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**Global Forum on Competition**

**Competition in the Food Supply Chain – Contribution from Norway**

**- Session IV -**

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This contribution is submitted by Norway under Session IV of the Global Forum on Competition to be held on 2-3 December 2024.

More documentation related to this discussion can be found at: [oe.cd/gfc24](https://oe.cd/gfc24).

Please contact Mr Antonio Capobianco [[Antonio.Capobianco@oecd.org](mailto:Antonio.Capobianco@oecd.org)] and Ms Carolina Abate [[Carolina.Abate@oecd.org](mailto:Carolina.Abate@oecd.org)] if you have questions about this document.

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## *Competition in the Food Supply Chain*

### *- Contribution from Norway –*

## **1. Competition in the Norwegian Grocery Market**

### **1.1. Introduction**

1. For many years, even before the Covid pandemic and the war in Ukraine, there have been concerns about the competition in the Norwegian grocery market due to high prices and limited product ranges. As part of a political mandate the Norwegian Competition Authority, the Authority has focused particularly on competition in the Norwegian food supply chain for the five past years. During this time, the Authority has investigated several cases and conducted a number of studies in the grocery market, some of which will be discussed in this note.

2. The lack of effective competition in the market, and therefore the risk that consumers pay more than they should for grocery products, is also reflected in several measures initiated by the government and the parliament. In February 2023 the government introduced a plan consisting of 10 measures to strengthen competition in the grocery market including several referred to below.<sup>1</sup>

3. The aim of the Norwegian Competition Authority's (the NCA hereafter) work in this market, in addition to enforcing the Norwegian Competition Act, has been to obtain a broader understanding of the market dynamics. This will lead to the NCA being better placed both to enforce the Norwegian Competition Act and to eventually implement measures to strengthen competition in the grocery market.

4. This contribution will first account for the characteristics of the Norwegian grocery market, including a short description of regulations of the agricultural sector. Thereafter we will address the government's proposed measures and the work relating to these initiatives. Finally, we will discuss some of the NCA's enforcement cases.

### **1.2. Market characteristics**

#### *1.2.1. Regulation of Norwegian agricultural markets*

5. The objective of the current Norwegian agricultural policy is to ensure food security and "preparedness", maintain agriculture across the entire, increase the value added, and to achieve sustainable agriculture with lower Greenhouse gas emissions. The Norwegian agricultural policy is built on two pillars, namely import protection and the agricultural agreement (negotiations on prices and other terms between the state and the farmers' organizations). The Norwegian regulation differs significantly from agricultural regulation in the EU countries. The intention of the Norwegian regulations is to protect and preserve Norwegian agriculture. Many of the payments from the agricultural agreement are e.g. differentiated by region and farm size in order to provide adequate income support across varieties of farms and regions.

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<sup>1</sup> See section 2 below.

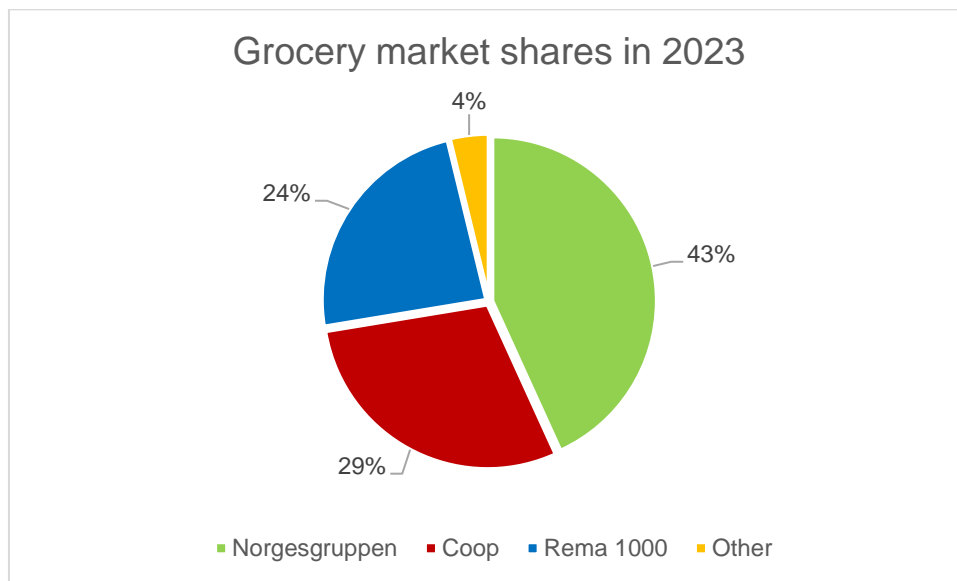
6. The agricultural regulation grants extensive exemptions from the Norwegian Competition Act for agricultural cooperatives. These cooperatives are also accorded the role as market regulators in their respective markets. As the cooperatives are also large suppliers in their respective markets, their power to influence market outcomes is significant.

7. The NCA has emphasized that because foreign undertakings are largely blocked from competing in Norwegian agricultural markets, the importance of actual national competition is crucial not only for consumers, but also for farmers. However, it has proven difficult to achieve competition in several of these markets due to regulations on both production, subsidies and more.

### 1.2.2. Concentrated grocery markets with high barriers to entry

8. The Norwegian grocery market is highly concentrated. Three vertically integrated grocery chains (Reitan AS, COOP SA and NorGesgruppen ASA) control about 95 percent of the market in terms of revenue, and their respective market shares have remained essentially unchanged for several years. The diagram below illustrates the market shares of the biggest three retail grocery chains in 2023.<sup>2</sup>

Figure 1.1. Grocery market shares in 2023

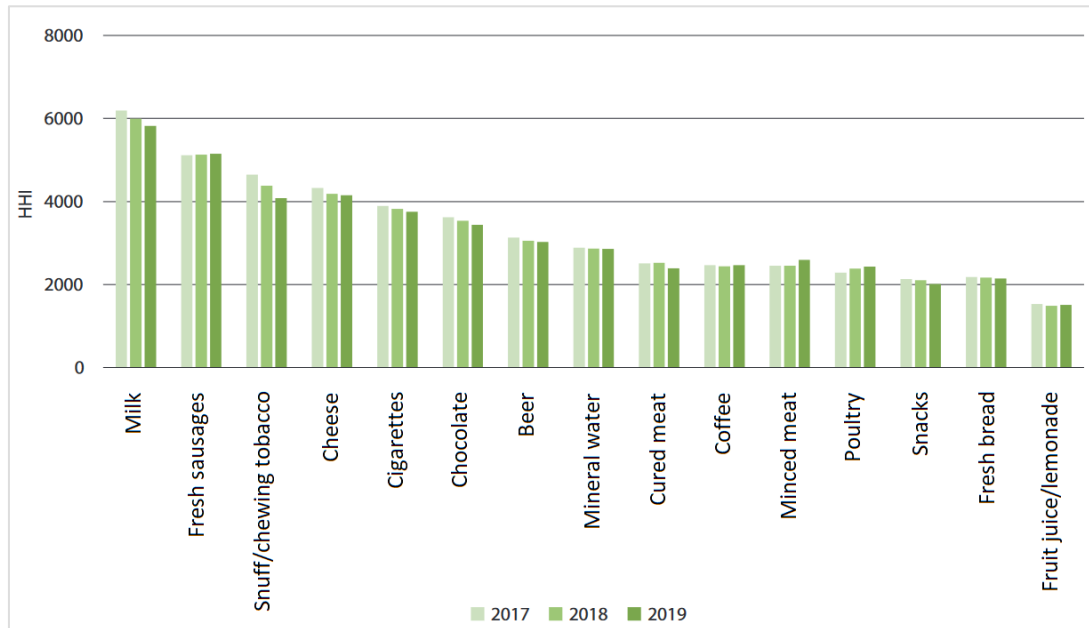


9. Many of the suppliers' (upstream) markets are also highly concentrated, some even more so than the retail market. The diagram below contains HHIs in 15 grocery categories for the period 2017–2019. The six most concentrated categories are milk, fresh sausages, snuff/chewing tobacco, cheese, cigarettes and chocolate.<sup>3</sup>

<sup>2</sup> See, e.g., this [press report](#)

<sup>3</sup> See *Dagligvare og konkurranse [Groceries and competition]*, Government White Paper, June 2020, page 61, available [here](#)

Figure 1.2. HHIs in 15 grocery categories



10. The high level of concentration in grocery markets is *inter alia* due to high barriers to entry, in particular import barriers, access to retail spaces and differences in wholesale prices. Additionally, Norway has a small population spread across a large area, making nationwide product distribution both expensive and difficult. As a result, Norwegian grocery chains generally operate a significant number of relatively small stores. This is illustrated by the fact that in 2018, Sweden had on average, twice as many customers per grocery store as Norway.<sup>4</sup>

11. Two retailers, the brick-and-mortar retailer Bunnpris and the online retailer ODA, have wholesale agreements with NorgesGruppen and Rema<sup>5</sup> respectively. Bunnpris has a nationwide presence, whereas ODA's activity is limited to the greater Oslo area and the southeastern parts of Norway.

12. Over the past decades, only a few new players have entered the Norwegian grocery market, and even fewer have succeeded. Lidl is the only foreign grocery chain that has attempted nationwide entry into the Norwegian grocery market. Lidl entered in 2004, but left Norway in 2008 and sold most of its stores to Rema. Other newcomers have mainly been situated in the capital and its surrounding areas, such as Iceland and Picard, which have now both left the Norwegian market.

13. Some home delivery services such as Foodora and Wolt distribute groceries to end-users in addition as well as take away meals from local restaurants. There is also a tendency, however small, towards more competition from retailers operating in narrower segments than full-range grocery stores. One of them is Normal, a Danish retailer, which mainly sells non-perishable products in categories such as snacks, skin- and hair care, many of which are brands and labels also found in grocery stores, and which are not affected by the import protection described above.

<sup>4</sup> Ibid, page 27.

<sup>5</sup> Rema is equivalent to Reitan AS.

14. In the larger cities, the density of grocery stores is relatively high, many of which are quite small, offering a significantly narrower product range than supermarkets.

## 2. The Governments' recent measures

15. Although high prices in the Norwegian grocery market have been of concern to both government and authorities for a long time, the public debate on the topic has significantly intensified over the past few years. As with most other countries, Norway experienced a rapid increase in food prices after the Covid pandemic and the Russian full-scale invasion of Ukraine; in 2022 alone, food prices increased by 12 per cent.

16. In February 2023 the Minister of Trade and Industry issued a plan consisting of ten specific measures designed to improve competition in the grocery market.<sup>6</sup> In short, they were:

- Investigate margins and profitability in the food chain (see 2.1 below)
- Investigate public price signaling (see 2.2 below)
- Investigate negotiations between suppliers and retailers (see 2.3 below)
- Investigate suppliers' wholesale pricing discrimination between retailers (see 2.4 below)
- Investigate the scope and impact of private labels (see 2.5 below)
- Investigate the impact of vertical integration in the food and grocery value chain (see 2.6 below)
- Banning clauses which limit competitors' access to suitable store premises (see 2.7 below)
- Introducing a new competition tool for the NCA (see 2.8 below)
- Lowering the threshold for concluding that a firm has a dominant position
- Increase the budget of the Norwegian Grocery Authority

17. Most of the proposed inquiries above have either been carried out or are currently being conducted.

18. Some regulatory proposals have been the subject of public consultations, and one of the proposals has already been implemented. The inquiries and suggested regulations are discussed below.

### 2.1. Survey of profitability in the food supply chain

19. In May 2024, the NCA published a report on profitability in the grocery market.<sup>7</sup>

20. As part of the survey, the NCA collected data from several suppliers in various product markets, as well as from the three major grocery chains, which are active at both the wholesale and retail levels in the grocery supply chain. The Authority calculated gross margins, operating margins, and return on capital for the period 2017 to 2022.

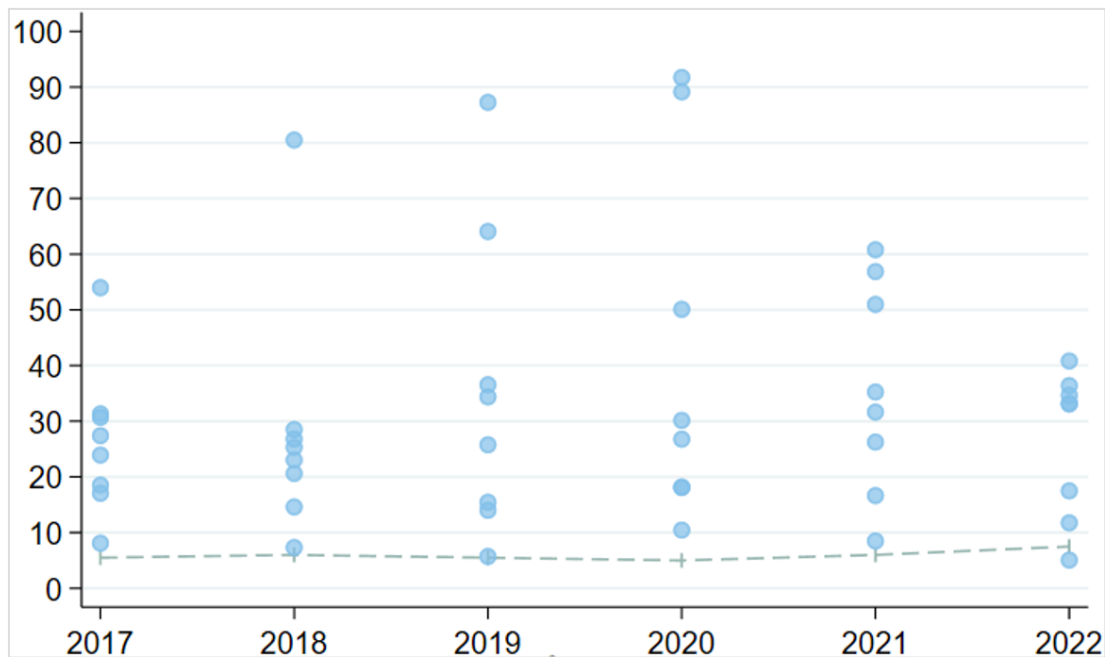
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<sup>6</sup> See the press release [here](#)

<sup>7</sup> See press release [here](#)

21. The NCA found few indications that players in the grocery supply chain had exploited the Covid pandemic or the war in Ukraine to increase prices and profits unrelated to cost increases. However, the NCA did find that profitability for several of the players at the supplier and retail levels in the grocery supply chain was significantly higher than one would expect to find in a market with strong competition and few barriers to entry. Thus, the results are consistent with weak competition and significant barriers to entry in parts of the Norwegian grocery market.

For illustration, the dots in the diagram below illustrate the Return on Net Operating Assets (RNOA) for eight large Norwegian suppliers of groceries from 2017 through 2022. Although the results should be interpreted with caution, as the survey covers only a small number of suppliers, the surveyed suppliers' profits were found to be generally high, and in many instances several times higher than the estimated Weighted Average Cost of Capital (WACC), represented by the dashed grey line.<sup>8</sup>



22. The report is the first part of a study conducted on behalf of the Ministry of Trade, Industries and Fisheries. The second part is expected to be published in December 2024 and presents margins on the product level.

<sup>8</sup> Weighted average cost of capital represents the alternative cost of the capital employed in operations, i.e. the expected return on an investment in a financial portfolio of similar risk to grocery operations. WACC is calculated using global database estimates of average industry capital structure and industry specific measures of systematic risk (beta). For the NCA's study, WACC estimates were also cross-referenced with estimates the financial reports of a selection of the companies analysed. There will always be some uncertainty when comparing estimated returns and estimated capital costs. However, a 4 to 1 ratio, e.g. a 20% return in operations with an annual cost of capital of 5%, indicates that profits from operations are several times larger than what is required to cover the cost of capital employed in operations. RNOA estimates several times higher than WACC estimates over an extended period can be seen as indicative of high barriers to entry and dampened competition in the market, as the prospect of high returns would otherwise encourage new entries into the market.

## 2.2. Price communication through media

23. In the winter of 2022–2023, and after the large commodity price increases of 2022, several market players expressed their expectation that grocery prices would increase significantly in the upcoming price adjustment window in February (see section 2.3 below on price adjustment windows).

24. The NCA found that this degree of communication regarding prices and future pricing between market players in concentrated markets could harm competition and requested meetings with several suppliers as well as all the grocery chains. Prior to the NCA's initiative, the Authority was also contacted by two industry players requesting guidance on the topic.

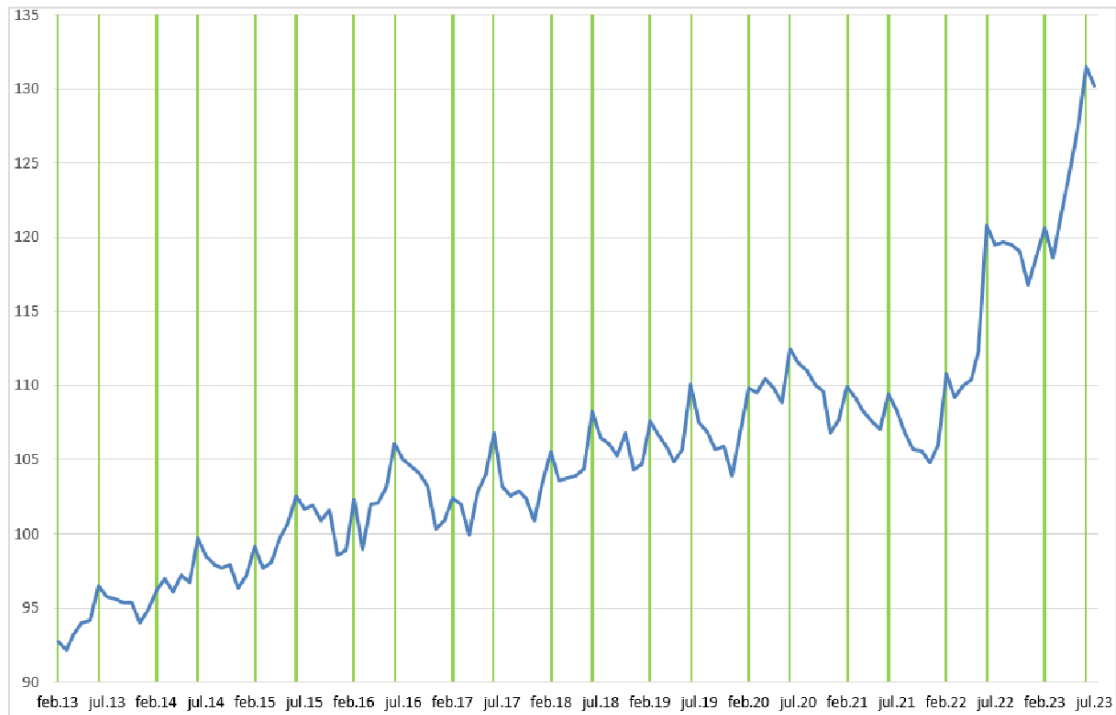
25. In the meetings, the NCA warned the market players to refrain from commenting on future pricing in the media. The same information and advice were given to all participants individually, and a summary was published on the NCA's website. The meetings resulted in an end to comments on future pricing through the media. The NCA has registered that several parties have referred to the guidance given by the NCA when declining to comment in the media on prices and price expectations.

26. It should be noted that, although the NCA had concerns about the effects of the media communication regarding pricing in this period, the Authority did not conclude that any firms had violated the the prohibition against anti-competitive cooperation in section 10 of Norwegian Competition Act.

## 2.3. Survey on price adjustment windows in the grocery market

27. For several years, Norwegian grocery suppliers' prices have been adjusted at two fixed dates: 1 February and 1 July. These price setting dates are called "price windows". Norwegian grocery prices fluctuate more than in neighboring countries, and the prices spike in February and July, coinciding with the wholesale price adjustment windows. This is illustrated in the diagram below, which graphs the consumer price index for food and non-alcoholic beverages in Norway for the period 2013–2023.

**Figure 2.1. Consumer price index for food and non-alcoholic beverages in Norway for the period 2013–2023**



28. In December 2023, the NCA published a report on the effect of fixed price adjustment windows on competition.<sup>9</sup> The report assessed effects in supplier and retail markets, considering economic theory, facts and data about the market, as well as replies to requests for information and internal documents from market players.

29. The NCA found no similar practices in other Norwegian industries, nor in foreign grocery markets. In addition, the Swedish and Danish grocery markets did not exhibit the same price fluctuations as the Norwegian grocery market. The fluctuations indicate that in general, consumer prices increased more than suppliers' prices at the time of the price windows.

30. Overall, the NCA concluded that the practice likely has restricted competition, and thus that grocery market competition would benefit if the practice is terminated. However, the NCA has not found the system to violate the prohibition against anti-competitive cooperation in section 10 of the Norwegian Competition Act.

31. The agreement itself was discontinued in 2005. However, the practice has continued as part of the standard agreements between the grocery chains and their suppliers. After the NCA published its report, some players have indicated that they will discontinue the practice, but it is still too early to assess if these intentions have been carried out and if so, whether market outcomes have been affected.

#### 2.4. Proposed regulation of wholesale price discrimination

32. Differences in wholesale prices is another barrier to entry. Some large and well-established retailers are charged lower prices by suppliers than other retailers (see section

<sup>9</sup> See press release with link to the report [here](#)

**Error! Reference source not found.** below on the NCA's surveys of these wholesale price differences).

33. In the public debate concerning the effect of grocery wholesale price differences, it has been claimed that the Norwegian Competition Act's equivalents to TFEU articles 101 and 102 are not sufficient to prevent the assumed adverse effects of these price differences.

34. As a result, regulation of grocery suppliers' prices has been subject to public consultation in two rounds, beginning in October 2022 and December 2023 respectively. The latter regulatory proposal prohibits suppliers and wholesalers with relative market power from charging retailers different prices for equivalent goods and services, when that price differentiation is capable of restricting competition.<sup>10</sup>

35. The NCA has argued that measures other than price regulation would likely be better suited, in terms of market consequences as well as feasibility. Hence, the NCA has suggested the implementation of a new market investigation tool in the Norwegian Competition Act, which is discussed in the next section.

36. As of today, no final decision has been made regarding regulation of wholesale price differences in the Norwegian grocery market.

## 2.5. Survey of vertical integration and the use of private labels

37. On behalf of the Ministry of Trade, Industry and Fisheries, the economics consulting firm Samfunnsøkonomisk Analyse ("SØA") has investigated how vertical structures and the use of private labels affect competition in the food supply chain.<sup>11</sup>

38. Among the findings were:

- vertical integration provides lower costs, more efficient production systems and prevents double marginalization
- private labels increase product range, in particular in the industries that are shielded from foreign competition
- private labels increase competition on prices within the grocery chains
- private labels provide more evident differences between the players and increases the competition between them.

39. In their report, SØA also pointed to a certain concern that private labels could be used in manners that decreases other brands' possibilities to compete on fair terms. The concerns were not such as to imply a need for regulation. However, SØA found that within certain product ranges the market shares of the grocery chains' private labels are sufficiently high to indicate a need for continued surveillance.

## 2.6. Survey of access to wholesalers

40. The Ministry of Trade, Industry and Fisheries has an ongoing survey of access to wholesaler services. As the Norwegian grocery market is highly concentrated, with three vertically integrated grocery chains, the Ministry wishes to investigate to which extent, if any, access to wholesalers' services constitute a barrier to entry for newcomers.

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<sup>10</sup> See the public hearing documents [here](#)

<sup>11</sup> See press release and links to the reports [here](#)

41. A report on the subject is due 2 December 2024.

## 2.7. Regulation regarding access to locations

42. A key barrier to entry for new grocery players is access to suitable grocery store premises. In 2021, the NCA investigated the extent of restrictive covenants in the grocery markets. These are clauses which are included in real estate sales contracts, prohibiting the buyer from renting out the real estate to competing grocery chains. Typically, such a clause may be added to a contract when a grocery chain sells real estate to a third party. The findings resulted in a regulation prohibiting market players from denying competitors the use of locations that the market players in question do not own themselves (prohibition of restrictive covenants in the grocery market). The prohibition only includes covenants established after the adoption of the regulation.

43. The regulation has been in force since 1 January 2024. The NCA has the authority to enforce the regulation. However, the grocery chains repealed most of the clauses registered before the regulation was implemented, and thus far there has been no enforcement of this new prohibition.

44. Another concern regarding access to premises, is the grocery chains' use of exclusive agreements on property. These agreements differ formally from restrictive covenants, but the effects may well be similar. An understanding of the use and the extent of such agreements is relevant for the NCA's future work to reduce barriers to entry in the grocery market.

## 2.8. New market investigation tool

45. In March 2023, the government sent a draft amending the Competition Act introducing a new market investigation tool for the NCA on public consultation.

46. According to the proposal the new tool will be general in scope and therefore could be of use to all markets where competition is restricted or at the risk of being restricted.

47. This September the government issued a proposition to the Norwegian Parliament to pass the bill. The first handling of the bill in Parliament is expected to take place 10 December 2024.<sup>12</sup>

## 3. Enforcement

### 3.1. Fines imposed on Coop, NorgesGruppen and Rema

48. In August 2024, the NCA imposed fines totaling 4,9 billion Norwegian kroner (420 million euros) on the three largest grocery chains – Coop, Rema and NorgesGruppen – for violation of section 10 in the Norwegian Competition Act and article 53 of the EEA agreement (both of which corresponds to TFEU Article 101).

49. The cooperation which Coop, NorgesGruppen and Rema were fined for, essentially entails the chains sharing large quantities of price information with each other, through an agreement allowing access for each other's "price hunters" – grocery chain employees scanning the prices of rival chains' stores.

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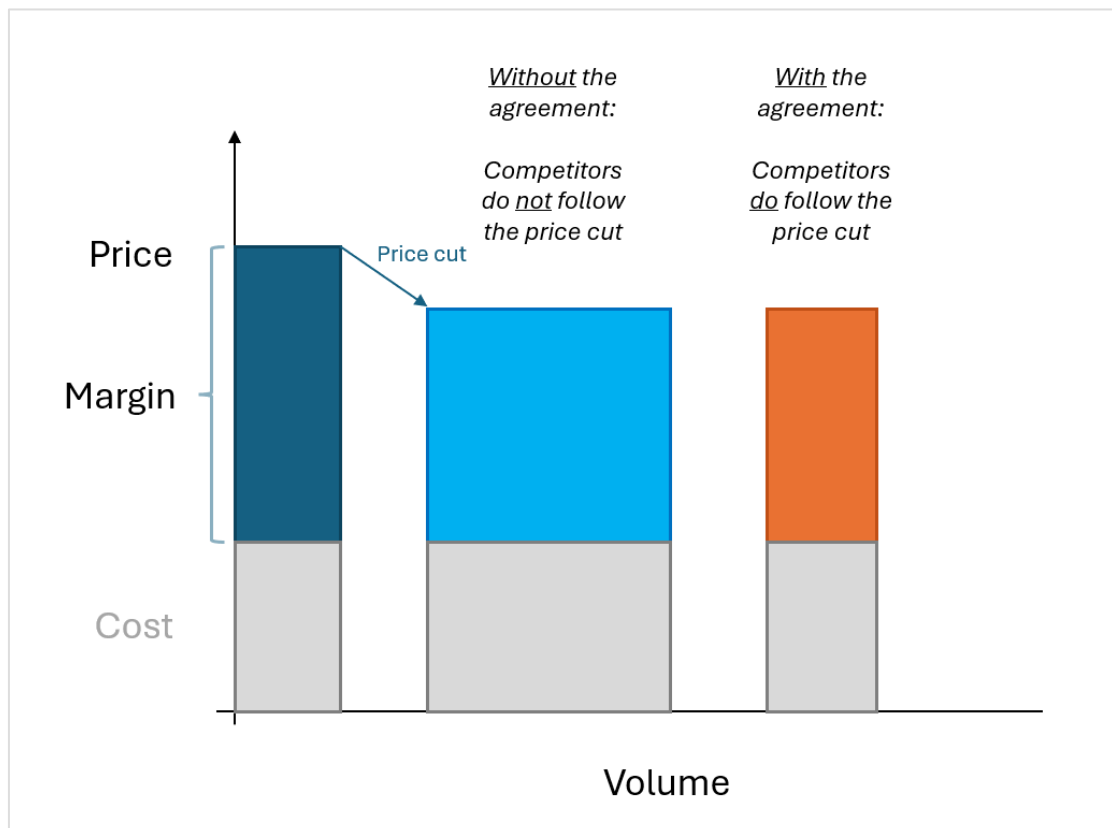
<sup>12</sup> See the law proposition [here](#)

50. The cooperation in question lasted from January 2011 and at least until the NCA's unannounced inspections in April 2018, and it increased price transparency dramatically between the chains. During the infringement period, price hunting activities increased, so that the chains eventually received updates on competitor prices several times a day, in effect sharing massive quantities of prices. The price information collected was used to quickly respond to any price changes made by competitors. Consumers, on the other hand, were not better informed because of the agreement.

51. The NCA's conclusion was that competition in the Norwegian grocery market has been harmed. Because of the cooperation, each chain has expected that their competitors would follow price changes quickly, making it more attractive for the chains to increase their prices, and less attractive to reduce prices. For example, if a chain knows that competitors will follow a price cut in a matter of hours, the incentives to cut prices in the first place are weakened. The result is dampened competition.

52. This mechanism is illustrated in the diagram below. The light blue rectangle illustrates a chain's profit on a product after cutting price without the price hunter agreement, whereas the orange rectangle illustrates profits from the same price cut with the agreement. The smaller size of the orange rectangle – owing to the lower volume gained by the price cut when competitors match the price cut swiftly – thus illustrates the reduced incentive to cut prices with the price hunter agreement in place.

Figure 3.1. Price cuts mechanism



53. In April 2018, the NCA conducted unannounced inspections at the three grocery chains' premises. The seized documents show that the chains used the price information collected by price hunters to test whether competitors would participate in price increases.

The rapid flow of information thus made it possible for chains to initiate price hikes with limited risk.

54. Documents in the case further show that the grocery chains concluded the agreement on price hunters despite understanding, or having been made aware of, that the cooperation could harm price competition in the groceries market.

55. The NCA imposed fines of 1.3 billion NOK on Coop, 2.3 billion NOK on NorgesGruppen and 1.3 billion NOK on Rema. The chains are also required to cease the illegal cooperation as well as any cooperation with similar effects.

56. All three parties have stated that they will appeal the decision to the Competition Appeals Board. An appeal must be presented within 6 months of the NCA's decision.

### 3.2. Merger control

57. Under the Norwegian Competition Act, notification is mandatory for mergers involving firms with a combined relevant turnover exceeding 1 billion Norwegian kroner (approx. 84 million Euro).

58. This duty to notify mergers does not apply if only one of the parties has relevant turnover exceeding 100 million Norwegian kroner. However, the Norwegian competition act authorizes the NCA to impose a duty to notify mergers under the thresholds if there are reasonable grounds to believe that the merger might affect competition, or when special circumstances indicate that the NCA investigates the merger. In some markets, where concentration raises particular concern to the NCA, relevant players have been imposed a general duty to notify mergers.

59. Mergers involving the large grocery chains have been of particular interest to the NCA, as even smaller acquisitions by these players might restrict competition, especially in local markets. The NCA has therefore imposed a duty on the grocery chains to notify every concentration which may affect the Norwegian grocery market. The notifications must include the name of the undertakings involved and the implementation of the merger and is significantly less extensive than under the ordinary merger regulation. Nevertheless, the notification regime provides the NCA with the information needed to assess whether a merger investigation should be started.

### 4. Concluding comments

60. This contribution from Norway highlights the challenges involved in establishing a foundation for effective competition in the Norwegian grocery markets.

61. Several measures have been implemented, and more are under consideration. These measures, combined with effective enforcement, are important to strengthen competition in the Norwegian food supply chain. As this note shows, the work is ongoing and highly prioritized by the national authorities.