policy grounds in order to override a decision would have been a significant step, marking a change in priorities. In Norway, competition is not treated as an overriding principle so important that it should be insulated against political intervention.