

Unclassified

DAF/COMP(2006)21/14



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

27-Sep-2006

English text only

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

DAF/COMP(2006)21/14
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN NORWAY

-- 2005 --

This report is submitted by the Norwegian Delegation to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 18-19 October 2006.

JT03214530

Document complet disponible sur OLIS dans son format d'origine
Complete document available on OLIS in its original format

English text only

TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
1. CHANGES TO COMPETITION LAWS AND POLICIES	3
2. ENFORCEMENT OF COMPETITION LAW AND POLICIES	5
3. RESOURCES AVAILABLE TO THE COMPETITION AUTHORITY	8
4. NEW REPORTS AND STUDIES ON COMPETITION POLICY ISSUES.....	8
5. INTERNATIONAL COOPERATION	9

Executive Summary

1. This report provides a brief summary of some of the more important activities of the Norwegian Competition Authority (NCA) in 2005. It contains a description of some important cases handled by the NCA, and some markets and areas that the NCA has paid special attention to.
2. In 2005, the NCA intervened in six mergers and acquisitions.
3. The NCA intervened against anti-competitive practices once during 2005. In June, the NCA levied a NOK 20 million fine against SAS Baathens for abuse of dominant position in the airline market. In September, the NCA announced that the dairy producer Tine BA might be subject to a fine of up to NOK 45 million for abuse of dominant position in the marketplace by entering into an exclusive supplier agreement with Rema 1000.
4. Two dawn raids were carried out by the NCA during 2005. One case concerned price fixing and bid rigging was reported to the public prosecuting authority with a request for criminal investigation and prosecution.
5. During the period, the NCA handled numerous competition advocacy cases.
6. The NCA continued to be active in international networks and organisations. During the period the NCA has had a special focus towards the development within the EU and the EEA, while also actively participating in meetings with the other Nordic competition authorities and in the OECD.
7. The Parliament has decided that the NCA shall move from Oslo to Bergen before the end of 2006. By the end of 2005, about 50 percent of the employees had their work place of employment in Bergen. The relocation has been finalised 1 September 2006.

1. Changes to competition laws and policies

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

8. The present Competition Act entered into force 1 May 2004. The Act is partly harmonised with EU competition rules and includes prohibitions of cartels and abuse of market dominance. A pre-merger notification system is introduced in addition to a new and more efficient sanction system.
9. The EEA Competition Act of 2004 entered into force on 19 May 2005. Some amendments were made in the Act in December 2004. These amendments entered into force on 1 July 2005. The EEA Competition Act establishes competence for the NCA to apply articles 53 and 54 of the EEA Agreement.
10. The Competition Act empowers the NCA to levy fines. According to the Regulation on administrative fines and leniency a maximum of 10 percent of last year's turnover may be fined an undertaking for violation of the prohibitions of the Competition Act or for failing to comply with interventions in mergers and acquisitions (i.e. concentrations). Undertaking which fail to notify concentrations may be fined a maximum of 1 percent of last year's turnover. The NCA is also able to report cases for criminal processing as was the case under the previous Act.
11. In August 2005, the new Regulation on administrative fines and leniency entered into force. The Regulation gives the possibility to obtain leniency from administrative fines if the undertakings concerned assist in solving an infringement case. The administrative fines can be dropped completely if the undertaking provides information, which was not earlier known, and which makes the unveiling of an

infringement possible. The prerequisite is that the undertaking has cooperated fully with the NCA, has terminated its participation in the infringement, and has not instigated other undertakings to take part in the violation.

12. In September 2005, the threshold level in the Public Procurement Act was increased from NOK 200.000 to NOK 500.000. Furthermore, a threshold of NOK 100.000 for simplified announcement and protocol was introduced. To increase competition connected to public procurement further, several new sectors have been included in the Public Procurement Act.

1.1.1 EU/EEA harmonisation

13. Norway is part of the European Economic Area (EEA) through its membership in EFTA. The rules and regulations in the EEA, which mirror those of the EC Treaty, have been implemented into Norwegian legislation through special acts and regulations. The Competition Act contains a prohibition against anti-competitive agreements and concerted practices and a prohibition against abuse of dominance. The wording of the prohibitions is, apart from effects on trade, identical to the wording of the prohibitions in Articles 81 and 82 of the EC Treaty and Articles 53 and 54 of the EEA Agreement. Case law under EU/EEA competition rules has become a key legal source for the NCA's enforcement of the prohibitions against anti-competitive agreements and abuse of a dominant market position, as well as for determining fines and leniency.

1.1.2 Investigation and sanctions

14. The Competition Act maintains the extensive investigative powers of the Competition Authority and the possibility of imposing criminal sanctions on individuals and undertakings that violates the provisions of the Act. In order to enforce the Act, the Competition Authority may impose administrative fines on undertakings that breach the prohibitions. The Act provides the basis for a transparent leniency programme.

1.1.3 Merger control

15. The Competition Authority is empowered to intervene in mergers, acquisitions, and other business concentrations that would lead to significant restriction of competition.

16. The Competition Act includes a mandatory notification system for concentrations. The concept of concentration is identical to that of EU/EEA merger control. Concentrations where the undertakings concerned have a combined annual turnover in Norway exceeding NOK 20 million (approximately USD 3.2 million), must be notified to the NCA by way of a standardised notification. Notification is not required if one of the undertakings concerned has an annual turnover in Norway below NOK 5 million (approximately USD 0.8 million).

17. The standardised mandatory notification is limited to basic information. If the NCA, after receiving a standardised notification, finds that a further examination of the concentration is necessary, it may order the submission of a complete notification. Undertakings shall not implement the concentration during the first phase of the procedures following an order to submit a complete notification.

18. The Act provides a strict procedural timetable for the handling of merger cases. Moreover, it retains the Substantial Lessening of Competition (SLC) test as the relevant merger test.

2. Enforcement of competition law and policies

19. This section deals with the issues of illegal collusion, block exemptions, interventions in anti-competitive practices and merger control.

2.1 *Illegal collusion*

20. In 2005, the public prosecutor dismissed three cases that had been reported by the NCA. Two of the cases concerned price cooperation and exchange of information in local hotel markets. The third case concerned vertical restrictions in a local market for car tires.

21. The NCA referred one case concerning price fixing and bid rigging, in the market for maintenance of power plant, to the public prosecuting authority for economic crimes, with a request for criminal investigation and prosecution.

22. In cases involving possible serious breaches of the prohibitions of the Competition Act, the NCA usually carries out inspections at the premises of the undertakings. The NCA may also demand access to homes if there are special reasons to assume that evidence may be kept there. In 2005, the NCA carried out inspections in two cases.

2.1.1 *Transport sector*

23. In February 2005, the NCA's lawsuit against Norway's four largest transportation companies for illegal price cooperation ended in a court settlement. Under the settlement, the companies agreed to pay fines totalling more than NOK 3.7 million (USD 0,56 million).

2.2 *Block exemptions*

24. In addition to existing block exemptions Regulations 2 new block exemptions entered into force in 2005; i.e.:

On the application of Article 10(3) of the Act to Categories of Certain Categories of Agreements, Decisions and Concerted Practices

- in the Insurance Sector;
- on the sales of Books concerning cooperation on prices in connection with book clubs.

2.3 *Anti-competitive practices*

25. In June 2005, the NCA levied a NOK 20 million fine on SAS Braathens for abuse of market dominance in the route between the Norwegian cities of Oslo and Haugesund. SAS Braathens was fined for predatory price cutting against Coast Air.

26. In July 2005, the Competition Authority notified SAS Braathens that it was also considering imposing fines for a similar violation on the company's Oslo-Ålesund route. On the eleven other routes investigated, the Authority did not any violations of Norway's Competition Act.

27. SAS Braathens lodged an appeal against the NCA's fine for predatory pricing on its Oslo-Haugesund route and in July 2006 the district court overruled the NCA's decision. Regarding Competition Authority intervention in alleged under-pricing on the Oslo-Ålesund route, SAS Braathens has submitted its comments, and the NCA will review the issue again before making a final determination.

28. In December 2004, it became known that the Norwegian supermarket chain Rema 1000 refused to sell dairy products manufactured by Synnøve Finden. The NCA started investigations of whether the cooperative dairy producer, Tine BA, had abused its dominant market position.

29. In September 2005, the NCA announced that the dairy producer Tine BA might be subject to a fine of up to NOK 45 million. The Authority's preliminary findings indicate that Tine may have abused its dominant position in the marketplace by entering into an exclusive supplier agreement with Rema 1000 that made it the supermarket chain's sole supplier of cheese. Tine may also have tried to establish a similar agreement with another supermarket chain.

2.4 Control with mergers and acquisitions

30. In 2005, the NCA intervened in six concentrations. In two instances, the NCA decided to prohibit the business concentration and in four cases, the NCA approved the transaction provided certain conditions were met.

31. In addition, the NCA, for the first time since the new Competition Act went into force, issued fines to companies that failed to submit notifications regarding mergers or acquisitions. This was done in six cases.

2.4.1 BBS' acquisition of ZebSign

32. In June 2005, the NCA approved the acquisition of ZebSign AS by Bankenes Betalingsentral AS (BBS), provided certain terms and conditions were met. ZebSign provides PKI (Public Key Infrastructure) services for secure electronic identification. BBS is an IT company owned by Norwegian banks. One condition was that BBS must offer its services based on non-discriminatory terms and prices.

2.4.2 Intervention against the merger of National Oilwell and Varco

33. The Competition Authority intervened in the merger of the two US companies National Oilwell, Inc. and Varco International, Inc. The Authority demanded the sale of the former National Oilwell's Norwegian subsidiaries engaging in sales and maintenance of drilling equipment. In November 2005, the Ministry of Modernisation repealed the NCA's decision and approved the merger.

2.4.3 Conditions for egg merger

34. In September 2005, the NCA prohibited Prior, a Norwegian egg and poultry producer, from acquiring its competitor Norgården. In its decision, the Competition Authority determined that the acquisition would strengthen Prior's market dominance and further limit competition in the market for eggs and egg products. Prior appealed the decision, and in February 2006 the Norwegian government approved the acquisition, based on agricultural policy considerations.

2.4.4 Telenor's acquisition of Tiscali

35. In August 2004, Telenor acquired Tiscali's business activities in Norway. Tiscali was a supplier of broadband and dial-up Internet services to private market customers in Norway.

36. The acquisition raised Telenor's broadband market share to 58 percent and its share of the market for dial-up Internet service to 65 percent. The NCA, in evaluating the acquisition, determined that it significantly restricted competition. Telenor thus committed to refrain from any similar acquisitions for a period of two years, and sold Tiscali's dial-up business.

2.4.5 *Orkla's acquisition of Collett Pharma*

37. In June 2005, Orkla acquired Collett Pharma. Both Orkla and Collett Pharma produce and sell cod-liver oil, Omega 3, natural medicine and skin lotion in Norway. After the acquisition, Orkla would gain a strong position in the market for cod-liver oil and Omega 3. The NCA approved the acquisition on the condition that Orkla sold all rights connected to the product Lofottran to an independent buyer and issue licenses connected to the product Triomega in Norway.

2.5 *Role in formulation and implementation of other policies*

38. The NCA is increasingly being used as a hearing body by other public authorities. This provides an opportunity to influence the decision process and include the competition aspect when considering the adoption of new public measures. The NCA made substantive remarks in 61 cases in 2005. On its own initiative the NCA pointed out the unfortunate effects of public measures initiated by other public authorities in six cases.

2.5.1 *Selection of cases*

Lower fees make it cheaper to switch banks

39. On 1 January 2006, the registration fee for refinancing of loans was lowered from NOK 2,112 to NOK 215. Lower fees make it cheaper to switch loans to another bank offering more favourable terms. The reduced fee applies to a refinanced loan that features the same principal, the same mortgagee, and a continuation of the same mortgaged asset as loan security. The Competition Authority has, on several occasions, requested that the aforementioned loan registration fees be reduced, so as to promote greater competition in the market for home mortgages.

New rules facilitate greater competition on retirement plans

40. Well-functioning competition is important to ensuring good yields on the pension assets of today's workforce and to maintain high levels of performance. Changes to Norwegian regulations, initially requested by the Competition Authority, went into effect as of January 2006. These changes will allow more companies to provide retirement plan asset management.

Refusal of Lidl entry

41. On three occasions Oslo municipality has refused Lidl to build new grocery stores in Oslo. The NCA has pointed out that this is unfortunate and asked the municipality to account for these refusals.

License for digital ground net

42. The only application for license to build a digital ground net came from Norges Televisjon (NTV), which is owned by NRK, TV 2 and Telenor. NRK and TV 2 are the two biggest TV channel and Telenor the biggest telecommunication company in Norway. The NCA was positive to the building of a digital ground net, but called attention to two possible problems; 1) that competing TV channels may get worse condition than NRK and TV 2; 2) other distributors of satellite and cable TV may get worse condition than Telenor. The NCA suggested separating the ownership of the net and the production and distribution companies. Otherwise the NCA suggested strict regulation to ensure other companies equal access to the net.

3. Resources available to the Competition Authority

43. The Parliament has decided that the NCA, as one of several government supervisory authorities, is to be moved from Oslo. The relocation of the NCA to Bergen has been completed by 1 September 2006. The reorganisation process had a high priority in 2005 and has been completed on time.

Budget

	Employees	Budget expenditure in NOK 1000	Budget expenditure in USD 1000
2005	113	79 739	12 576
2004	125	69 009	10 685
2003	121	65 110	9408
2002	107	69 878	10 099

Employees - profession

	2004	2005
Economists	50	44
Lawyers	37	37
Other professionals	10	13
Support staff	28	19
All staff combined:	125	113

4. New reports and studies on competition policy issues

4.1 Measures to ensure competition in the grocery sector

44. In June 2005, the Competition Authority launched a report on the effects of payments made by suppliers to obtain supermarket shelf space (so-called listing fees). According to the report such payments by dominant suppliers may weaken competition and exclude smaller suppliers from the market. The report's findings led the NCA to propose several measures to ensure competition in the grocery sector.

45. Along with these measures, the NCA imposed a duty upon supermarket chains to notify the Authority about their annual agreements with 25 major suppliers. The notification duty will remain in force for five years.

Other reports initiated by the NCA

- On equal terms? An analysis of competition between private and state owned enterprises.
- Free professions – freer competition?

Reports prepared by the NCA

- The role of intermediaries and their importance on competition.

- Competition in the dairy sector.

5. International cooperation

46. As a small state that is not part of the enlarged European Union, it is increasingly important that the NCA keeps close contact with the international community. The Authority prioritises European cooperation within the European Economic Area (EEA), but Nordic cooperation and cooperation within OECD are also important.

47. It is vital for the NCA to maintain a close working relationship with the EFTA Surveillance Authority and the European Commission, particularly for the sake of the strength and efficiency of competition law – and its efficient enforcement. In 2005, the EFTA Surveillance Authority and the EEA/EFTA states established a network for cooperation in handling and enforcing EEA Agreement prohibitions.

48. Following the reform of EC legislation on concentrations, EEA legislation has been amended. Norway may participate in transfers of cases from the Commission to national authorities, as well as transfers to the Commission.

49. The NCA has actively participated in certain EC legislative work, as well as the Commission's investigations, case handling, and sector inquiries.