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DAF/COMP/AR(2015)47

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

27-Oct-2015

English - Or. English

**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE**

DAF/COMP/AR(2015)47
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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN NORWAY

-- 2014 --

27-28 October 2015

This report is submitted by Norway to the Competition Division FOR DISCUSSION at its forthcoming meeting to be held on 27-28 October 2015.

JT03385212

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Executive summary

1. The Norwegian Competition Authority's main task is to enforce the Competition Act, prevent and deter competition crime and affect market structure in a direction that promotes healthy competition. Uncovering illegal cartels and bid rigging is the key priority for the Norwegian Competition Authority (NCA, henceforth).

2. In this regard, the NCA had a record high investigation activity in 2014, conducting 6 dawn raids in 17 sites. Several of the new cases stem from public tenders where competitors are involved in bid rigging. Our experience is that when the tips come from public procurers, the evidence is often solid and provides a good basis for the case. However, the experiences from these cases also demonstrate the need to intensify advocacy towards small and medium sized businesses.

3. In the abuse of dominance area, the NCA continued investigating a potential abuse of dominance by the largest Norwegian telecom operator throughout 2014. The authority carried out a systematic ex officio analysis of specified markets characterized by dominating actors in 2013/2014. Some potential cases were identified, and the NCA has an increased focus on abuse of dominance in case handling in general.

4. The high activity level also extends to the merger side. In 2012-2014, the NCA intervened in 10 mergers. Six mergers were allowed with remedies, whereas four mergers were blocked. Three of the four blocked mergers have been transactions where large national corporations have acquired local market positions close to monopoly. Given the geographical structure of Norway, with a very elongated shape and scattered settlements, it is particularly important to pay close attention to local mergers that potentially can imply monopolized markets.

5. From 1 January 2014, the first major revision of the 2004 Competition Act came into force. The background for the revisions was to achieve a more effective competition law. One of the measures in this regard is significantly higher thresholds for merger notifications. Related to merger control, the NCA received notification of 89 concentrations in 2014. This is a considerable reduction in number from earlier years, reflecting the higher notification thresholds. In 2014, the NCA intervened in three concentrations.

6. On the policy side, the NCA has taken steps towards more soft law enforcement to resolve anticompetitive conduct. Important measures have been market investigations resulting in public reports, and actively, and sometimes publicly, warning parties that are at risk of breaching the competition law.

7. The NCA also applied a soft law approach in reacting to a harmful practice of signaling in the banking sector. As a response to stricter capital claims, a number of banks publicly warned that they would have to raise interest rates. Some also stated how much. Instead of starting a full-fledged investigation, the NCA warned the major players and their federation that this signaling potentially was an illegal practice. As a result, the banks are now much less open about their plans to raise interest rates.

8. This soft law approach is also facilitated by the introduction of commitments in the revised competition act that was implemented from 2014.

9. In the last few years, we have also experienced an increasing awareness of the importance of competition in Norway. The appointment of a productivity commission by the Norwegian government reflects this. A key area for the commission is the importance of competition as a driving force for productivity. One of the measures the commission called for in their first report, was a systematic assessment of regulations restricting competition in the services industries.

10. Moreover, the new government initiated a number of new measures to strengthen the legal framework for competition and its effective enforcement. These initiatives are partly based on a report from a commission that suggested an independent appeals commission for merger cases, but there are also plans to end the regime where changes in ownership in the media sector were considered both by the Norwegian Media Authority and the NCA, and to implement measures to simplify the law and regulations for public procurement.

11. Advocacy has also been high on the agenda for the Authority the last year, as it highlights the important and independent role of competition authorities in pinpointing competition problems created through exemptions and anti-competitive regulations. Accordingly, the NCA has over the last couple of years taken a more active role in the public sphere in promoting competition in both the private and public sector. We have called for a thorough investigation of anti-competitive regulations to unleash the potential for more competition in several markets. This has been done through many channels, among others written articles, columns and not least many speeches and presentations addressing competition problems that arise due to public regulations.

12. This also goes hand in hand with one of the NCA's strategic goals: to be highly visible in society. Another important strategic goal is to treat the parties with respect. This is extremely important as the NCA has substantial power to intervene in markets. The Authority can stop or settle mergers with remedies, forbid or settle abuse of dominance or anti-competitive cooperation with commitments and issue substantial fines for infringement of the competition law. These are powerful tools. Thus, it is of utmost importance that the NCA is humble in its exercise of power and shows respect for the parties involved. We believe that the continued high ranking in Global Competition Review reflects achievements on this dimension as well as the other strategic goals.

13. Finally, it can be mentioned that the government in 2014 gave the NCA the responsibility to allocate funds for research in competition law and economics in the order of approximately 6 million NOK per year (approximately EUR 0.7 million). This will strengthen the ties between the academic community and the competition authority but not least improve the knowledge basis for competition enforcement.

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

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

14. **Revised Competition Act.** In May 2013, the Storting (Norwegian Parliament) enacted the first major revision of the 2004 Competition Act. The revision entered into force 1 January 2014. The most important changes concern the merger control provisions. The notification procedure has been altered significantly, and the thresholds have increased significantly in the new Act.

15. Under the revised Act, the parties have to notify transactions where the parties concerned achieved a combined annual turnover in Norway above NOK 1 billion (approximately EUR 120 million), and where at least two of the parties concerned achieved annual turnover in Norway above NOK 100 million (approximately EUR 12 million). Before 2014, the thresholds were NOK 50 million (approximately EUR 6 million) and NOK 20 million (approximately EUR 2.4 million), respectively.

16. However, the NCA retains its competence to order notifications for transactions below the thresholds for a period of up to three months after a change of control, or after final agreement has been concluded. This competence allows the NCA to continue devoting close attention to competition in local markets. In addition, the NCA imposed an obligation to notify all acquisitions, also those involving companies with annual turnovers below the thresholds, upon eleven companies in different markets with

high concentration. The information required for these notifications is at a bare minimum; thus, this does not put the same burden on companies as the previous obligation to notify with the lower thresholds.

17. In order to increase the efficiency of the procedure and to reduce the case handling time in merger cases, the revised procedure places great emphasis on the parties' duty to propose remedies. The revised Act specifically states that the NCA no longer is competent to suggest or impose remedial actions at its own initiative. Consequently, the procedure underlines the parties' ability to propose remedies as early as possible during the notification period. The main principle is that the NCA must clear a transaction as soon as possible on the conditions suggested by the parties or present a formal notice of intervention. To ease the burden of the parties further, the NCA is able to reduce the amount of information required by individual decision, in the same way as Short Form CO's under EU Merger Control rules.

18. Another positive effect is that undertakings in Norway can relate to notification rules that are more consistent with the rules in Norway's neighboring countries and the rest of Europe.

19. An important motivating factor for these changes was to free up the NCA's resources and thereby contribute to increased control of those concentrations that actually may impede effective competition on the relevant markets, above or below the thresholds. However, even though the number of notifications has been reduced, mergers draw an increasing share of the NCA's case handling resources: The share of case handling resources used on mergers increased from 22 per cent in 2013 to 38 per cent in 2014. Obviously, this effects the ability to investigate cartels and abuse of dominance cases.

20. The revised Competition Act extends the scope of the NCA's competence to issue "cease and desist" orders against behavior deemed to infringe Section 10 and 11 (Equivalent to Articles 101 and 102 TFEU). If the parties under investigation propose satisfactory remedies, the NCA has the possibility to impose binding decisions regarding commitments suggested, and thus stop further proceedings. The behavioral prohibitions remain unchanged since these already were harmonized with EU and EEA competition law.

21. The revisions relating to the leniency framework introduce a marker system intended to mirror the European Commission's practice closely. The marker constitutes the only material change to the leniency conditions as previously defined under the Leniency Regulation, and which now is included in the Act. There will still be a criminal track regarding personal sanctions. Thus, the revised Act does not provide a general protection against criminal prosecution for the management in a company. The rationale is that such a protection would conflict with fundamental principles of Norwegian criminal law. However, a provision has been adopted where criminal prosecution of violation of the competition rules is conditioned upon the NCA's petition. In addition, criminal sanctions for companies have been abolished in the revised Act in their entirety, as such sanctions are considered redundant next to administrative fines. Moreover, the revised Act also guarantees non-disclosure of applications for leniency. This provision was included to prevent the risk of private litigation being a disincentive to potential leniency applicants.

22. As a final note on the revisions, it can be mentioned that the rules governing investigations of infringements of the Competition Act have also been clarified further after the revisions. One of the changes relates to the procedure for seizing evidence. Previously, the NCA could seize original documents and allow the undertaking to make copies. From 1 January 2014, the NCA shall only seize originals if the original contains material of evidentiary value. Otherwise, the NCA makes copies of the material if further investigations are necessary.

1.2 Other relevant measures, including new guidelines

23. **Airline loyalty program.** In the summer of 2013, the Government decided to remove **the ban on frequent-flyer or loyalty programs for domestic airline routes in Norway.** However, the Government clearly stated that the use of legal measures should be reconsidered if market developments warrant this. Moreover, the NCA was asked to monitor the development in this market closely, and to demand information and use audit tools to ensure that airlines are not tempted to anticompetitive use of bonus programs. The NCA therefore obliged SAS Group AB and Norwegian Air Shuttle ASA to send necessary information in order to carry out market monitoring. The findings will be reported to the Ministry of Trade, Industry and Fisheries in last part of 2015.

24. **Guidance.** The NCA is currently working on a guidance on the assessment of fines in order to ensure transparency and objectivity. The NCA will base its notice on ia. comments received during the public consultation and the EU/EEA fining guidelines.

25. **Funding for competition research.** In 2014, the NCA invited applications for research into competition economics and competition law projects. From 2015, up to NOK 6 million (approximately EUR 715,000) will be allocated yearly from the general price regulation fund. This will help to strengthen competition policy research and facilitate knowledge-sharing between competition authorities and academia. Educational and research institutions, enterprises and independent individuals can apply for funding from the Fund. In this round, the Competition Authority received 21 applications from a variety of different disciplines. Research topics for the allocation in 2015/16 is a mix of what the Competition Authority sees as needing to be researched and proposals from applicants.

1.3 Government proposals for new legislation

26. **New board of appeals for competition matters.** An expert committee began its work in May 2014 with a mandate to assess a new independent board of appeals for competition matters. The current framework is that appeals of merger decisions are considered by the Ministry of Trade, Industry and Fisheries. The expert committee's report forms the basis for the establishment of the new independent appeals board for competition matters. A public hearing was conducted in November 2014, and in the summer of 2015, the Ministry decided that the board of appeals for competition matters will be established. The board will in addition to dealing with appeals of merger decisions, also be the first instance to consider appeals of Section 10 (cartels) and 11 (abuse of dominance) decisions.

2. Enforcement of competition laws and policies

27. According to the Competition Act, the primary responsibilities of the NCA are as follows:

- Monitor adherence by businesses and industry to the Competition Act's prohibitions against competition-restricting cooperation and abuse of a dominant market position.
- Ensure that mergers, acquisitions and other forms of concentrations do not significantly restrict competition.
- Implement measures to increase the transparency of markets.
- Enforce Articles 53 and 54 of the EEA Agreement.
- Call attention to any restrictive effects on competition of public measures and, where appropriate, submit proposals aimed at furthering competition and facilitating market access by new competitors.

28. The NCA can impose administrative fines on businesses for breaches of provisions of the Competition Act.

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

29. For several years, the NCA has given the detection of cartels and combatting illegal collusive tendering top priority. One key element in the strategy to achieve this goal has been to develop expertise and a high professional standard. Another key element is to be visible in society. This implies *ia.* being clearly and strategically visible in the media, provide trade and industry with information about the Competition Act in general and the prohibition regulations as well as the leniency program in particular.

30. The NCA has regular meetings with the major organizations for employers in order to discuss ways to increase knowledge about the Competition Act and to induce firms to comply with the Competition Act. The NCA also has meetings with individual undertakings to provide guidance. In addition, NCA employees regularly make presentations about the Competition Act and relevant cases, e.g. on conferences organized by industry or trade organizations.

31. In 2014, the NCA secured evidence in six cases on 17 different locations. Moreover, 34 formal statements were taken in connection with investigations in four different cases. One of the dawn raids in Norway involved assistance to ESA.

Investigative Work Activities 2006-2013

	2007	2008	2009	2010	2011	2012	2013	2014
Securing evidence section 25 – cases/locations	2/6	3/5	2/7	4/19	4/9	2/5	1/3	6/17
Depositions (formal statements) section 24 – cases/locations	3/12	4/12	2/9	6/32	9/48	5/10	4/20	4/34

32. In addition to these investigations, the NCA continued its market monitoring in the dairy sector, the wholesale market for electricity and the domestic air transport market.

33. It also appears that the efforts to increase the knowledge of the leniency scheme have been successful. Leniency was introduced by the Competition Act of 2004, but only two applications for leniency had been received until 2009. By the end of 2014, this figure had risen to 25.

Applications for leniency 2007-2013

	2007	2008	2009	2010	2011	2012	2013	2014
Number of applications	2	0	3	6	3	6	2	3

34. Even though the threshold for seeking leniency appears to be relatively low, the Veidekke/NCC case in the asphalt industry alluded to below is a good example of a major case being the result of the leniency program.

35. Market monitoring of the wholesale market for electricity, in cooperation with the Norwegian Water Resources and Energy Directorate (NVE) is another ongoing activity. The purpose of the surveillance is to identify potential abuses of market power. However, no extended investigation of possible violation of the prohibition provisions was initiated in 2014.

2.1.1 An overview of some significant cases

36. As mentioned above, the Authority carried out dawn raids connected to six cases in 2014, which are currently under investigation. However, only two of the six cases reached the public awareness during 2014. The collection of evidence from five companies within the market for book distribution in April 2014 was one of them. The case concerned a possible refusal to supply in the market for the distribution of books to the mass market, such as grocery stores and kiosks. The second case involved assistance to a dawn raid conducted under the EFTA Surveillance Authority, ESA. The inspections were carried out at the premises of airline company Widerøe's Flyveselskap AS. A third investigation started in 2014 concerning abuse of dominance became known in 2015.

37. Presented below is a brief summary of some significant decisions and case developments in the sphere of anticompetitive behavior in 2014.

38. **Groceries.** In the first half of 2013, the NCA temporarily suspended the cooperation agreement on joint purchasing and distribution operations between the two grocery chains Norgesgruppen and Ica Norge. In order for the Authority to temporarily suspend cooperation, there must be a risk of irreversible and irreparable harm and reasonable grounds to believe that the cooperation is illegal. The NCA concluded it could be detrimental to competition in the grocery market if Ica Norge's wholesale operations were closed down, and if a market participant got access to strategic information about a competitor. In December 2013, the two other competing actors in this market, i.e. Rema 1000 and Coop, announced that they had signed an agreement on joint purchasing that would enter into force if the NCA allowed the agreement between Norgesgruppen and Ica Norge. The NCA continued its investigations while taking into account the possible effects of this new development. In March 2014, the NCA issued a statement of objection with the preliminary conclusion that the agreement between Norgesgruppen and Ica Norge was in breach of the Competition Act.

39. However, before the NCA could finally conclude the case, Coop announced in the autumn of 2014 that it would acquire Ica Norge. The proposed acquisition will imply that the number of competitors is reduced from four to three at a national wholesale level, and from five to four at a national retail level. Thus, the NCA suspended its work on the assessment of the cooperation agreement to focus on a thorough investigation of the competitive effects of the latest developments in the consolidation in the retail grocery market. The assessment of Coop's acquisition of Ica is described below.

40. **Collusive bidding for electrical services to a health enterprise.** In the first part of 2015, the NCA imposed fines of several million on three undertakings participating in collusive bidding for electrical services to a health enterprise. The case was initiated in the fall of 2013, and investigated throughout 2014. The fined undertakings had a three year framework agreement with Vestre Viken Helseforetak ('Health enterprise') in the Drammen area. Through the framework agreement the three undertakings concerned were the only permitted bidders in limited tenders for electrical services. Whenever Vestre Viken Helseforetak required electrical services, only the three pre-qualified firms would be invited to bid for the contracts. The NCA found that Arro, Caverion and Pettersen allocated contracts in between themselves from December 2012 to October 2013. The participants colluded to decide the winning bidder, whilst the customer, Vestre Viken Helseforetak, was under the impression that the bidding was competitive. Caverion has applied for leniency. However, they only got partial leniency due to the fact that the leniency application was only put forward after the Authority had been on a dawn raid.

41. The decision implied fines to Pettersen and Arro fines in the order of NOK 2.88 million and NOK 1.87 million, respectively. The NCA reduced Caverion's fine from NOK 2.4 million to NOK 1.44 million due to the partial leniency. (Numbers in EUR respectively: 340,000, 220,000, 285,000 and 170,000.)

42. **Trade association for repair shops of white goods.** In March 2015, the authority fined a trade association for repair shops of white goods for breaching the competition law. The association advised its members on prices and acceptable price levels on repair services for white goods suppliers during the period from 2006 to 2011.

Developments in the courts

43. **Taxi companies.** In 2011, the NCA fined three taxi companies for illegal cooperation in connection with competitive tendering rounds advertised by the Oslo University Hospital. The decision was appealed by the parties, and was not upheld by the District Court in its judgment in February 2013. The judgment has been appealed by the NCA. The case should have been handled by the Court of Appeal in spring 2014, but the court case had to be postponed for practical reasons. In February 2015, the Borgarting Court of Appeal agreed with the NCA's earlier decision, but reduced the fines.

44. **Asphalt.** As in 2012, an extensive cooperation between the companies Veidekke and NCC was among the major cases dealt with by the NCA in 2013. In March 2013, the Competition Authority decided to impose a fine of NOK 140 million (approximately EUR 17 million) on NCC AB and NCC Roads AS for colluding with Veidekke during the period 2005-2008. Veidekke received a fine of NOK 220 million (approximately EUR 26 million). Veidekke applied for leniency by providing the NCA with information that led to the case. Thus, the company was exempted from paying the fine of NOK 220 million. The collusion included market sharing, price fixing and bid rigging as well as the exchange of other strategic information in connection with asphalt tenders in mid-Norway. The companies did not accept the fine and brought the matter before the Oslo District Court. The Authority's view that NCC Roads AS is held liable for employees' actions was supported, but the Court reduced the fine from NOK 140 million to NOK 40 million (approximately from EUR 17 million to EUR 4.7 million) as it did not agree with the basis for the Authority's calculation, i.e. regarding affected turnover. Also, the court found no grounds for holding the parent company NCC AB responsible for the infringement.

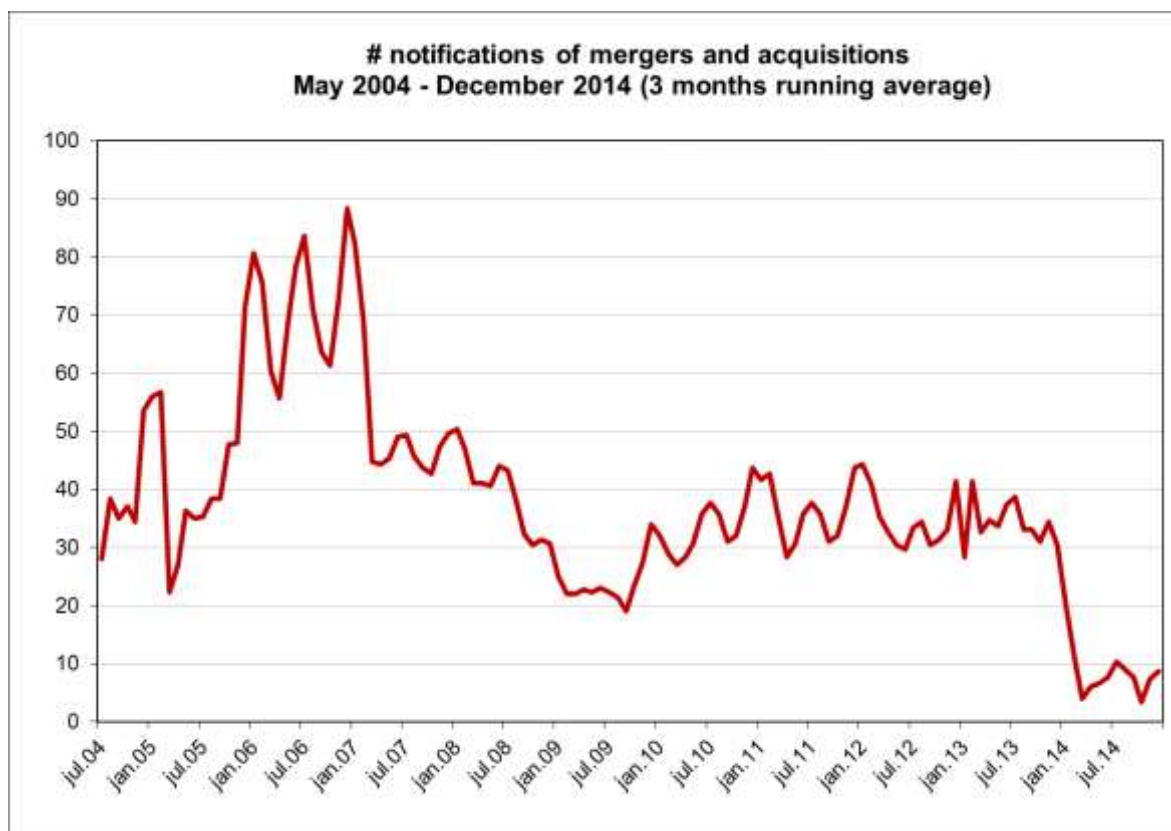
45. The NCA appealed the District Court's decision in the asphalt case to the Borgarting Court of Appeal. The appeal concerns both the application of the law and the assessment of the evidence. NCC has also appealed the Court's decision.

46. In the first part of 2015, the Court of Appeal ruled to hold NCC Roads AS liable for an employee's actions and the parent company NCC AB is held jointly and severally liable. The court also decided to raise the fine to NOK 150 million (approximately EUR 18 million) due to recidivism. The judgment states that it is important to have an effective enforcement of this type of violation of competition law which may have significant adverse effects.

47. Both cases described above may end up in the Supreme Court.

2.2 Mergers and acquisitions

48. The number of notifications of mergers and acquisitions has been much lower compared to previous years, due to changes in thresholds for notifications as explained earlier in this report. The NCA received 89 notifications in 2014. By comparison, it received 391 in 2013.



The significant drop in notifications in 2007 is due to higher thresholds for notifications. The second significant drop is due to the recent increase of thresholds in 2014.

49. The NCA intervened in three concentrations in 2014. The merger in the health and fitness sector between SATS and Elixia, where the Norwegian part was transferred from the EU Commission to Norway, was the first time that the NCA made a decision of approval of remedies proposed by the parties, following the new rules of the revised Competition Act. SATS-Elixia was approved on conditions in the beginning of 2014. This case will be described briefly below, in addition to some other significant merger cases.

50. None of the merger decisions taken in 2014 were appealed to the Ministry.

51. **SATS and ELIXIA merger approved subject to conditions.** The merger involved the two largest players in the fitness centre industry in Norway, the fitness centre operators ELIXIA and Health & Fitness Nordic (with the chains SATS and Fresh Fitness). In its assessment of market conditions, the NCA found that the merger would lead to higher prices and poorer services for customers in five different areas.

52. The Authority communicated these concerns to the parties during the process of assessing the merger. The parties proposed merger remedies according to which they were obliged to divest 11 fitness centers. SATS and ELIXIA had to complete the sales of the fitness centers before they were allowed to complete the merger in these five areas. Subsequently, the NCA decided to allow the merger, conditional on the companies selling out several training centers in areas that were identified as areas where competition would be significantly restricted.

53. **Avfall Sør Bedrift AS acquisition by Norsk Gjenvinning AS.** The NCA prohibited the acquisition of Avfall Sør Bedrift AS by Norsk Gjenvinning AS, to prevent a large national cooperation to acquire a potentially harmful local market position within the market for waste management.

54. **Nortura SA acquisition of part of the activities of Prima Gruppen AS.** The NCA allowed meat processing company Nortura SA to acquire part of the activities of Prima Gruppen AS on conditions. A full implementation of the acquisition would have led to Nortura largely acquiring Prima Gruppen's slaughtering and cutting operations. The parties chose to offer remedial measures, which mitigated the NCA's concerns

55. Two other cases that required significant resources in 2015 were concluded first part of 2015:

56. **TeliaSonera-Tele2.** After Tele2 lost its bid to acquire 4G spectrum licenses in the Government auction in 2013 to newcomer ICE, the NCA received a notification on the acquisition of Tele2 by TeliaSonera in August 2014. The acquisition involved a merger of two of the three largest players in mobile phone market in Norway. The Competition Authority may use up to 130 working days to handle a merger case. After 70 days, the Authority notified the parties that it considered intervening against TeliaSonera's acquisition of Tele2. In its Statement of Objections, the Authority wrote that the mobile telephony market already was highly concentrated, and that it feared that prices for consumers would be higher and the quality of services lower after the acquisition. Before the Statement of Objections, TeliaSonera had sent proposals for merger remedies, but the NCA considered them insufficient to offset the harm to competition that the acquisition would give rise to.

57. In the discussions with TeliaSonera, the Authority made it clear that a third network operator with a certain customer base was vital to ensure continued competition on price and quality. The final commitments offered by TeliaSonera provided a satisfactory basis for the development of a third mobile network in Norway, and provided a real opportunity for a third mobile network operator to enter the market and to compete for Norwegian mobile customers. The commitments included:

- TeliaSonera sells infrastructure to ICE
- TeliaSonera concludes a roaming and service provider agreement with ICE
- TeliaSonera sells Network Norway's customer base (corporate), distribution network and frequencies to ICE
- TeliaSonera commits to offer MVNO access to Norwegian mobile operators
- TeliaSonera offers to sell three Tele2 stores to ICE

58. Consequently, the NCA approved the acquisition conditional upon the full implementation of a commitments package submitted by TeliaSonera, which includes the conclusion of a roaming agreement with ICE and the sale of Tele2's mobile network and the mobile operator Network Norway to ICE.

59. **The groceries market.** The consolidation of the Norwegian retail grocery market continued in 2014. In January 2013 Ica Norge, Norway's fourth largest grocery chain, and Norges-gruppen, by far the largest grocery chain in Norway, entered into a five year agreement to cooperate in purchasing and distribution. In February 2014, the NCA announced its intention to block the agreement. However, in October 2014, just before the Authority would take a final decision, the Authority was informed that Coop, the third largest grocery chain in Norway, had bought Ica Norge. The proposed acquisition led to the suspension of the Competition Authority's assessment of the cooperation agreement between Ica and Norgesgruppen.

60. The Competition Authority found that the merger could lead to a significant restriction of competition in 90 local markets. To avoid the anti-competitive effects, Coop offered to sell 43 grocery stores to Bunnpris and 50 grocery stores to Norgesgruppen to avoid restricting competition. The NCA decided to approve Coop's acquisition of Ica Norge with these remedies.

61. In addition to these merger decisions, the NCA followed up those mergers that previously had been approved on conditions. In most of these cases an external administrator, appointed by the NCA, makes sure conditions are met.

62. The table below presents an overview of the amount of merger notifications received in the period 2008-2014.

	2008	2009	2010	2011	2012	2013	2014
Notifications of mergers and acquisitions	444	293	412	460	411	391	89

63. As the table and the graph above shows, the amount of notifications has gone down drastically after the increase of thresholds in the revised Competition Act that entered into force 1 January 2014. In order to still be able to follow developments in highly concentrated markets, the NCA obliged ten actors to notify all acquisitions in certain markets. One more actor was imposed this notification in 2014. The NCA will consider continuously whether there are more markets where a closer monitoring is necessary to protect competition. After 1 January 2014, the NCA also imposed one actor to notify a certain acquisition within three months after the agreements was signed. The acquisition was not stopped, but the NCA needed more information to be able to consider the effects on competition thoroughly enough.

64. In 2014, the NCA fined five companies according to Competition Act Section 19 for not notifying the NCA of an acquisition before this acquisition was carried out. These fines sum up to 26.3 MNOK (approximately EUR 3.1 million). The largest case was against Norgesgruppen for taking over and continuing the grocery business in grocery stores previously owned by competitor Ica Norge. Norgesgruppen was aware that this could be a violation of the standstill obligation, but nevertheless chose to put into effect the transaction. For the fine to have sufficient deterrent effect, and thereby contribute to an efficient merger control regime in Norway, the NCA responded with a substantial fine of 25 MNOK (approximately EUR 3 million). Although Norgesgruppen did not agree with the decision, it decided to accept the fine.

2.3 *The Norwegian Complaints Board for Public Procurement (KOFA)*

65. The Norwegian Complaints Board for Public Procurement (KOFA) is a national complaints body that enforces the Norwegian regulations on public procurement. The Board's members are all lawyers (10 members in 2014), who are appointed by the Government. KOFA's decisions are advisory. The body's main role is to offer the public body and the tenderer a low-cost and efficient body to resolve conflicts on alleged violations of the procurement rules.

66. Until recently, KOFA could also impose fines for illegal direct award of contracts. However, as a consequence of the implementation of Directive 2007/66/EC, the authority to issue fines for illegal direct procurement has been transferred to the civil courts.

67. The NCA has the administrative responsibility for the Board's Secretariat.

68. Before 2012, there was a steady and substantial increase in the number of cases that KOFA received. With limited resources, the case backlog increased significantly. As a measure to increase the threshold for complaints, the Ministry decided to introduce a filing fee from 1 of July 2012, implying that complaints regarding illegal direct awards have a filing fee of NOK 1000 and other complaints have a filing fee of NOK 8000 (approximately EUR 120 and EUR 950, respectively). Consequently, the number

of cases received decreased in 2012, and even more so in 2013. The number of cases received in 2013 was even lower than before the increase in the years 2008-2011, but did not go down further in 2014.

69. Case statistics for the period 2003-2014 are presented below:

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Complaints	266	288	268	152	153	216	277	407	332	237	144	143
Decided	182	250	264	176	217	171	230	280	293	253	211	276
Rejected	77	106	137	50	48	43	50	84	100	92	59	75
Violations	52	80	71	77	118	66	112	123	86	82	69	90
Non-violations	24	10	27	31	38	40	36	30	40	42	64	99

70. In 2014, KOFA received 143 complaints. Due to the decrease in incoming cases and more resources, KOFA could significantly shorten the backlog of cases that had stayed open from previous years. From April 2015, KOFA has reduced its case handling time to 3 months for new cases. September 2013, expected case handling time was still 14 months. KOFA closed 276 cases in 2014, including 90 cases which were potentially involving fines, ie. illegal direct procurement.

71. Illegal direct procurement is procurement that is not advertised according to the public procurement regulations. Infringing the duty to advertise is regarded as the most serious breach of the regulations. KOFA issued in total 15 fines to different public authorities in 2014 for illegal direct procurement. In total, KOFA issued fines for approximately NOK 21 million in 2014 (approximately EUR 2.3 million). After it lost its authority to issue fines in 2012, KOFA handled cases during a transition period. In October 2014, this transition period was finalized by KOFA's last fine.

72. For the financial year 2014, KOFA's budget was approximately NOK 11.8 million (approximately EUR 1.4 million).

73. **Procurement advocacy.** There is still a need for information on how the public procurement rules should be understood and employed, and KOFA is experiencing a great demand for guidance. However, responsibility for guidance on the public procurement rules lies with the Agency for Public Management and eGovernment (Difi). Nevertheless, KOFA and the NCA are working together to increase awareness of both the procurement rules and the provisions of the Competition Act on illegal collusive tendering among public awarding bodies.

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

3.1 Cooperating bodies

74. The NCA holds regular meetings for information and contact purposes with cooperating bodies such as the Financial Supervisory Authority of Norway, the Norwegian Post and Telecommunications Authority, the Norwegian Water Resources and Energy Directorate and the Agency for Public Management and eGovernment.

75. In addition to an agreement with the Norwegian Post and Telecommunications Authority, the NCA has cooperation agreements with the Consumer Ombudsman and the Norwegian Consumer Council. The three institutions have regular cooperation on specific cases, in addition to regular contact meetings twice a year.

3.2 *International cooperation*

76. For the NCA, international cooperation has a high priority, not least through the Nordic network, the ECN, ICN and the OECD. The NCA aims to be an active contributor to these networks. In addition, the NCA has regular contact with the EFTA Surveillance Authority on ongoing cases with a cross-border dimension.

77. In 2014, a working group from the Nordic competition authorities started its work on a joint report on competition in waste management markets. The report will expectedly be published in the fall of 2015.

78. The NCA sent two written contributions for OECD-meetings in 2014: Competition issues in the distribution of pharmaceuticals and Competition issues in airline services.

3.3 *Expressing competition concerns related to existing or proposed regulations*

79. According to section 9 of the Competition Act, the NCA shall supervise competition in the various markets, among others by implementing measures to promote market transparency, and by calling attention to any restrictive effects on competition of public measures (section 9e).

80. In 2014, the NCA produced 13 hearing statements expressing concerns related to consequences for competition of proposed laws and regulations. By acting as a hearing body, the NCA ensures that the competition perspective is given due consideration when new policies are being adopted.

81. More generally, the NCA has expressed concerns regarding regulatory initiatives in a number of sectors, as well as exemptions from the competition law. The NCA has called for a review of anticompetitive regulations and a stronger prioritization of competition as a key tool to raise productivity in the Norwegian economy.

82. In 2014, the government established a committee with a mandate to propose measures to strengthen productivity and growth in the national economy. The NCA's former Director General Christine Meyer was appointed as a member of this Productivity Committee.

83. Moreover, in its letter of assignment, the new government asked the NCA to start work with the aim to identify regulations in the services sectors that might be harmful to competition.

3.4 *Visibility, transparency and awareness of consumers*

84. Throughout 2014, the NCA has worked to increase awareness among various stakeholders, both to prevent and detect competition crimes. Our webpage is an important channel for information directed towards the public, business, lawyers and media, to further knowledge of the Competition Act and the NCA's tasks and enforcement powers. The webpages had around 274,000 visitors in 2014. In addition, the NCA was referred to in the media 5,371 times. A high share of visitors check the NCA's electricity price comparison service. However, this website was shut down, and replaced by a new website of the Norwegian Consumer Council in July 2015. The Consumer Council already offered price comparison services in other markets, and in order to save costs in updating and redesigning the NCA's site, this responsibility was placed under the Consumer Council.

85. Throughout 2014, NCA employees have been active with presentations on conferences, media debates and published articles. Reports and articles on specific markets and sector regulations attained a good deal of attention, as well as case decisions.

4. Resources of the competition authorities

4.1 Resources overall (current numbers and change over previous year):

4.1.1 Annual budget:

86. In 2014, the NCA had a budget of 93.4 million Norwegian kroner (approximately EUR 11.1 millions).¹

4.1.2 Number of employees

87. As on 31 December 2014, the NCA had a total of 100 employees – 88.74 person years – excluding the employees of Norwegian Complaints Board for Public Procurement (KOFA), which administratively is part of the NCA.

88. The NCA has a relatively young workforce. In 2014, the average age was 39 years. Regarding time in service, an increasing number of employees has worked at the NCA for more than five years. Yet, many have been recruited directly from universities and colleges. Thus, there still are many employees with short experience at the NCA. The NCA moved from Oslo to Bergen (from the capital to the second city in Norway) in 2004, and the last ten years the NCA has focused on building an experienced workforce in Bergen. In 2012, the turnover was 15 percent, and in 2013 it was 11 percent. In 2014, the turnover was reduced even further to 8 per cent.

89. Of the NCA's one hundred employees, 34 are economists and 35 are lawyers. 17 have another type of higher education. In total, 72 out of 100 work on competition enforcement. The authority has reorganized its administrative resources, aiming at a more effective organisation of its administrative staff. Due to strict budget limits and an increase in amount of cases, investigations especially, the authority aims to release resources from administrative functions, favouring case handling resources.

4.1.3 Human resources (person-years) applied to:

90. **Enforcement, merger, and advocacy.** The NCA is organized by sector. Thus, the case handlers are organized in market departments with responsibilities towards specific markets. All case handlers work with all types of competition cases within the markets allocated to them. In addition, the NCA has an investigations staff with approximately five staff members dedicated to cartel investigations and anti-cartel networking only. The investigations staff supports the market sections in cartel cases. Specialized legal and economic support and quality assurance is provided by the legal director's team and the chief economist's team.

91. The NCA started using an internal activity-monitoring tool in January 2009. Percentage of total case handling resources used on different case types can be summarized as follows:

- a. **Mergers:** 35 % (20 % in 2013)
- b. **Anti-cartel:** 40 % (45 % in 2013)
- c. **Dominance-related issues:** 10 % (15 % in 2013)
- d. **Other (eg, advocacy):** The remaining 15 % of the case handler resources are dedicated to international cases and advocacy matters. (20 % in 2013)

¹ This figure includes the budget for the Norwegian Complaints Board for Public Procurement (KOFA).

92. Notably, there has been an increase in the percentage of resources used on merger cases in 2014 due to several larger cases. The authority has worked hard on not letting this impact the resources on cartel cases through various measures to increase efficiency in case-handling.

4.2 *Period covered by the above information:*

93. Numbers of staff as on 31 December 2014. Resources under 4.2 as registered by employees for the whole of 2014.

5. Summaries of or references to new reports and studies on competition policy issues

94. Two market study reports were published in 2014. The main issues and recommendations will be referred below.

95. **Competition problems in the market for residential development.** The NCA conducted an inquiry on competition in the market for residential development in six of the largest urban areas in Norway, and found indications that competition in several of the urban areas studied is limited. The data collected and the Authority's calculations show that the market is concentrated in most urban areas, especially if the assessment is based on land ownership by the different housing developers.

96. The supply of land is limited, and is one of the main challenges in urban areas. In periods of rising land prices and limited supply of parcels, smaller operators in particular face a relatively significant competitive challenge. These challenges are increased by municipal regulatory and planning processes that are time consuming and might be experienced as inefficient, and often unpredictable. Smaller players have fewer opportunities than the larger ones to bear the economic risk that a long and uncertain regulatory process entails.

97. In the study, the NCA proposed several measures that can help to strengthen competition in the market.

98. **Report on petrol prices.** Gross margins on retail fuel have increased significantly in Norway in the last few years, and are considerably higher in Norway than in Sweden. As part of the NCA's long-term focus on the retail fuel market, the Authority collected price data from more than two thousand petrol stations for the years 2006 to 2011, and published its findings in a report in March 2014.

99. The analyses show that the recommended retail price had increased, but also that all firms adhered to a new pattern. There was already a price peak on Mondays, but in addition new price peaks were introduced on Thursdays. However, motorists had not significantly reduced consumption on Thursdays and Fridays. Because of this, margins could increase significantly.

100. Knowledge and awareness of prices is important to ensure adequate competition. With its report, the Competition Authority aimed to increase consumer awareness and give consumers the possibility to adapt to the price cycle by buying petrol on the cheapest days. The report received much attention from the media, and the Authority continues to monitor the market. Further measures to improve the level of competition will be considered.

101. Another market in focus is the financial market. The NCA started a sector inquiry in 2014, which also resulted in a report in 2015.

102. The NCA also published a report on the taxi market in March 2015, pointing out that the market is over-regulated, and how this is harmful to competition, productivity and innovation.

103. Finally, it can be mentioned that in 2014, the Nordic competition authorities started a joint market study work on the waste management market. This report will expectedly be published by the end of 2015.