

# THE NORWEGIAN COMPETITION AUTHORITY (NCA)

## ANNUAL REPORT 2000

### Executive Summary

#### *- Legislation*

A number of revisions of the Competition Act took place during 2000. The most important changes were related to the possibility to obtain and exchange confidential information and a provision to temporarily prohibit the implementation of business acquisitions.

Furthermore, a committee has been appointed to assess certain revisions of the Competition Act. The committee was appointed by the Government, with a mandate to assess the requirements for decentralised enforcement of the competition rules of the EEA Treaty and to assess the question of harmonisation of the Norwegian Competition Act to the Treaty.

#### *- Enforcement and advocacy*

In 2000 the enforcement activities of the NCA have been upheld at the same level as in 1999. Due to the fact that the NCA initiated a profound reorganisation process in the second half of 2000, advocacy activities were at a lower level in 2000. This, however, is temporary and does not reflect the general priorities of the NCA.

#### *- Co-operation agreement*

Denmark, Iceland and Norway have entered into an agreement to exchange confidential information on specific cases relating to competition. This agreement came into force on 1 April 2001, and may be extended to encompass other Nordic countries.

#### *- Reports*

The NCA initiated an external research and development project to ascertain the most appropriate formulation of sanction methods in the Competition Act. The report was finalised in June 2001, and will be handed over to the committee that has been appointed to assess revisions of the Competition Act. The report i.a. describes the introduction of a penalty reduction programme for companies and individuals who volunteer information to the authorities on illegal cartels that they have participated in.

Furthermore, external reports commissioned by the NCA on cross subsidisation, market modelling and the broadcasting market has been finalised in 2000.

#### *- Organisation*

In 2000, it was decided to close down the 8 regional offices of the NCA. The planning of the necessary measures demanded substantial resources. At the same time, a process was initiated to reorganise the central unit. As of 1 June 2001, the new organisation model is implemented.

## **I. Changes to competition laws and policies – proposed and adopted**

### **I.1. Summary of new legal provisions of competition law and related legislation**

The Competition Act of 1993 laid the foundations for a competition policy aimed at efficient utilisation of society's resources. The Act has now been in force for over seven years and has functioned side by side the competition rules set out in the EEA Agreement, which apply when trade in the European Economic Area is noticeably affected.

In January 1999 the NCA forwarded a report to the Ministry of Labour and Government Administration with a draft for revisions of the Competition Act. The Government submitted the proposed amendments to the Storting, the Norwegian Parliament, in bill no. 97 (1998-1999). The Storting adopted the bill on 5 May 2000. The main changes were:

- Under Section 3-11 in the Competition Act, the NCA can now prohibit temporarily the implementation of business acquisitions, until it has carried out its final assessment.
- According to a new Section 1-8 and a change in Section 6-1 of the Competition Act, the NCA may obtain and exchange confidential information in connection with co-operation with the competition authorities in other countries.
- According to a new Section 1-7, the prohibitions in the Competition Act (against price fixing, market sharing and bid rigging) do not apply to co-operation that is covered by the group exemptions or individual exemptions under Article 53 nr.3 of the EEA-agreement. This formalises the practice that has been followed by the NCA.
- The prohibition concerning collaboration and influence on prices mark-ups and discounts in Section 3-1 – and the provision in the same Section concerning exemptions from this – is changed to include providers of services. This implies that providers of services are not allowed to fix or seek to influence resale prices by other means than setting recommended prices.

### **I.2. Other relevant measures, including new guidelines**

#### ***Guidelines relating to the enforcement of national competition regulations***

The Nordic competition authorities work closely together. In collaboration with other Nordic countries, the NCA has compiled guidelines relating to assistance in the enforcement of national competition regulations. The competition directors of the Nordic countries approved the guidelines in May 2000.

#### ***Agreement on the exchange of confidential information***

The NCA now has the legal authority (cfr. changes in Sections 1-8 and 6-1 of the Competition Act of 5 May 2000) to exchange confidential information with the competition authorities of other countries. In December, a Norwegian negotiation group with members from the Ministry of Labour and Administrative Affairs was appointed, with a mandate to negotiate a bilateral, or multilateral, internationally binding agreement on the exchange of confidential information with one or more other Nordic countries. The agreement was signed by Denmark, Iceland and Norway in Copenhagen on 16 March 2001, and came into effect on 1 April 2001.

### ***Cartel detection***

The NCA has set up a telephone number that members of the public can ring if they believe they can see any harmful restrictions on competition. The number is 800 999 22 and information on the service is given on the Authority's website: [www.konkurransetilsynet.no](http://www.konkurransetilsynet.no).

### **I.3. Government proposals for new legislation**

On 24 November 2000, the Government appointed a public committee to examine Norwegian competition legislation and to put forward a proposal for new regulations in this area.

The need for a thorough examination of Norwegian competition legislation is founded on our experiences with the Norwegian Competition Act and the competition rules under the EEA-agreement, and the development of the competition policy in EU and the EEA over the last few years.

In September 2000, the European Commission put forward a proposal for a Council Regulation on the implementation of prohibitions on collaboration that restricts competition, and the abuse of market power (EU Articles 81 and 82). A central element of the proposal was that the prohibitions are to be enforced by the national competition authorities. The rules that the proposal seeks to change are part of the EEA Agreement, and are thus of significance for both the EEA Agreement (Articles 53 and 54) and Norwegian law. The committee has been asked to assess whether there is a need to grant the Norwegian authorities comprehensive power to enforce Articles 53 and 54 of the EEA agreement. The committee is to present its assessment and proposals in the form of a recommendation by 1 November 2001.

Another issue the committee has been asked to assess is whether, and, if applicable, to what extent, a new Norwegian Competition Act should be drawn up along the lines of the competition rules laid down in the EEA Agreement, or whether a different legislative model should be used.

If the committee is asked to draft a new bill on the lines of the EEA's competition rules, it will have to assess the requirement for provisions and adaptations suited specifically to Norwegian circumstances and to put forward proposals for such provisions.

The following major issues will be assessed related to the compilation of a new Norwegian Competition Act: The organisation of the competition authorities including the decision making process, the various models for testing and verifying the authorities' resolutions, the allocation of tasks and responsibility amongst the competition authorities and the various sector authorities, and the drawing up of appropriate verification and sanction methods for ensuring the rules are enforced effectively and complied with.

The committee has been asked to put forward proposals for a new Norwegian Competition Act by 1 November 2002.

## **II. Enforcement of competition law and policies**

### **II.1. Action against anti-competitive practices, including agreements and abuses of dominant position.**

In this section the following issues will be treated:

#### PART I:

- Collusion
  - Activities
  - Cases
  - Exemptions
    - Activities
    - Cases
    - Rejected applications for exemptions

#### PART II:

- Anti-competitive behaviour
  - Activities
  - Cases

### **PART I:**

#### **Collusion – Activities:**

In 2000, the NCA dealt with 101 cases relating to the prohibition of collaboration and influence on prices, mark-ups and discounts, and on supplier regulations. Four cases were reported as crimes, while enforcing the provisions concluded 50 cases.

<b>I. Verification and enforcement cases</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
Handled	189	121	214	114	101
Dropped	112	38	97	92	47
Enforced	71	81	114	20	50
Compulsory fine	0	1	0	1	0
Reported as crimes	1	1	3	1	4

The NCA verifies that the business community complies with the prohibition provisions of the Competition Act, or with resolutions made in accordance with the Act, primarily by carrying out investigations of individual companies. Those cases that are investigated and assessed are often complex and take considerable time.

**Sections 3-1 to 3-4** in the Competition Act contain explicit prohibitions against

- Collaboration and influence on *prices, mark-ups and discounts*.
- Collaboration and influence on *tenders*.
- Collaboration on, or use of influence to achieve, *market sharing*.
- *Associated undertakings* determining or encouraging these competition restraints.

According to Section 6-2 of the Competition Act, the NCA has the right to demand access to property, stocks and other chattels to look for evidence when there are reasonable grounds to assume that the law, or resolutions made in accordance with the law, has/have been infringed. The court of examination and summary jurisdiction is the authority that decides on whether to grant the right to look for evidence. The NCA carries out verifications in accordance with Section 6-2 and as stipulated in the Authority's internal guidelines for routines and working methods relating to the search for illegal restrictions of competition. The guidelines ensure that cases are handled efficiently and in line with the tenets of legal protection guarantees.

In 2000, the NCA secured evidence in two cases in accordance with Section 6-2 of the Competition Act.

## **Collusion – Cases:**

### ***The Norwegian Association of Impresarios (Denif):***

*Denif* was reported in July 2000, for the collaboration on, and for influencing of, prices on services related to the booking of artists. The association accepted a fine of NOK 100,000 from Økokrim – The National Authority for the Investigation and Prosecution of Economic and Environmental Crime in Norway. *Denif* organises impresarios, i.e. entertainment agencies organising concerts and tours for performing artists. Up to last year, the association's contract terms stated that its members had to demand at least a 15 per cent commission from the artists' fee. The contract also stated that if two members collaborated on an assignment, the commission had to be divided equally between them. Furthermore, the association would not allow its members to share jobs with agencies that were not members of *Denif*, unless the board granted a special consent. The organisation also exercised a certain control of the market by means of its members having to send in lists of the artists they represented. The case was brought before the NCA by an agency that was not a member of *Denif* and which had often been excluded from the market. Following the report, *Denif* changed its articles of association to meet the terms laid down by the Authority.

### ***The Furniture Market:***

In November 2000, the *furniture manufacturer*, Aannø Industri AS, and the furniture retailing chain, *Bohus AS*, were reported to Økokrim – The National Authority for the Investigation and Prosecution of Economic and Environmental Crime in Norway for price collaboration and involvement in price collaboration respectively. Aannø Industri is suspected of having put pressure on its dealers because their prices were too low. Aannø Industri complained about the dealers' high discounts and some of the dealers were given "B-customer" status and poorer sales terms. The *Bohus* retail chain, which is by far the largest purchaser of goods from Aannø Industri, is suspected of having persuaded, or pressured, Aannø Industri into illegal price-fixing. This may have been because the *Bohus* chain was dissatisfied with the low prices prevailing due to the tough competition in the sector.

### ***The Cleaning Machine Market:***

Further, to a previous case in which evidence was secured, *Kärcher AS* and four previous employees in the company were reported to Økokrim – The National Authority for the Investigation and Prosecution of Economic and Environmental Crime in Norway in November 2000, for having influenced the prices set by the dealers. Kärcher sells various types of cleaning machines to a number of dealers throughout Norway. The company considered its dealers were keeping their prices too low and is suspected of having pressured them in various ways to increase their prices. Kärcher claimed that the low sales prices offered by its dealers squeezed profit margins. Kärcher is accused of limiting the discounts it offered those dealers who it alleged were maintaining excessively low prices and is said to have threatened that it would cause supply problems and loss of market support if its dealers did not increase their prices to the “right” level.

### ***Other cases***

Other cases relating to illegal influence of dealers’ prices were concluded with written enforcement of the provisions and orders to inform dealers that they were fully entitled to determine whatever level of prices they wanted.

In one case, one person was reported for having given incorrect information relating to Section 6-1 of the Competition Act.

## **Collusion – Exemptions**

Section 3-9 of the Competition Act empowers the NCA to grant exemptions, subject to certain conditions, for agreements that conflict with the provisions of the Act that relate to prohibitions. The conditions that must be met for dispensation to be granted are that competition in the respective market is strengthened, that the efficiency gains made offset any effects that restrict competition, and that the competition regulations are of little significance on competition (or that specific factors have to be taken into account).

In 2000, the NCA assessed a total of 147 requests for exemptions. In 99 cases, an exemption was granted for the whole, or parts of, the planned collaboration. This figure includes 37 exemptions that were given for collaboration in chains or groups. Five requests for exemptions were rejected, while 43 exemptions were rescinded.

The tables below show the prohibition provisions that the NCA granted exemption from, and the legal basis for these exemptions. In some cases, more than one legal foundation can be applied, and exemption from more than one provision may be granted at the same time.

<b>Exemption cases</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
Handled	150	129	131	85	147
Granted	130	101	70	53	99
Rejected	12	7	1	6	5
Dropped / Rescinded	8	21	60	26	43

<b>Legal basis for the exemption</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
Section 3-9 a) competition strengthened	29	21	32
Section 3-9 b) efficiency gains	18	8	31
Section 3-9 c) minor significance for competition	19	22	39
Section 3-9 d) special considerations	6	6	1

<b>Provisions from which exemption was granted</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
Section 3-1, Subsection 1, price collaboration	55	47	87
Section 3-1, Subsection 2, price influence	11	8	9
Section 3-2, collaboration on tenders	3	6	28
Section 3-3, market sharing	16	16	29

## **Collusion – Exemptions – Cases**

### ***Taxi Centrals***

When the regulation governing maximum prices for taxi services was rescinded in certain areas (see section, above, on the taxi market), there was a need to assess certain exemptions from the Act's prohibitions on price and tender collaboration within taxi centrals. In its assessment of exemptions, the NCA pointed out the importance of the fact that the organisation of the taxi market through taxi centrals provided significant economic gains in efficiency, for example, through the distribution of orders and traffic routing. Without common prices, the taxi central and the customer would have had to assess several offers on the basis of factors like price, pick-up distance and waiting time. On this background 21 taxi centrals were granted exemptions to continue their policy of maximum prices.

### ***Time and paint lists for painting cars***

The Norwegian Car Trade Association distributes and gives training in a time and paint list system for painting small vehicles. The system provides a standard by which to determine how long various types of painting work should take and how much paint should be used. The NCA found that this system had the capacity to affect the prices of paint services, since it had to be assumed that it reduced the number of competition parameters in the market for the painting of small vehicles. The system was developed in collaboration with the insurance trade, which buys more than 80 per cent of the paint services in the relevant market. The Authority assessed the case based on the fact that the insurance companies would not want to use the system if it led to increased costs for them. The Authority thus assumed that the efficiency gains resulting from the time and paint lists were greater than the loss of efficiency resulting from the reduction in the number of competition parameters. The NCA therefore granted an exemption.

### ***Artists' and Copyright holders' remuneration***

Organisations representing artists and copyright holders of protected intellectual property signed an agreement with the NRK (Norwegian Broadcasting Authority) on a method of remuneration. The NCA assessed whether it would have been possible for individual artists/copyright holders to negotiate with the NRK, but decided that the interest organisation was a more suitable party in terms of negotiating strength for negotiating with the NRK as a buyer. The Authority weighed the restriction on competition that resulted from the regulation of the level of remuneration against the saving of resources resulting from the NRK

subsequently being able to deal with organisations instead of individual artists/copyright holders. The Authority thus granted exemption for the agreements, as they promoted efficiency.

### ***Maintenance of railway network***

Selmer ASA and Jernbaneverket Baneservice (a public company that is in charge of the rail road infrastructure) were granted exemption from the terms of Section 3-2 of the Competition Act in order to be able to collaborate on tenders and the development and maintenance of the railway network. The parties carry out complementary work, and are not competitors. There are, however, no requirements in the prohibition provisions that the collaborating parties are, or could be, competitors. For Section 3-2 of the Competition Act to be applicable, it is sufficient that there is a possibility for competition to arise. The NCA concluded that the parties' collaboration fell under the terms of the prohibition on tender collaboration, but that dispensation could be given because the collaboration was of little significance on competition.

## **Collusion – Rejected Exemption Applications**

### ***Animal transport***

Hed-Opp Dyretransportforening (a local Association of Transporters of Animals) applied for an exemption so that the association's members could collaborate on prices for transporting live animals to AL Hedmark and Oppland Slakterier (slaughterhouses). The NCA had already granted dispensation for a committee from the association to negotiate with the slaughterhouse on transport prices. The slaughterhouse did not wish to renew this exemption. The NCA considered, in particular, that the collaboration encompassed all relevant transport companies in the area and that it was therefore inappropriate to grant dispensation on the grounds of the activities increasing competition, or on the grounds of these activities being of little significance on competition. In general, collective negotiations reduce costs for both buyers and sellers. Savings would be limited, however, as it would relate to assignments for a maximum of only 17 transport companies. The slaughterhouses are under increasing pressure from their customers and thus have incentives to maximise the efficiency of their distribution systems. In such a situation, the gains acquired through collaboration would not offset the loss in economic welfare resulting from the prevention of a more differentiated and cost-effective provision of transport services. Thus the collaboration also failed to meet the terms for exemption laid down in Section 3-9, Item b) of the Competition Act. Since no special considerations were to be taken into account, the Authority rejected the application for dispensation.

### ***Environmental taxes***

The company that *Næringsselektro* appointed to deal with discarded electrical and electronic products intended to establish and run a nation-wide scheme to collect and deal appropriately with these goods. The Association of Electrical Contractors applied for exemption from the prohibition on price collaboration in the Competition Act in order to coordinate the method of collecting the environment tax. This would have involved collaborating on prices in relation to parts of the total retail price. The Association of Electrical Contractors based its application on the fact that the coordination of the environment tax would give its members the opportunity to coordinate the presentation of their participation in the returned goods scheme. This would benefit the parties participating in the scheme, and would disadvantage those not

adhering to the relevant regulations laid down by the Ministry of the Environment. The NCA considered the benefits of the extra information were small. The Authority also believed that this type of regulation from such a large trade association might lead to a considerable restriction on competition. The application for exemption was thus rejected.

## **Part two:**

### **Anti-competitive Behaviour – Activities**

In 2000, the NCA assessed 74 cases relating to collaboration that restrict competition, and damaging use of market power, as laid down in Section 3-10 of the Competition Act. Seven decisions to intervene were made. Following exhaustive assessments, the NCA found no reason for intervention in 13 cases. The remaining cases were quickly dismissed.

<b>Intervention cases carried out in accordance with Section 3-10</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
Cases handled	61	79	52	69	74
Intervention resolutions	3	11	4	4	7

In addition to individual decisions, the NCA has adopted, in accordance with Section 3-10, a regulation relating to maximum price regulations for taxi services. The regulation implements the decision of the Ministry of Labour and Government Administration that the regulation of prices may be abandoned in areas where there are two or more taxi centrals, as long as there are no conditions that might otherwise prevent competition.

Based on **Section 3-10 of the Competition Act**, the NCA may, by means of individual decisions or regulations, intervene to halt conditions, agreements or activities that the Authority considers to have the aim or effect of, or are suitable for the purpose of, restricting competition in conflict with the aim of efficient use of society's resources. Examples of conduct that may be covered by the provision relating to intervention are: the use of methods that restrict competition to maintain a dominant market position, the exclusion of competitors, the rejection of business contacts and the refusal to grant membership to associations. Intervention may take the form of issuing a prohibition, giving an order, or granting consents subject to certain conditions. Interventions may also involve regulating prices.

### **Anti-competitive Behaviour – Cases**

#### ***Light Clinker***

Norsk Leca AS is part of the German-owned Scancem Group, and has a market share for light clinker in Norway of approximately 85 per cent. The company is the only Norwegian manufacturer of light clinker, but is now subject to competition from abroad. Through its exclusive supplier contracts with its 700 dealers, Norsk Leca had a grip on a significant percentage of the available network of dealers. This made it difficult for other suppliers to start up in the market. The NCA thus prohibited Norsk Leca from demanding that dealers should sell light clinker exclusively from Norsk Leca, or that light clinker from Norsk Leca should constitute a fixed percentage of the dealers' sales of light clinker products.

### ***Municipal pension insurance***

Based on the requests from municipalities that wished to change supplier of pension insurance products, the NCA considered intervening against certain provisions of the main wage agreement of the municipalities sector. The Norwegian Association of Local and Regional Authorities and the employees' unions entered into the agreement. The provisions restrict the municipalities' right to transfer pension insurance agreements by demanding that the new product must be "investigated by the Banking, Insurance and Securities Commission" before transfer can take place. The NCA found that the provisions regulated business activities in a way that restricted competition, especially in that they prevented transfers from the dominating supplier, KLP Insurance, to competing life assurance companies. The lack of competition may lead to a loss of efficiency through reduced pressure to reduce the companies' costs and to meet profit requirements, and by preventing municipalities whose employees have a favourable risk profile from transferring their insurance policies to group insurance schemes which reward this. The Authority, however, deemed the loss of efficiency too insignificant to justify intervention.

### ***"El-number bank" – product numbering system***

In February 2000, the NCA intervened in the practices of the Association of Electrical Contractors in respect of the product numbering system called "El-number bank". It is essential for people wishing to start a wholesale company in the electro trade to have access to the product numbering system, and this, together with the requirement to be a member of the Association of Electrical Contractors, has been an obstacle to starting up. The Association of Electrical Contractors was ordered to allow companies that were not members of the association to submit products for registering in the product numbering system on the same terms as members were allowed to. Furthermore, the Association of Electrical Contractors was ordered to allow all users of the product numbering system to have the right to participate in the Product Numbering System Committee, which compiles the rules and resolves disputes between users of the product numbering system.

### ***Skirt and apron material***

Norway's sole manufacturer of skirt and apron material for the historical costume of the region of Troms, Røros Tweed AS, refused in 1996 to deliver material to the company, Elsa M. Systue, in Tromsø. This was apparently because there was an agreement that Husfliden Tromsø AS (Husfliden) should have the exclusive right to sell the materials. The NCA ordered Røros Tweed to supply Elsa M. Systue on the same terms as it supplied Husfliden. Yet, despite the Authority's resolution, Elsa M. Systue did not receive its supplies. In November 2000, the NCA therefore ordered Husfliden to supply Elsa M. Systue with the materials on the same terms as it supplied Husfliden. The resolution also stipulated a ceiling for the quantity of material that Husfliden was bound to supply to Elsa M. Systue every year. Husfliden has appealed to the Ministry of Labour and Government Administration against the resolution.

### ***Supply terms for wool and meat***

The NCA resolved that the Sales Cooperative of Northern Norway (Nord-Norges Salgslag) be prohibited from stipulating in its articles of association that members must deliver all their production of wool to the Cooperative. The Authority also prohibited the Cooperative from exercising the provisions of its supply terms that made the prices for wool dependent on the delivery of meat by its members to the Cooperative. By linking the two markets, the Cooperative exploited its position in the market for meat in order to restrict the competition in the market for wool.

### ***Destruction of animal waste***

The two companies, Norsk Fett- og Limindustri AS and Fisklim og Fôrstoff AS, which both deal in the destruction of animal waste, complained to the NCA about certain requirements that Norsk Kjøtt samvirke BA laid down for Norwegian fodder producers. The products created with the rendering of animal waste (bone marrow and fat) are used in animal fodder. According to the requirements laid down by Norsk Kjøtt, the rendering plants handling foreign waste would not have been approved as supplier to the Norwegian fodder industry. This was the case even if the foreign waste was not to be included in the production of Norwegian fodder. Norsk Kjøtt's own rendering plants do not handle foreign waste and would have become, if adhering to the relevant requirements, the sole providers of bone marrow and rendered fat in Norway. Following the NCA's warning of intervention, Norsk Kjøtt withdrew its requirements. The Authority then concluded the case.

## **II.2. Business acquisitions**

### **II.2.a Statistics on number, size and type of mergers notified and/or controlled under competition laws.**

In 2000, the NCA assessed 40 cases relating to business acquisitions in the fields of foodstuffs, pharmaceuticals, electricity and telecommunications. Seventeen cases were dismissed at an early stage of proceedings. In 21 cases, the Authority decided, after exhaustive assessments, that there was no basis for intervention. The NCA intervened in two cases.

<b>Business acquisitions</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
Total cases assessed	46	41	46	31	40
Interventions	1	3	2	2	2

The Ministry of Labour and Government Administration assessed an appeal concerning the decision in the case concerning Canal Digital Norge's acquisition of Norgeskanalen AS, from 1999. The Ministry rescinded the resolution.

Founded in the provisions of **Section 3-11 of the Competition Act**, the NCA has the power to intervene in business acquisitions if it finds that they would lead to, or would strengthen a significant restriction of competition in breach of the intent of the Act relating to the efficient use of the society's resources. The term "business acquisition" here is intended to include mergers, acquisition of shares or interests, and part-acquisition of a business. Intervention may take the form of issuing prohibitions, giving orders, or granting consents subject to certain conditions. Intervention must be carried out within six months of the acquisition contract having been concluded. Where special grounds so indicate, the Authority may intervene up to one year from the same date.

## **II.2.b Summary of significant cases**

### ***Tamro OYJ – Apokjeden AS***

In February 2000, the Finnish company, Tamro OYJ, bought 23 per cent of the shares in Apokjeden AS. As payment for the shares, Apokjeden received 49 per cent of the shares in Tamro's Norwegian subsidiary, Tamro Distribusjon AS. At the same time, the parties entered into agreements that bound Apokjeden to use Tamro Distribusjon as its exclusive wholesaler for the members of the chain. Apokjeden had a very dominant position in the dispensary market at the time when the agreement was entered into. The acquisitions and purchase commitment would therefore have given Tamro Distribusjon a dominant position in the wholesale market for dispensary goods. On this foundation, the NCA at first warned that it might intervene to stop the business acquisition. It subsequently became clear, however, that Apokjeden's market share had dropped, and that the Ministry of Health and Social Welfare had created guidelines to make it easier for new dispensaries to start up. The Authority therefore found that there were no longer any grounds for intervening to halt the acquisition or the distribution agreement. The Authority ordered the parties, however, to report on the development of the companies' turnover, market shares and the number of members in Apokjeden. This duty to report applies for two years.

### ***Carlsberg AS – Pripps Ringnes AB***

The NCA assessed the merger between Carlsberg AS and Pripps Ringnes AB. Carlsberg has a proprietary interest in Coca-Cola Drikker AS, which, in turn, has a very strong position in the Norwegian soft drinks market. Ringnes has a monopoly on the production and bottling of Pepsi in Norway. The Authority found that the competition in the Norwegian soft drinks market was very limited even before the business acquisition and that the current acquisition would thus reinforce this considerable limitation of competition. The Authority thus decided that the business acquisition could not go ahead, unless Carlsberg relinquished its proprietary interest in Coca-Cola Drikker AS. The company therefore had to give up its aim of having proprietary interests in, or production, sales, and distribution agreements with, companies that had the rights to The Coca-Cola Company's (TCCC's) trademarks in the Norwegian soft drinks market. The same terms applied in relation to companies, which produced, distributed or sold TCCC's drinks in Norway.

### ***Statkraft SF – Skiensfjordens Kommunale Kraftselskap AS – Vestfold Kraft AS***

Statkraft entered into agreements with Skiensfjordens Kommunale Kraftselskap AS (SKK) and Vestfold Kraft AS (VK) that Statkraft should acquire 34 per cent of the shares in each of the two companies. The NCA assessed the acquisition in the light of Section 3-11 of the Competition Act. Wholesale trading of power is currently carried out in the Norwegian market by means of a spot market and financial markets. The acquisition would have no noticeable effect on concentration of producers in the Nordic wholesale market. Due to the bottlenecks in the distribution network, the geographical extent of the relevant market was occasionally limited to South Norway. It was in this market that Statkraft was increasing its influence, and the NCA was worried that Statkraft was on the verge of acquiring such a significant share of the regulated production of power that it would have been able to exercise control over the market in South Norway. The Authority came to the conclusion that Statkraft would not be able to exercise control in the market to any extent that would create, or strengthen a significant restrictions of competition contrary to the purpose of the Competition Act.

### ***Felleskjøpene – Stormøllen/Statkorn***

As discussed in the annual report for 1999, Felleskjøpene took over in 1999 Stormøllen AS' concentrated cattle food activities and 50% of the shares in Statkorn AS. In February 2000, the NCA approved the acquisition subject to certain conditions. Felleskjøpene appealed to the Ministry of Labour and Government Administration regarding some of the terms of the Authority's resolution.

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

In accordance with Section 2-2 d) of the Competition Act, the NCA is to call attention to the restraining effects on competition, where appropriate by submitting proposals aimed at increasing competition and facilitating entry for new competitors.

In order to do this, the NCA has to issue submissions and specify those factors that restrict competition.

A considerable proportion of the NCA's work relating to public measures that restrict competition has concerned environmental factors, the energy sector, the finance sector, the telecommunications sector, and the dispensing chemists sector. In 2000, the NCA assessed 179 submissions. The Authority made annotations regarding 77 of these. In 12 cases, the Authority contacted other public offices and drew attention to the negative effects of public regulations.

<b>Cases according to the Competition Act, Section 2-2- d)</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
Handled	154	180	159	182	179
Submissions	64	92	60	78	77
Instances illustrated	4	11	51	17	12

### ***Contact with the municipalities***

In autumn, 1999, the NCA started a special campaign directed towards the municipalities sector. This work was continued in 2000. Through meetings with individual municipalities, the Authority wished to urge the municipalities sector to focus greater attention on the significance of valuing competition and efficiency factors in their purchase and tender procedures. At the same time, the Authority wanted to make the municipalities' purchasing staff more aware of the prohibition of supplier collaboration. The NCA would like the municipalities to contact the Authority if they observe any indication of such collaboration.

Meetings with the municipalities have shown that:

- The municipalities have become more aware of competition problems;
- The municipalities commented on cases and sectors that interested the NCA;
- The municipalities have the potential to increase the efficiency of their purchasing procedures still further;

- The municipalities need guidance and expertise on how to promote competition.

### ***Quota system for climate gases***

NOU 2000:1 describes a quota system for trading with climate gases. In a submission to the quota committee's report, the NCA stated that, if environmental factors were taken into account, the consents for emissions should be distributed so that competition in the market could help promote cost-effective solutions and thus the efficient use of society's resources. To this end, the NCA emphasised that the quotas would have to be tradable. The Authority supported the recommendations of the quota committee's majority that every party should pay the full market price for emission quotas, and that no free quotas should be awarded to any industries. Furthermore, the Authority commented on individual issues relating to the structure of a possible future quota system, and how this would relate to competition legislation. It is important to safeguard a market that functions efficiently if a free international market is not established. The market should be made accessible to companies not bound by the quota system. Additionally, during the design stage of any auction scheme, the respective authorities should assess whether to lay down rules to prevent corporate activities that restrict competition where competition legislation should prove inadequate.

### ***New market scheme for grain***

A working group appointed by the Ministry of Agriculture proposed a new market scheme for grain. The new scheme is to be based on the Storting's resolution of principle relating to the replacement of the current system with a public sector obligation to buy, and guaranteed prices for producers, with a regulatory system for the target price and the market, as used in the schemes for milk, meat and eggs. The new scheme also assumes that the current system of permanent, administratively determined customs duty rates will be replaced with a customs quota system.

The NCA participated in the working group and also made a submission. In its submission, the Authority emphasised that market competition would only work efficiently if prices were allowed to find their own level. The Authority went on to say that any target price system should avoid too small a range limit, as this would restrict market price movements. Furthermore, the Authority was of the opinion that the responsibility for regulating the market should be assumed by a neutral public administration body such as the State Agricultural Administration, rather than by Norske Felleskjøp. The Authority supported the conclusion of the working group that a quota system based on auction should be chosen, but expressed the view that a fixed rate of duty within the quotas should be established in the long-term.

### ***Economic consequence analyses***

The NCA participated in a working group led by the Ministry of Trade and Industry, which in October 2000 issued a guide on economic consequence analyses. The guide, who is a practical tool for everyone preparing public sector reforms, new regulations, or other measures, contains a checklist of eight points that should be kept in mind.

One of the points in the guide concerns whether regulation will affect competition factors in the business community. The following questions should be asked when analysing competition-related consequences.

- Can increased costs and more stringent requirements for expertise prevent new companies from starting up, or lead to unfair competition?
- Can regulation contribute to certain companies, such as market leaders, being given an advantage because they are asked for advice when the regulation is formulated?

- Will the regulation affect companies competing in the same market differently?
- Will the regulation affect existing, or potential, competitors differently?
- Will the regulation reduce the number of companies in the respective market?
- Will the regulation lead to a change in the general conditions for Norwegian companies, compared to the conditions for foreign companies?
- Does the regulation lead to unfair competition in other municipalities?

### ***Rules for public sector purchases***

In a submission to the Ministry of Labour and Government Administration, the NCA presented annotations to a report from a working group that had assessed the monitoring and enforcement system in the area of public sector purchases. The Authority stated in its introduction that the public sector spent over NOK 200,000 million on goods and services in 1997, corresponding to 20 per cent of the gross national product. The Authority said it was therefore important that the rules governing public sector purchases were effective. It then gave its support to the establishment of a new enforcement body. The new body would make the opportunity to appeal easier, and it would be possible to intervene before contracts were signed. Following a holistic assessment, the Authority resolved to support the establishment of a new body to resolve conflicts that would have no formal right of decision. It should be considered whether or not to give the NCA the right to present cases to this body, and whether the Authority should be represented in a steering group for the body. The experience gained in using a body to resolve conflicts without formal power of decision should be assessed after a given time. Alternatives in the form of a separate inspection body, or an appeal committee, which has the power of decision should also be assessed. The Authority expressed scepticism to the idea of allocating the secretariat function to the Ministry of Trade and Industry as this could raise doubts about the latter's impartiality.

### **Other activities**

#### ***Price information and price surveillance***

Goods sold to consumers must be clearly labelled with the price. Many goods must also be labelled with the unit price. The NCA has issued regulations on the price labelling of goods.

Prices for services must also be given to consumers. The NCA has issued regulations on how price information is to be given.

In 2000, the NCA carried out 983 inspections to check if the terms of the price information regulations were being complied with.

<b>Verification of compliance with the provisions relating to the provision of information on prices</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
<b>Number of inspections</b>	2804	2970	2586	976	983
Enforcement of provisions	1559	1581	1075	587	432

The reason for there having been far fewer inspections in the last two years is that the priorities of the NCA changed and resources were reallocated to other tasks. The Authority has prioritised information on the new regulations relating to unit labelling. The regulation stipulates that the unit price for goods sold to consumers must be stated. The unit price makes

it easier for consumers to compare prices of different goods, regardless of the size of the packets. The regulation, which came about as a result of the EU's price-labelling directive, came into force on 1 January 2000. The Authority considered information from the grocery chains to be of particular importance.

Now that the regulation governing maximum taxi fares has been abandoned in some areas (see section on the taxi market, above), special monitoring of price trends and price information provided by taxi services operating in such areas will be carried out. The majority of taxi services have been willing to comply with the provisions governing price information, as laid down in the general service regulations, and they have made the necessary information available.

Price surveys can be used as a tool for acquiring an overview of markets, and to increase customer awareness and purchasing efficiency. Such measures are especially useful in markets where customers have not been used to paying much attention to price – for example, in recently deregulated areas, or where, for any number of reasons, it has been difficult for customers to gain information about special offers.

Eight price surveys were carried out; six of these were nation-wide. The nation-wide surveys covered the price of power, fuel, building materials, car insurance, telecommunications prices and groceries. A survey was carried out on the price of fuel in order to assess the effects of the policy to even out the cost of freight on the determination of price (see discussion below).

## **IV. Resources of the competition authority**

### **IV.1. Resources overall (current members and change over previous year)**

	<b>NOK</b>	<b>USD</b>	<b>Percentage change relative to 1999</b>
Annual budget (2000)	70.3 mill.	8.8 mill.*	-3

\* Exchange rate 31.12.99

<b>Employees</b>	<b>Person- years 1999</b>	<b>Person- years 2000</b>	<b>Percentage change relative to 1999</b>
Economists	48	42	- 12*
Lawyers	26	24	- 8*
Other professionals	46	46	0
Support staff	23	23	0
All staff combined:	145	135	-6

\* The reduction is partly due to the closing down of the 8 regional offices of the NCA.

#### IV.2. Human resources (person-years) applied to:

Employees	Person- years 2000	Percentage change relative to 1999
Enforcement against anticompetitive practices	87	2
Merger review and enforcement	15	0
Advocacy efforts	16	-23*

\* The decrease in advocacy efforts is a result of the restructuring process at the NCA, which was initiated in the second half of 2000. It can partly be explained by the fact that the regional offices of the NCA were in a process of closing down. It is also the result of the fact that the reorganisation of the central unit demanded substantial resources in the same time period. Hence, the change is temporary, and does not reflect the general priorities of the NCA.

#### IV.3. Period covered by the above information: 2000

### V. Summaries of or references to new reports and studies on competition policy issues?

#### *Cross subsidising*

The NCA has received many complaints from the business community about unfair competition practised by public companies. The complaints often contained claims that a public company was cross subsidising by supporting a part of its business exposed to competition, using income from a second part that was regulated.

Cross subsidisation is not a well-defined concept. In the economic literature there are many definitions with different implications as of how the concept can be applied in the analysis of competition. The NCA has initiated an external R&D project whose aim is to establish a practical definition of the concept. The Authority also considers it important to assess measures to prevent economically undesirable cross subsidisation.

SNF (The Foundation for Social and Business Research) completed in May 2000 its report, (SNF, 19/00) entitled "Cross subsidising – practical definition and economically desirable measures"<sup>1</sup>. The NCA, the Ministry of Labour and Government Administration, and the Business Law Committee commissioned the report.

To start with, cross subsidising can take place between products or between geographical markets. In order to cross subsidise products or services, companies must have a source of funding. This may be a product that generates income that is greater than the cost of production. This may be the case, for example, in a market where a company has a dominant position, or for a part of the company's activities that are subsidised. With this source of funding a company can subsidise the price of another product, so that income can be kept lower than production costs. More concisely, the SNF say that we have cross subsidising

when the price of the “funding” product is greater than its stand-alone costs, and the price of the “subsidised” product is less than the incremental costs.

Private and public companies may wish to cross-subsidise products in order to increase profit through so-called predation. This strategy is based on keeping prices low over a given period in order to push competitors out of the market and then set prices at a level that only a monopoly can demand. Public companies may, however, have additional reasons for cross subsidising. Some types of cross subsidising in public companies may be founded in part of a regulation, for example, to finance publicly required services that are commercially unprofitable. Alternatively, cross-subsidising may take place to reduce the pressure on the appurtenant company’s own activities that are subject to competition, or to expand in a highly competitive market.

The SNF presents a method for revealing cross subsidising. The first step is to establish whether cross subsidising is actually feasible. The next step is to determine whether there is an incentive for maintaining low prices. It then has to be established whether low prices in the appurtenant market are likely to damage competition. If the assessors determine that cross subsidising is feasible, that the incentives are present and that low prices may damage competition, they must then try to find out if cross-subsidising is actually taking place. The first step is then to ask the complaining party to submit evidence that the price for the given item is being subsidised. The defending company is then given the opportunity to reject that the given price is harmful to competition.

The SNF lists the following measures that can be implemented against public companies practising cross subsidising that is harmful to competition:

- Prohibit participation in activities exposed to competition;
- Order a judicial separation between activities subject to competition and those which are regulated;
- Order a separation of accounts between activities subject to competition and those which are regulated;
- Maximum price regulation for regulated services.

If two products are manufactured in the same company, it usually means that the company can benefit from coordinated operation. By prohibiting public companies from participating in activities subject to competition, or by ordering companies to separate regulated activities and activities subject to competition, companies would not benefit to the full extent from these advantages. Of the proposed measures, those of making an accounting separation and establishing maximum price adjustments for regulated services represent the best compromises between the protection of competition and the realising of economies of scope. The most effective tools for preventing cross subsidising are, however, the prohibition of public companies from participating in activities subject to competition and ordering the respective company to make a juridical division between activities, as outlined above. In certain cases, the competition authorities have to assess restrictions on competition against the loss of benefits of coordinated operations and other welfare economic benefits.

### ***The advertising and broadcasting markets***

*Between 1998 and 2000, the competition authorities funded a series of projects on the advertising and broadcasting markets. Following a tendering procedure, the NCA allocated the projects to the Centre for Media Economics (SfM) at the Norwegian School of*

*Management (BI), and the Foundation for Social and Business Research (SNF). All in all, nine reports were compiled<sup>2</sup>.*

One of SNF's reports dealt with the competition between the various television channels, and how such competition affected the selection of programmes transmitted. The broadcasting market is characterised by vertical relations and is made up of market segments that overlap and affect each other. Competition for viewers dictates programme strategy, i.e. the kind of programmes transmitted, how they are presented and when they are transmitted. The result of competition is reflected in the viewer ratings for each channel, and this, in turn, influences the income from advertising sales and sponsor posters.

The survey first analyses selected theories relating to program selection. The earliest theories indicated that a television monopoly would yield the most variegated range of programmes, and greater consumer profit and general economic welfare than that which would be the case if there were competition between the channels. It was considered that competing channels would all want a share of the biggest viewer groups and thus transmit the same kinds of programmes at the same time. This would waste resources, however. So, to avoid this, it was recommended that a television monopoly be set up to control the programmes transmitted on all channels.

Subsequent theories showed, however, that such conclusions were only valid in certain circumstances, for example, if the distribution capacity was limited and the viewer groups were of differing size. Without the presence of such conditions, a monopoly would not necessarily be the best welfare economic solution. Given the right conditions, free competition between the channels would be preferable to an oligopoly or monopoly.

The assessment of theories provides a good basis for analysing the competition between Norwegian television channels – especially in respect of news and sports programmes. The competition for viewers has led to Norwegian television channels tending to transmit the same kind of programmes at the same time of day as competing channels, and sometimes a little earlier. This is a problem, as viewers prefer greater variety. The report shows, however, that the problems can be solved by promoting more competition between the channels and by generating other kinds of competition. This may affect Norwegian media policy.

The policy in Norway has always been to promote a broad range of programmes by shielding certain channels from competition. The SNF believes such a policy could be counterproductive. The report shows that competition between many channels, even if funded in different ways, can provide an overall range of programmes that is more varied than that which is possible with just a few major channels that are bound by transmission guidelines that are difficult to control.

### ***Modelling the market***

In 1999, the NCA initiated a project on modelling the market. Following the evaluation of tenders, the Foundation for Social and Business Research (SNF) was engaged to carry out the project. The first stage was completed in March 2000.

An important element of the NCA's work is to observe the markets and intervene where necessary to prevent company acquisitions and agreements between businesses that restrict competition. Competition authorities in all countries perform qualitative analyses to shed light on such problems. The contents of such analyses may vary, but they usually share a number

of common traits. These may be: The definition of relevant markets, the identification of companies in the markets, market concentration, entry possibilities, and other factors affecting competition between the companies in the market. The aim of the analyses is to ascertain whether a particular market activity restricts competition, allowing the respective companies to dominate the market – especially by way of demanding higher prices for goods and services than the efficient use of resources would dictate.

Competition is affected by a number of factors. Companies differ in size and competition is not always as tough between all of them. Size, location, product range and quality all affect how the market works. In some markets, price is the most important competition factor. In other markets, companies compete on other factors, such as quality, marketing and capacity.

Different factors affecting market adaptation can have different outcomes. For this reason, the competition authorities in many countries have started using numeric modelling of the markets. This method generates a figure for the total effect of changes in market conditions. It guarantees consistency in the use of information and between conditions and results.

SNF Report 11/00 (“Numeric modelling of markets with differentiated products”) describes methods for finding equalities and different models for strategic interaction between companies. SNF’s memo 14/00 “Mergers and competition: The calculation of costs and demand in market models” describes econometric methods for estimating modelling parameters.

### ***Competition Indicators***

The Nordic competition authorities are collaborating on a project to assess the possibilities of compiling comparable competition indicators for business groups in each of the Nordic countries. The project group has agreed on the types of data to be collated and on the degree of concentration and mobility it should try to calculate.

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<sup>1</sup> SNF 19/00, Kenneth Fjell, Kåre P. Hagen, Geir Mo Johansen, ”Krysssubsidiering – operasjonaliserbar definisjon og samfunnsøkonomisk ønskelige tiltak”

2

- SNF, Geir Pettersen, (R 68 1999) *Programmes available on television – the fight for viewers.*
- Lars Sørgard and Tore Nilsen, (R 3 2000) *The Television Industry: The Interplay Between Products, Advertising and Programme Quality.*
- Kjell Grønhaug, Leif E. Hem and Herbjørn Nysveen, (R 9 2000) *The advertising market: Views on competition, and market segments.*
- SfM, Thorolf Helgesen, *Forms of competition in the media and advertising market.*
- Thorolf Helgesen, *The advertising market and the media market in Norway – market segments and forms of competition.*
- Rolf Høyer, *Competition problems in the Norwegian media industry*
- Rolf Høyer, *Competition in the market for broadcasts transmitted via satellite in Norway.*
- Stephan Granhaug, *The market for the supply of television transmissions in Norway.*
- Stephan Granhaug, *Corporate integration in the media and telecommunications sector.*