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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN NORWAY**

-- 2006 --

*This report is submitted by the Norwegian Delegation to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 17-18 October 2007.*

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**ANNUAL REPORT ON COMPETITION POLICY  
DEVELOPMENTS IN NORWAY 2006**

**Executive Summary**

1. In 2006, the Norwegian Competition Authority was engaged in the final phase of the establishment of the Authority in Bergen. At the beginning of 2007, there were almost 90 employees in Bergen. When the relocation from Oslo was approved by the Norwegian parliament in June 2003, the Authority had 116 employees. At the end of 2006, 98 of these had resigned. Despite the fact that a large number of staff members resigned due to the move, the Authority has managed to recruit highly capable professionals in Bergen. The challenge has been to recruit, hold on to and develop employees with experience and knowledge on analysing and processing competition cases. Among the professionals in the Market Monitoring Support Departments and on the staff, forty per cent had spent less than one year with the Authority at the turn of the year. For that reason considerable emphasis has been placed on training and transfer of experience.
2. There were a large number of large, complex cases in 2006. In particular, cases relating to competition in the air travel and grocery markets have demanded considerable resources. The ban on the abuse of a dominant market position was new to Norwegian law in 2004, and two cases in particular have required a great deal of time and resources.
3. The first case involved a fine of NOK 20 million which the Competition Authority imposed on the SAS air carrier group in June 2005 for having abused its dominant position on the Oslo-Haugesund flight route. The Authority considered that SAS had set prices too low in order to squeeze competitors out of the market. The case went to court in 2006 and the Oslo District Court found in favour of SAS. The Competition Authority appealed, and the case will be heard by the Court of Appeal in January 2008.
4. The second case concerned the dairy producer TINE. In September 2005, the Competition Authority issued a statement of objection to the main Norwegian dairy producer TINE for infringement of the Norwegian Competition Act. TINE entered into an agreement with the grocery chain REMA 1000 in the autumn of 2004, in which TINE became the sole supplier of cheese to REMA 1000. The Norwegian Competition Authority found that TINE had abused its dominant position by entering into this agreement. TINE also abused its dominant position when it made an attempt to enter into a similar agreement with the grocery chain ICA. The agreement between TINE and REMA 1000 also constitutes a violation of the prohibition against agreements restricting competition. The Authority decided in February 2007 to impose a fine of NOK 45 million for violation of the law.
5. The main focus of the Norwegian Competition Authority in 2006 has been on illegal price-fixing, tendering collusion and market sharing.
6. The Norwegian Competition Authority intervened in two merger cases in 2006. The Authority also handled numerous competition advocacy cases.

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

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

7. The Norwegian Competition Authority enforces the Norwegian Competition Act of 2004<sup>1</sup>. The primary tools of the Act is section 10 and 11 (equivalent to Article 53 and 54 of the EEA agreement and Article 81 and 82 of the ECC agreement) and merger control under section 16 (similar to Article 57 in the EEA agreement). Additionally, the Authority occasionally use its ability granted in section 9 to point out anti-competitive effects of public measures and proposals.

8. The threshold levels for mandatory notification for mergers and acquisitions were increased in 2006. Concentrations where the undertakings concerned have a combined annual turnover in Norway exceeding NOK 50 million (approximately 8.9 USD million), must be notified to the Competition Authority by way of standardized notification. Notification is not required if one of the undertakings concerned has an annual turnover in Norway below NOK 20 million (approximately USD 3.5 million).

9. In addition to existing block exemptions, an additional block exemption entered into force in 2006, i.e. on the application of Article 10(3) of the Competition Act to categories of technology transfer agreements.

### ***1.2 Government proposals for new legislation***

10. The prohibition on SAS' frequent flyer scheme in 2002 has been decisive for the restoration of competition on routes within Norway. SAS has undertaken costs cuts and prices have fallen by 15-20 per cent. This means that Norwegian consumers save 1-2 billion NOK annually. Competition has led to improved service for travellers, including more departures. The 2002 ban on SAS' frequent flyer program on Norwegian domestic routes expires in August 2007. The Ministry of Government Administration and Reform sent a proposal for public consultation on the continuation of the prohibition. The deadline for consultation was May 21, 2007.

## **2. Enforcement of competition laws and policies**

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

#### ***2.1.1 Dairy Producer TINE Fined for Abuse of Dominance***

11. The dairy producer TINE was issued with an administrative fine of NOK 45 million in February 2007, for abusing its dominant market position and entering into a collaboration which had a detrimental effect on competition. The Competition Authority concluded that there was a great risk that TINE's only competitor, Synnøve Finden, could get squeezed out of the market as a result of TINE's efforts to exclude it. This would result in reduced competition, leading to higher prices, fewer options for consumers and lack of innovation.

12. The Authority's investigation showed that TINE and the supermarket chain REMA 1000 had entered into a supply contract in the autumn of 2004, which entailed that Synnøve Finden lost shelf space in REMA. In return for using TINE as the only supplier of white cheese and brown cheese, REMA received increased discounts worth millions from TINE. Furthermore, TINE also attempted in a similar

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<sup>1</sup> [http://www.konkurransetilsynet.no/portal/page?\\_pageid=235,471152&\\_dad=portal&\\_schema=PORTAL&menuid=13066](http://www.konkurransetilsynet.no/portal/page?_pageid=235,471152&_dad=portal&_schema=PORTAL&menuid=13066)

manner to become sole supplier to the supermarket chain RIMI through its annual negotiations with ICA Norge in 2004. The Competition Authority found that TINE's conduct with respect to REMA 1000 also breached the Competition Act's prohibition against competition-restricting cooperation. If Synnøve Finden had remained excluded from REMA 1000 for a longer period, and if it had also been removed from the RIMI stores, the company would have been at great risk of losing competitiveness and in the worst case scenario would have had to withdraw from the market.

13. The Competition Authority has for several years been working on a series of specific cases to build up competition in the dairy markets. According to the Competition Act, dominant players such as TINE have a special responsibility to ensure that their actions do not violate competition regulations. If TINE had succeeded in becoming the sole supplier of white and brown cheese to REMA 1000 and RIMI, that would have resulted in a further decline in the cheese markets in Norway. This would have had unfavourable effects for the consumers and for the efficient use of resources in society.

#### *2.1.2 Notification Duty for Supermarket Chains*

14. At the turn of the year 2005–2006, the Competition Authority imposed a duty upon supermarket chains to notify the Authority about their annual agreements with major food suppliers. The objective is to generate sound competition between the supermarket chains, ensure a wide range of products and prevent smaller and new suppliers and grocery distributors from being shut out of the market. 98 per cent of all grocery goods are today sold in shops under the chain-umbrellas of Norgesgruppen, ICA, Coop and REMA 1000. The Authority has assessed the annual agreements for 2006 and has followed up matters through meetings with the grocery chains. The notification duty will remain in force until 1 January, 2010.

#### *2.1.3 Cease Detailed Information Exchange*

15. The Competition Authority has considered intervening in the supermarket chains' exchange of price information through the analyst AC Nielsen, because it could weaken competition between the chains. After having been presented with the Authority's assessment, the parties themselves chose to amend the practice. Through weekly reports from AC Nielsen, the supermarket chains have had access to fresh and detailed information on the prices applied by their competitors. The exchange of such information can be regarded as an infringement of the competition law prohibiting cooperation which limits competition. Information exchange makes the market more transparent for the chains, allowing them to react quickly to any price changes made by a competitor. Reduced uncertainty in the market is a factor in decreasing competition. Following the Competition Authority's briefing, AC Nielsen and the supermarket chains agreed to make essential changes in the reporting process. Information will be less detailed and less up-to-date, and consequently less likely to damage competition.

#### *2.1.4 Intervention against Predatory Pricing*

16. The Norwegian Competition Authority investigated 13 domestic air routes during the summer season of 2004, when SAS Braathens was involved in tough competition. On the basis of these investigations, the Competition Authority presented SAS Braathens with a fine of NOK 20 million in June 2005 for having abused its dominant market position on the Oslo–Haugesund route. The authority believes that SAS Braathens has set its prices too low, leading to losses, in order to force its competitor out of the market. SAS claimed there was no justification for this fine, and the case has been brought before the courts. The Oslo District Court ruled in favour of SAS Braathens in its verdict of July 26, 2006. The Competition Authority has appealed the verdict – and the case will be brought to the Court of Appeal in January 2008.

17. The Competition Authority announced in July 2005 that a fine may be issued for breach of the competition Act in relation to the Oslo – Ålesund route. After a thorough assessment and examining the responses from SAS Braathens to the announcement, the Competition Authority has closed the case without issuing a fine.

#### *2.1.5 Assessment of Microsoft Agreements was highly prioritized*

18. The Norwegian Competition Authority received a complaint from LinPro AS (LinPro) on 2 March, 2006. In the complaint, LinPro alleged that Microsoft abused its dominant position through the agreement that it had signed with Norwegian county administrations (“Fylkesavtalen” or “Counties Agreement”) and the “School Agreement” that is based on the Counties Agreement.

19. LinPro specifically pointed out that the structure of discounts in the Counties Agreement restricts competition in that it requires county administrations to buy a so-called desktop package consisting of several different products in order to obtain the discounts provided under the agreement. LinPro also specifically pointed out that the licensing model in the Counties Agreement is a so-called site licence that involves a fixed licence fee based on the number of PCs in the school. According to the complaint, this license fee is paid independently of whether the programs are actually installed on the PCs. In the complaint, LinPro requests that an order be issued on the basis of § 12 of the Competition Act in order to modify certain elements of the Counties Agreement.

20. On this basis the Competition Authority opened its investigation of the Counties Agreement and Microsoft’s practice in connection with the agreement. Based on the complaint, the Authority focused its investigation especially on the requirement regarding site-licensing and the requirement regarding licensing several types of programs in order to receive a discount under the Counties Agreement.

21. In the summer of 2007, Microsoft informed the Authority that an agreement had been entered into with the county administrations in order to modify the Counties Agreement. The modifications involve, first, the removal of the requirement on licensing of the desktop package in order to obtain a discount under the Counties Agreement. The second modification allows individual schools to remove PCs from coverage of the agreement, instead using competing programs on the PCs and not paying a licence fee to Microsoft for those PCs.

22. The modifications imply that the Counties Agreement is changed substantially in the two main areas in which the Authority focused its investigation. As a result of the modifications Microsoft has agreed with the county administrations, the Competition Authority closed its investigation.

#### *2.1.6 Cooperation on Kystbussen must stop*

23. On 15 May 2007 the Competition Authority decided that Tide Reiser AS and Veolia Transport Sør AS no longer can cooperate on the Kystbussen express bus route between Bergen and Stavanger. The Authority has found that the cooperation is restricting competition in violation of Section 10 of the Norwegian Competition Act. This decision follows a statement of objections issued in March 2006. (Tide ASA was formerly known as HSD Buss AS and Gaia Reiser AS, while Veolia Transport Sør AS is the former Connex Vest AS.)

#### *2.1.7 Competition and Public Procurement*

24. 2007 has been a year for strengthening the Competition Authority organization in Bergen. The main focus this year has been on illegal price-fixing, tendering collusion and market sharing. In this context, we wish to develop cooperation between the Authority's ordinary responsibilities in the area and the work of the secretariat of the Public Procurement Complaint Board (KOFA), which is now a part of the

Authority. Every year public purchases amount to between NOK 200 and 300 million. From the point of view of competition it is important that the rules for public purchases are complied with. However, effective enforcement of the Competition Act's prohibition of competition-restricting cooperation will contribute towards ensuring real competition for public contracts. Effective competition for public contracts will also contribute towards reducing the risks associated with, and therefore the extent of, corruption and other forms of economic crime.

#### *2.1.8 Combating cartel operations*

25. In 2007 the Norwegian Competition Authority continued its strong focus on combating cartel operations. In 2006, the Competition Authority conducted dawn raids of two contractors in Northern Norway and to chemical suppliers in Eastern Norway. These cases are expected to be dealt with by the Authority during the first half of 2007. In one case EFTA's monitoring agency (the ESA) received help from the Authority to secure evidence in Norway.

26. In June 2006, the Competition Authority reported two machinery contractors based in the Oslo area to the Oslo police. The Authority maintained that these firms had colluded on a development project. The matter was referred to Økokrim, the National Authority for Investigation and Prosecution of Economic and Environmental Crime, in December the same year.

27. In October 2006, the Competition Authority reported a company to Økokrim. This company provides insulation, interior fitting and surface maintenance services on oilrigs and ships. It was the Authority's opinion that it had attempted to set up an illegal cooperation with a rival in a competition for tender.

28. In June 2006, Økokrim issued fines totaling NOK 36 million and ordered seizures to the value of NOK 5.6 million against leading contractors in the asphalt and construction sectors. The cases, which were referred to Økokrim by the Competition Authority in July 2002 and February 2003 following a comprehensive investigation, revealed gross breaches of the Competition Act, including illegal market sharing, price-fixing and tender collusion. At the turn of the year, over half the fines had been accepted. Two companies were granted an extended deadline to consider the fines.

29. In another case, two companies (Uniprotect and Pro-Corr), and three high-ranking individuals within them, accepted fines of NOK 250.000 per company and NOK 20.000 and NOK 30.000 per person. The collusion was discovered in connection with a competition for tender. One of the companies had by mistake enclosed part of its rival's bid. The Competition Authority was alerted and the investigation revealed several similar instances of cooperation.

#### *2.2 Mergers and acquisitions*

30. In 2006 the Norwegian Competition Authority reviewed 872 mergers and acquisitions. The NCA intervened in two cases. In addition, in 66 cases the NCA issued administrative fines to companies for failure to submit or late submission of notifications of mergers and acquisitions. Undertakings which fail to notify concentrations may be fined a maximum of 1 percent of last year's turnover.

##### *2.2.1 The Gilde-Prior Merger*

31. In June 2006, the Competition Authority adopted a resolution prohibiting the merger of Gilde Norsk Kjøtt BA with Prior Norge BA. The Authority was uneasy with the fact that this merger would further weaken the already low level of competition in the poultry market. The Authority found that Gilde was probably in a position to start producing its own poultry products and should therefore be regarded as a potential rival for Prior. The Authority deemed that the merger in effect removed Gilde as a potential

competitor for Prior. Gilde and Prior contested the resolution with the Ministry of Government Administration and Reform. The Ministry disagreed with the Authority's expert assessment and authorized the merger in October 2006. The Ministry deemed that the possibility of Gilde establishing itself in the poultry market would not significantly impact on competition in the near future.

### 2.2.2 *The Falck-Viking Acquisition*

32. In September, The Competition Authority decided to prohibit the acquisition by Falck Danmark A/S of Viking Redningstjeneste AS (roadside assistance service). Following such an acquisition Falck/Viking would have gained a substantial share of the corporate market, while NAF would still have been the largest provider in the private subscription market. The Competition Authority concluded that the acquisition would facilitate coordinated action between Falck/Viking and NAF. This would have resulted in weaker competition in road rescue services. Falck appealed the decision to the Ministry of Government Administration and Reform. The Ministry decided to allow Falck to go through with the acquisition of Viking while the case was being processed. In the final decision of 17 January 2007, the Ministry upheld the Competition Authority's prohibition of the acquisition. Falck was ordered to sell Viking, but can still retain Viking's activities in Sweden and Finland, as well as the Norwegian subsidiary Viking FollowIt AS. The Competition Authority has appointed an administrator to ensure that the order to sell is carried out.

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

### 3.1 *Advocacy activities*

33. The Norwegian Competition Authority is often used as a hearing body by other public authorities. This provides an opportunity to influence the decision process and includes the competition aspect when considering the adoption of new policies. The Norwegian Competition Authority made 68 hearing submissions of significance in 2006. It also identified two public regulations detrimental to competition.

#### 3.1.1 *Easier Comparison between Banking and Insurance Products*

34. As of January 1, 2006 new regulations make it easier for consumers to change insurance company. However, studies show that the difficulties of comparing the banking and insurance products of different companies curb competition. On several occasions the Competition Authority has stressed the need for easier comparison between various banking and insurance products. The Financial Supervisory Authority of Norway, the Norwegian Consumer Council and the Consumer Ombudsman's Office have proposed the creation of a web portal to help consumers find their bearings in the market and to increase competition between financial institutions. The government has committed NOK 6 million from its 2007 budget to the establishment of this finance portal. The portal will include everyday banking services, lending, saving and insurance products. It will provide free and clear information to consumers looking for the best deal. In addition to comparing prices, the portal will also give customers important information on the products. This could remedy problems of comparison arising from the fact that many products are offered as a package.

#### 3.1.2 *The Importance of Competition in the Digital Terrestrial Network*

35. The Norwegian Competition Authority has stressed the importance of competition in the digital terrestrial network. In June 2006, Norges Televisjon (NTV) was awarded a concession to establish and operate a digital terrestrial network for television in Norway. Telenor (the largest telecom company in Norway), TV2 and NRK (the two largest TV channels) have common ownership of NTV, to the extent of a third each. The Competition Authority has on several occasions expressed concerns regarding issues linked

to the digital terrestrial network. In particular, the Authority is preoccupied with the following: Firstly, there is a risk that TV channels competing with NRK and TV2 might face less favorable conditions when it comes to access to the digital terrestrial network. Secondly, there is a risk that this concession will weaken the competitive conditions for Telenor's rivals in the satellite and cable TV distribution sector.

### *3.1.3 Cooperation with the Norwegian Post and Telecommunication Authority*

36. The Competition Authority is cooperating with the Norwegian Post and Telecommunication Authority to ensure competitive new providers and technologies can enter the market. During 2006 the two authorities had several meetings. Further, the Competition Authority is involved as a consultative body in the Post and Telecommunication Authority's market monitoring work, in particular as regards defining relevant product and geographical markets.

## **3.2 New reports and studies on competition policy issues**

### *3.2.1 Study of the Nordic Retail Banking Sector*

37. The Authority took part in the compilation of the report "Competition in Nordic Retail Banking" together with its counterparts in the other Nordic countries. The report concludes that customer mobility in the Nordic banking market is relatively low. This leads to less competition. The report recommends measures that will reduce the drawbacks for customers of switching banks. The drawbacks largely consist of the fees associated with switching, practical issues of getting new payment cards, informing all relevant parties of the new account number and, for many, the loss of a confidential relationship with the customer advisor at the previous bank. Partially based on this report, the Ministry for Finance has asked a committee to evaluate measures and schemes that can help reduce the inconvenience associated with switching banks and increasing competition in the sector. The committee will submit its report in June 2007.

### *3.2.2 Book on Competition and Welfare*

38. Chief Economist Lars Sørgard is editor of the book "Competition and Welfare: The Norwegian Experience", in which independent researchers explain the effects of competition in seven different markets in Norway.

### *3.2.3 Study of the Norwegian Book Market*

39. The Norwegian Competition Authority also carried out a study of the Norwegian book market in 2006. The new Net Book Agreement of 2005 afforded the market players a restricted opportunity to compete on price. The book clubs lost their monopoly on giving discounts on new, Norwegian literature. According to the new Net Book Agreement all sales channels are allowed to give up to 12.5 per cent discount on the fixed price of textbooks, fiction and non-fiction. Furthermore, the fixed price period was reduced. Vendors are now free to set their own price after a maximum of 16 months after the publishing date, as compared to 24 months previously. To evaluate the effect of the new Net Book Agreement, the Authority carried out an extensive study in 2006 of the trend since 2005. The study showed that significantly more fiction was sold in the bookshops, and the price of fiction had decreased after the implementation of the new agreement. It appears that the best sellers did indeed take up a larger share of the volume, but this does not have a negative effect on diversity. On the contrary, the number of titles sold increased.

### *3.2.4 Studies of the Electricity Market*

40. In addition to several reports in Norwegian, a report in English was issued in 2006: "Ownership and cooperation in the Norwegian power market," which is also available on [www.kt.no](http://www.kt.no). Close links exist

between a number of energy producers in Norway, as revealed in a survey conducted by the Institute for Research in Economics and Business Administration (SNF) for the Competition Authority. The SNF studied the extent of cross-ownership and other forms of collaboration in the Norwegian energy sector. High levels of concentration, comprehensive cross-ownership and other forms of collaboration between the producers, lower competition in the energy market. Statkraft, the largest energy producer in Norway, is a typical example of a player with links to many other Norwegian energy producers through direct or indirect ownership. There are also close links between companies which own power plants together. The same applies to cooperatives where companies within a delimited geographical area cooperate on the common exploitation of water resources. These types of collaboration contribute to information exchange between companies. The SNF has also developed a software tool that the Competition Authority will use to conduct detailed analysis of the concentration in the Norwegian energy industry.

41. In September 2007, the Nordic competition authorities presented a new report on the functioning of the Nordic electricity market: “Capacity for competition – Investing for an Efficient Nordic Electricity Market”.<sup>2</sup> The report is the product of a joint Nordic working group with members from Norway, Sweden, Denmark, Finland and Iceland. The Norwegian Competition Authority has chaired the group and provided the secretariat. An earlier report on the power market was published in 2003.

42. The report concludes that the Nordic electricity market functions well, but there is room for improvement. The Nordic competition authorities call attention to several competition challenges, among these we find owner concentration, cross-ownership and the transmission capacity among the Nordic countries. It is pointed out that ownership concentration in the Nordic power market is still high, and is aggravated by widespread cross-ownership and joint ownership of generating plants. The report express support for the reduction in the extent of cross-ownership and joint ownership and point out that, in Sweden, the extent of joint ownership of hydropower plants has been reduced.

43. In the report, it is also stressed that in order for the power market to function satisfactorily, the transmission capacity among the Nordic countries needs to be strengthened. The Nordic system operators have agreed to five major projects that are supported by the Nordic competition authorities. In addition, the system operators should work to improve the effective utilisation of the capacity.

44. It can also be noted that the Nordic competition authorities are engaged in on-going cooperation with respect to the power market. This implies, among other things, that the authorities consult each other when they examine important cases related to that market, and that they exchange information on major competition problems

45. EFTA’s Surveillance Authority, the ESA, has investigated the conditions for competition in the electricity markets in the EFTA countries, which include Norway, Iceland and Liechtenstein. However, the report focuses mostly on the energy market in Norway. The investigation was carried out in parallel with an analogous examination of the energy sector in the EU countries. The report concludes that competition in the wholesale market for electric power functions relatively well in Norway. Integration with markets in other countries, transparency and liquidity in the market are relatively good. Nonetheless, the ESA points out that the high market concentration, such as the increasing market share of Statkraft, may restrict competition.

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<sup>2</sup> <http://www.kt.no/iKnowBase/Content/427537/CAPACITY%20FOR%20COMPETITION.PDF>