



Competition Policy and Financial Crises

Lessons Learned and the Way Forward



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– A joint report by the Nordic competition authorities –

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Preface

In their semi-annual meeting in Helsinki in March 2009, the Directors General of the Nordic competition authorities discussed the financial crisis, its economic impact on the real economy as well as how the crisis had affected the respective Nordic competition authorities.

The directors unanimously agreed and stressed the importance of not weakening competition policy in times of crisis. Furthermore, they underlined the importance of adhering to public procurement law and regulations. This applies to state aid as well. The crisis must not be used as an excuse for measures lessening or distorting competition and trade, neither within the internal market nor internationally.

At the same time, and as evidenced by history, this view has and will expectedly be challenged further as the crisis evolves. Thus, the Directors General acknowledged the need to substantiate why competition policy is important for fast economic recovery from the crisis.

This is the background for this report. The mandate outlined by the Directors General asks for a review of how the crisis has affected the economies of the Nordic countries, and the respective measures imposed to counteract the negative effects. The working group was also asked to take a historical perspective on previous crises, and briefly review the lessons learned from a competition point of view. Yet another issue to be covered is how competition policy has been challenged so far during the crisis. In this regard, a presentation of the Icelandic experience would be particularly relevant and important. The mandate also stated that before concluding with specific recommendations, the working group should review experience on the connection between competition, innovation and economic growth.

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The report will be presented at the annual meeting of the Nordic competition authorities in Reykjavik the 10th of September, 2009.

Bergen/Copenhagen/Helsinki/Nuuk/Reykjavik/Stockholm

Summary

The financial crisis originating in the USA quickly spread to the rest of the world with confidence receding, interbank lending rarefied and a serious credit crunch. Financial institutions throughout the world got into trouble, and over time the crisis in the financial markets has caused wide-spread financial difficulties across the world. Iceland is one of the countries hardest hit by the crisis, but most of the other Nordic countries have experienced and anticipate further economic downturns as well, although presumably at a lesser scale.

In their semi-annual meeting in Helsinki in March 2009, the Directors General of the Nordic competition authorities discussed the financial crisis, its economic impact on the real economy as well as how the crisis had affected the respective Nordic competition authorities. The Directors General unanimously agreed and stressed the importance of not weakening competition policy in times of crisis. At the same time, and as evidenced by history, this view has and will expectedly be challenged further as the crisis evolves. Thus, the Directors General acknowledged the need to substantiate why continued, vigorous competition enforcement is important to come strengthened out of the crisis. This is the background for this report.

The report consists of six different parts. The first part (chapter 2) contains a review of how the crisis has affected the economies of the Nordic countries, and the respective measures imposed to counteract the effects. Chapter 3 presents EU Commission policy and Commission measures related to the crisis. Chapter 4 takes a historical perspective on previous crisis, and briefly review the lessons learned from a competition point of view. The report also contains a review of the experience on the connection between competition, productivity and economic growth (chapter 5), before presenting how competition policy has been challenged so far during the crisis in the Nordic countries. Here, the Icelandic experience is particularly relevant and important. The report concludes with specific recommendations on competition policy in times of crisis in chapter 7. A brief summary of the different part of the report is presented below.

Chapter 2 – The current financial crisis and the economic perspectives in each of the Nordic countries

The current global crisis has profoundly affected the availability and cost of credit to the world's households and businesses. Being basically a crisis in trust this credit crunch has impacted all Nordic countries by a quick and deep contraction of the economies. Stock prices are down between 50 per cent and 90 per cent since the peak in early 2007. Except for Greenland, GDP growth has fallen sharply in 2008, and will continue to do so in 2009. Unemployment rates have risen and will first start to level in 2010. Inflation remains low, however, but a real fear of deflation still exists. Initiatives to remedy the effects of the crisis include expansive fiscal policy measures and tax cuts, credit packages for households and industries as well as bank rescue packages. Iceland's situation is particularly urgent and complicated, as outlined in chapter 2.7.

Chapter 3 – EU Commission – policy and measures related to the current financial crisis

The European Commission has, along with the member states, launched a number of efforts to remedy the effects of the financial crisis. Its *European Economic Recovery Plan*, aims at stimulating demand and confidence and secure long term competitiveness. It proposes a set of actions to support the real economy by counter-cyclical macroeconomic responses, some of which include State aid. The imminent

need to unblock bank lending and encourage investment were met by the adoption of “Temporary Framework” in December 2008. This framework includes measures which allow Member States to mitigate or remedy the effect of the credit crunch on the real economy in minimally distortive way. The subsequent implementation of financial aid schemes was widespread, and by May 2009 the Commission had authorized nearly 40 measures in 16 Member States within the framework.

Chapter 4 – Experiences from previous financial crises

In times of crises competition law becomes particularly important. In earlier crises, proposals have come forward calling for weaker competition laws. In order to be able to assess the rationale of such a standpoint, it is helpful to look at experiences and evidence from earlier economic setbacks, recessions or depressions. Lessons can be learned from the Norwegian banking crisis of the 1920s, the Great Depression and how it was dealt with in United States and by the Nordic countries, as well as the Scandinavian/Nordic banking crisis of the 1990s. Research has shown that weakening competition laws as a tool to combat economic difficulties may have the opposite effect and works to prolong the crisis. It is important to keep this in mind when governments take actions in order to limit the negative effects of the current crisis.

Chapter 5 – The benefits of competition

Economic theory supports the view that competition is desirable because it increases the welfare of consumers and contributes to efficiency in economic activity. Competition is rivalry between individual firms. Rivalry ensures that only the most efficient and innovative firms are in the market. Competition is an ongoing process that works through utilization of company resources, entry and exit in the market and innovation. It is difficult to quantify how much an efficient competition affects productivity and the economy more generally, but a number of extensive studies have found that stronger competition is associated with higher productivity. In the same way that it is clear that competition in business has a positive impact, it has also been established that competition restrictions may cause great damage to the public and the economy.

Chapter 6 – Challenges to competition policy

The current economic crisis poses several challenges to competition policy. When it comes to merger control, competition authorities may envisage an increased reference to the failing firm defence. The crisis can also affect the notion of what are legitimate responses to the downturn. Firms may disregard the illegality of cartels and see a cartel agreement as the best way to reduce overcapacity and reduce uncertainty. As substantial parts of the fiscal stimulus are channeled subject to public procurement, it might be needed to further underline the risk or propensity of cartel formation among participants in tenders. The rise in bankruptcies in various industries has led and will lead to concentration that in already concentrated markets may distort competition. Firms’ restricted access to credit may imply increased barriers to entry. We will see an increased pressure for state aid and other government interventions that may distort competition. Public measures that imply a restriction or distortion to competition might be proposed and be more politically acceptable in times of crisis.

Chapter 7 – Summary, conclusions and recommendations

The report concludes with a number of recommendations. First of all, the report emphasizes the importance of continued, vigorous competition enforcement and to stand firm on competition policy also in times of global economic crisis. It is well documented that competition contributes to economic growth and increases welfare. This is

supported by historical evidence, which clearly indicates that actions that restrict competition actually prolong the economic difficulties and postpone recovery. Consequently, measures implemented to deal with the crisis must not distort or weaken competition; for instance by reducing the companies' ability or incentives to compete, or by raising barriers to entry. Experience shows that measures imposed often are irreversible in nature (e.g. forced mergers) or tend to become permanent. Thus, temporary measures and government involvement must be truly temporary and include a clear exit strategy.

Even though the crisis does not alter the rationale for competition policy as such, it alters the economic realities in which competition policy works. Some industries will become more concentrated. The failing firm defense might be invoked to an increasing extent, it might be more tempting to collude or abuse a dominant situation. The competition authorities will not tolerate any attempts to use the crisis as an excuse for a more lax attitude towards competition law. Mergers and acquisitions will be assessed according to the normal criteria for assessment, but the competition authorities will also act expediently and allocate the necessary resources to the assessment, for instance when necessary to secure continued operations and to avoid unnecessary loss of workplaces. An important part of the fiscal stimulus packages imposed in the Nordic countries will be directed towards public construction projects. The report underlines the importance of effective competition and low barriers to entry in local, regional and state procurement. This applies even if urgency procurement procedures are used. Checklists to aid in detecting illegal cooperation and bid rigging are available.

As the crisis has evolved, the Nordic competition authorities have witnessed and still expect an increased pressure for state aid and other government interventions that may distort competition. As a final point, the report stresses the importance of state aid complying with EU/EEA rules and guidelines. Furthermore, protectionist measures must be avoided as this will only prolong the crisis.

1. Introduction

The financial crisis originating in the U.S. quickly spread to the rest of the world with confidence receding, interbank lending rarefied and a serious credit crunch. Financial institutions throughout the world got into trouble, and over time the crisis in the financial markets has caused wide-spread financial difficulties across the world. Iceland is one of the countries hardest hit by the crisis, which was accelerated by domestic vulnerabilities, but most of the other Nordic countries have experienced and anticipate further economic downturns as well.

As in the context of earlier crisis, some might argue that this situation calls for amendments to competition law or for changes in the implementation of competition law. Could these difficulties for instance justify relaxing the requirements under the competition acts of these countries? Would it for example be right to permit anti-competitive collaboration among competitors for the purpose of protecting jobs? Or should merger control be more lax?

In order to be able to assess these issues it is prudent to look at experiences from earlier economic setbacks, recessions or depressions and see if there are any similarities to the current financial crisis and whether we can learn from actions taken in the aftermath.

The report starts with a chapter on the background of the financial and economic crisis and how it has hit the respective Nordic countries. We then present a summary of policy and measures imposed on EU Commission level before looking at experiences from previous economic crisis, particularly focusing on how competition policy was challenged. To motivate even further why competition policy is important in times of crisis, we summarise some studies on the interrelationship between competition policy, innovation and economic growth before proceeding to how the Nordic competition authorities in their day to day work so far have been affected by, or challenged by, the crisis. In the final chapter, the nordic competition authorities presents specific recommendations on competition policy in times of crisis.

2. The current financial crisis and the economic perspectives in each of the Nordic countries

2.1 Background of the crisis

The current global crisis has had profound consequences for most of the world's economies. Crucially, it has affected the availability and cost of credit to both households and businesses. The recent years' global saving-investment imbalances led the U.S. and other industrial nations to import savings from fast-growing, low-consuming emerging markets as well as from oil-exporting nations. Large price bubbles in the housing markets followed partly because financial institutions reacted to the surplus of capital by competing for borrowers. To satisfy the surging demand for investments as well as a need for new risk spreading instruments the financial sector began designing complex and unclear securities that combined individual loans. These new 'innovations' concealed risks and are partly responsible for the size of the collapse that has followed. Moreover, much of the new lending activity and securitization occurred in the so called 'shadow banking system,' which was outside the regulation that constrained the activities of, for example, savings banks.

In early 2007 the credit-boom started to unravel in the U.S. as problems with subprime loans surfaced and house prices began to fall. A crisis in trust commenced as investors started withdrawing from a range of credit markets and financial institutions cut back lending. The crisis accelerated in September last year as credit markets froze due to the failure or near-failure of several large financial institutions in the U.S.. Stock prices declined with the built up of both distrust of the financial system and gloomy economic prospects. The result was a quick and deep contraction of the real economy that still persists.

2.2 Impact of the crisis and economic perspectives

To a significant extent the crisis in the Nordic countries originated in the U.S.. Effects ran through the globally intertwined banking sectors with a resulting contraction of exports and economic activity. However, bubbles have also permeated the housing sectors of the Nordic countries.

All Nordic countries are affected by the global crisis though to varying degrees. Stock prices were in 2009 down between 50 per cent and 90 per cent since the peak in early 2007. Except for Greenland, GDP growth has fallen sharply in 2008, and will continue to do so in 2009 while a recovery is predicted to begin in 2010. Concurrently, unemployment rates have risen and are expected to start level in 2010. Inflation remains low, however, while a real fear of deflation still exists. Iceland's situation is particularly urgent as high foreign debt ratios are accentuated by a sharp decline of the exchange rate.

Different measures have been taken to remedy the negative effects of the crisis. Initiatives range from various expansive fiscal policy measures (tax cuts and increased public spending) to credit packages for households and industry and bank rescue packages. The means include securing bank deposits, establishing credit funds, injecting hybrid core capital in banks and mortgage credit institutions as well as nationalising banks. The following section presents key figures for the Nordic countries.

2.3 Key figures for the Nordic countries

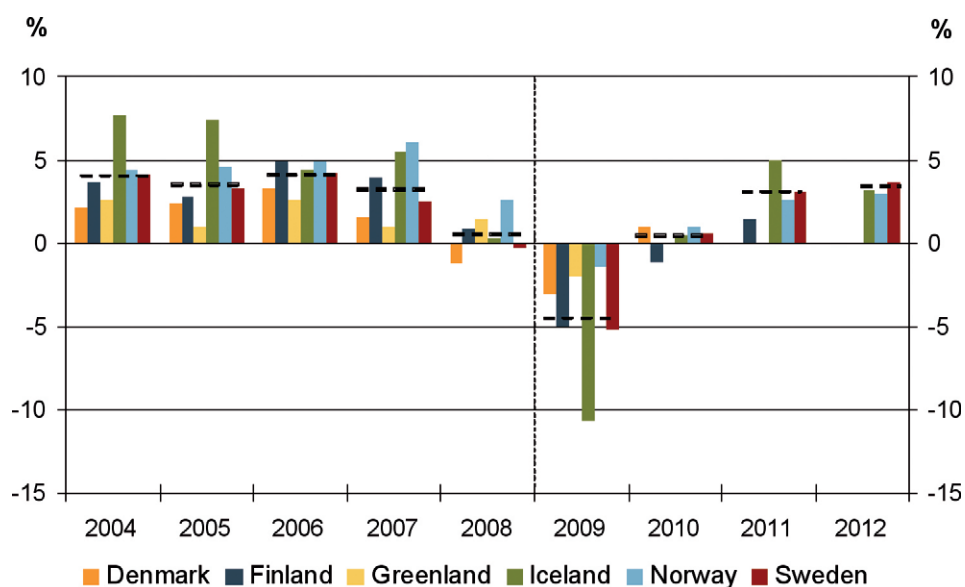


Figure 1. Actual GDP growth in Nordic countries 2004-2008, forecast 2009-2012

Note: For some countries there are no forecasts regarding 2011 and 2012. Norwegian figures relate to mainland Norway.

Source: The Danish Ministry of Finance, Bank of Finland, Statistics Finland, Greenland's Department of Finance (Politisk Økonomisk beretning 2009), Greenland's Statistic Institute, The Iceland Ministry of Finance and the Central Bank of Iceland, Statistisk Sentralbyrå, The Swedish National Institute of Economic Research and the Swedish Department of Finance.

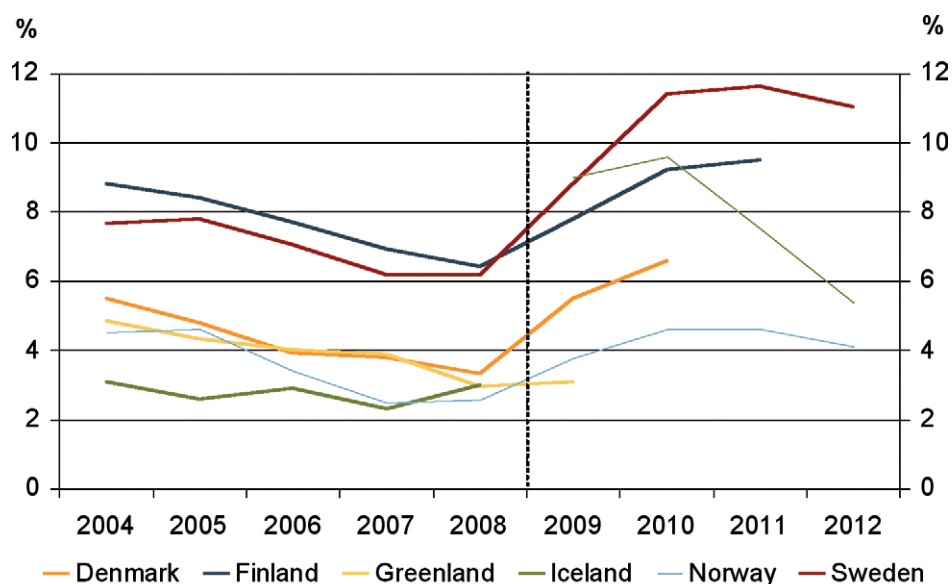


Figure 2. Unemployment rates in Nordic countries 2004-2008, forecast 2009-2012

Note: For some countries there are no forecasts regarding 2011 and 2012. From 2004 until 2008 Iceland figures are according to the ILO definitions. From 2009 until 2012 it is according to LFS definitions. For all other Countries it is ILO definitions.

Source: The Danish Ministry of Finance, Bank of Finland, Statistics Finland, Greenland's Department of Finance (Politisk Økonomisk beretning 2009), Greenland's Statistic Institute, The Iceland Ministry of Finance and the Central Bank of Iceland, Statistisk Sentralbyrå, The Swedish National Institute of Economic Research and the Swedish Department of Finance.

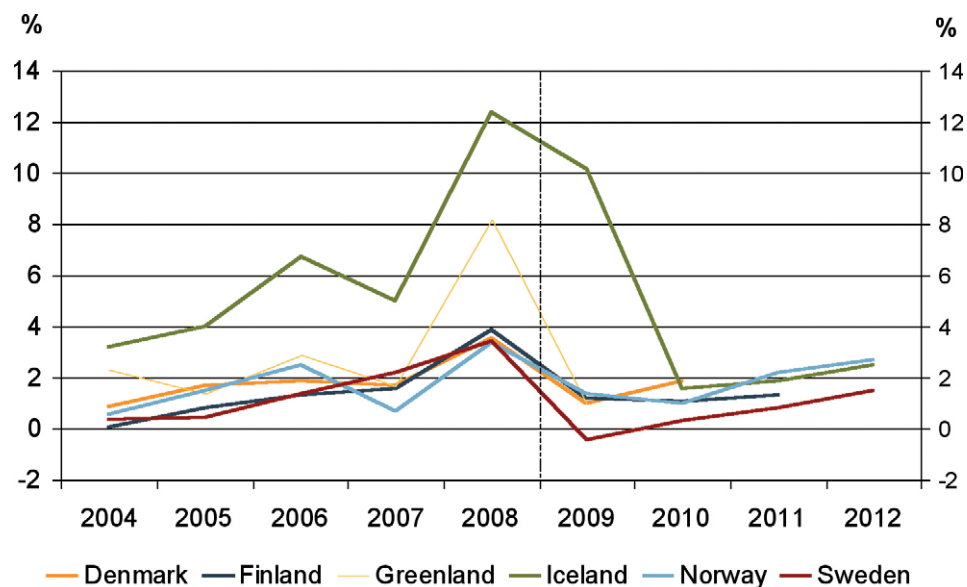


Figure 3. Harmonized growth in consumer prices 2004-2008, forecast 2009-2012

Note: For some countries there are no forecasts regarding 2011 and 2012.

Source: The Danish Ministry of Finance, Bank of Finland, Statistics Finland, Greenland's Department of Finance (Politisk Økonomisk beretning 2009), Greenland's Statistic Institute, The Iceland Ministry of Finance and the Central Bank of Iceland, Statistisk Sentralbyrå, The Swedish National Institute of Economic Research and the Swedish Department of Finance.

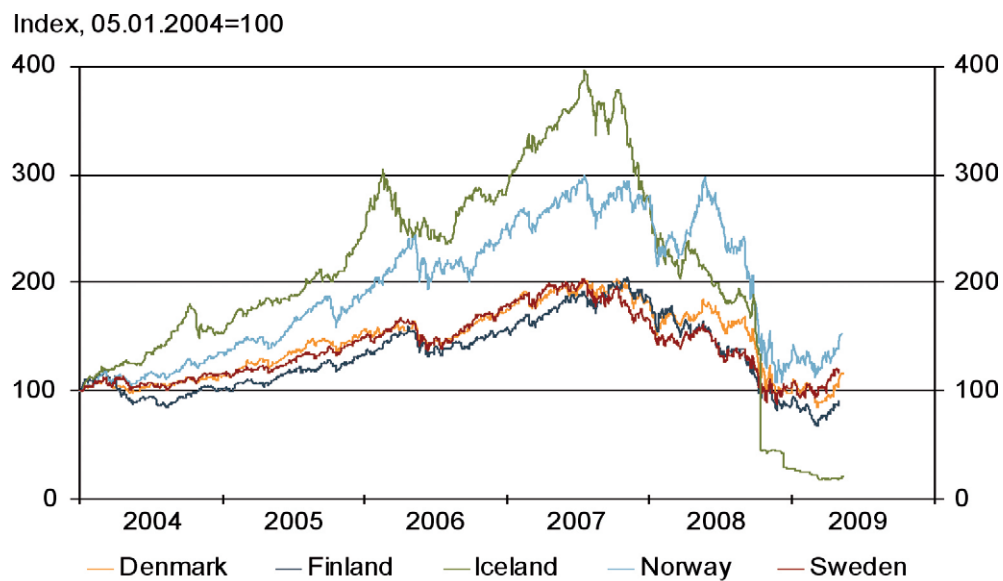


Figure 4. Stock price indices 2004-2009

Source: www.nasdaqomxnordic.com/.

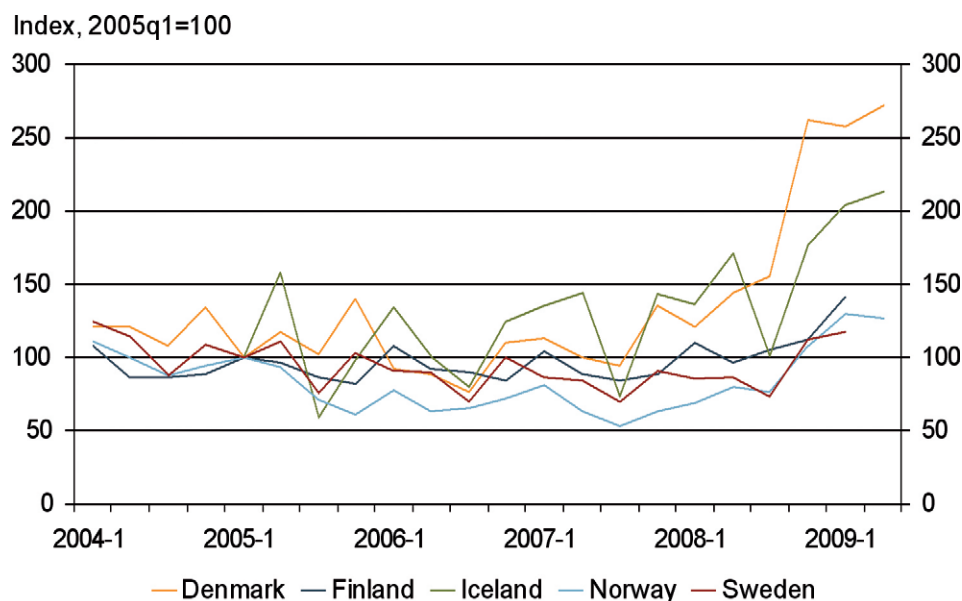


Figure 5. Number of bankruptcies, 2004-2009

Source: Statistics Denmark, Statistics Norway, Statistics Sweden, Statistics Finland and Statistics Iceland.

2.4 Denmark

The escalation of the global financial turmoil the autumn of 2008 reinforced the slow-down in the Danish and the international economy that started already in 2007. The Danish economy slowed down in 2007 and went into a recession in 2008, where GDP fell by 1.1 per cent. In 2009 GDP is expected to fall with up to 2.5 per cent. A gradual recovery is expected in 2010.

Unemployment has fallen markedly since 2004 and came to a historically low level in March 2008 with 91,000 unemployed (seasonally adjusted, ILO definition), corresponding to 4.0 per cent of the labour force. In April 2009 the number had risen to 165,000, corresponding to 5.5 per cent. The reversal has been abrupt, and unemployment has risen by more than 5,000 persons each month during early 2009, and in March and April by more than 10,000 each month. Unemployment is expected to rise both this and next year, mainly due to the reduction in production that has already taken place. Unemployment is thus projected to rise to around 7 per cent of the labour force in 2010, corresponding to 190,000 unemployed. In comparison, unemployment reached 168,000 in the last downturn in 2003.

Proposed and imposed measures.¹ According to the Danish Central Bank, Denmark has the most cyclical government budget balance among the OECD countries.² Besides this automatic reaction, a number of initiatives have been taken to support economic growth and the financial and business sectors:

¹ This section is based largely on Monetary Review 2009, 1. Quarter, The Danish Central Bank.

² Monetary Review 2009, 1. Quarter, The Danish Central Bank.

Box 1**Initiatives to support economic growth and the financial and business sectors in Denmark**

- Option to withdraw special pension savings in 2009 at a reduced rate of taxation
- Earmarking of DKK 1.5 billion for renovation of private housing in 2009.
- Bringing fixed local-government investments forward beyond what was envisaged in the 2009 budgets, in the range of DKK 1.5-2 billion.
- Increasing traffic infrastructure investments by a total of DKK 5 billion in 2009 and 2010.
- A temporarily underfinanced tax reform, effective from 2010, when it is underfinanced by approximately DKK 14 billion.
- A Bank Rescue Package covering all unsecured claims to support stability in the financial sector.
- A Credit Package allowing for government injections of hybrid core capital into banks and mortgage-credit institutes for up to DKK 100 billion.
- An export loan scheme of DKK 20 billion.
- Extended credits for payment of VAT and other taxes, etc. in excess of DKK 65 billion, equivalent to government interest expenses of DKK 1.5 billion in 2009.

2.5 Finland

The Finnish banking sector has by the middle of 2009 not yet shown signs of being excessively exposed to the financial crisis. The crisis had, however, some impact on the financial result of Finnish deposit banks. Despite increased net interest incomes, the total operating profit of more than EUR 2 billion in 2008 meant, however, a large overall reduction from year 2007.³ The main reasons for this decline were credit faults and the reduction in asset values. The largest impact of the crisis was felt in the latter part of year 2008, when reduced availability or supply of long-term financing led to increasing costs of refinancing.⁴

Finnish banks expect that lending will decrease in 2009. This is founded on expectations that demand for loans will decrease while deposits of both consumers and firms are expected to increase.⁵ These expectations are in line with the results from surveys of Confederation of Finnish Industry (CFI), according to which access to credit has not constituted bottlenecks in production. In May of 2009, the main bottlenecks for small and middle sized enterprises were the insufficient demand and availability of professionally experienced staff.⁶ The expectations of a decrease in lending may also result from the fact that before 2009 Finnish banks acted increasingly as substitutes to drained foreign lending channels.

The global downturn and the widespread lack of confidence induced by the financial crisis have affected Finland's main export areas. Declining growth figures in main export markets have affected the export industry and hence the real economy in Finland.⁷ In Finland, consumer confidence has until recently been relatively strong compared to the Euro Area. However, a substantial decline of the indicators can be observed from the last quarter of 2008. This decline may be a result of growing unemployment, which has increased from an average of 6.4 per cent in 2008 to 7.2 per cent in the first quarter of 2009. However, the confidence in Finnish industry has declined since 2008 with a pace similar to that of the Euro Area.⁸ These confidence figures of both the consumers

3 The results for individual banks showed, however, large variation, including large declines in annual operating profits.

4 Source: Federation of Finnish Financial Services (FFFS) (2009) "Bank statistics" and "Suomen pankit 2008" 7.5.2009.

5 FFFS "Pankkibarometri".

6 Confederation of Finnish Industry (CFI): P&K Suhdannebarometri

7 Bank of Finland (2009) "Talouden näkymät - Euro & talous 1/2009"

8 CFI 2009, Bank of Finland 1.8.2009

and the industry may be related to the large negative annual growth figures of production expected for 2009 (-5 per cent) and an even larger forecasted decrease in private investments (-15.1 per cent) and exports (-19.6 per cent) in 2009.⁹ The first quarter of 2009 indeed revealed a 20.6 per cent decline in industrial production from the previous year.¹⁰ In manufacturing, production volumes have declined in metals, engineering, electronics, forest industries, while development in chemical industries has been volatile, but not as negative as in the other abovementioned sectors. The expectations regarding the currently declining order stock add to the pessimistic views of Finnish industry. The situation challenges domestic demand as well, as consumers' expectations regarding unemployment turned largely pessimistic during latter part of year 2008.¹¹ However, consumer confidence has increased substantially in the second quarter of 2009.¹² The actions to remedy the possible spill-over effects from the financial crisis include a large stimulus package. The Government agreed on, 30 January 2009, on a stimulus package with an overall impact of EUR 2 billion. The package was argued to generate at least 25,000 man-years in employment. It has been speculated, that during the next few years the Finnish State is likely to raise new debt of some tens of billions euro (EUR 20 – 60 billion) which could effectively mean that State debt will be doubled. The indebtedness would still be relatively moderate in relation to the overall figures in the Euro Area.¹³

According to the Government the fiscal stimulus impact, 1.70 per cent of GDP, or EUR 3 billion, brought about by the decisions concerning the budget and supplementary budget of 2009, was ranked the third largest in the Commission's comparison among the 27 Member States.¹⁴

As the slowing and even declining growth figures affect the import of goods and services, the balance of goods and services, from being at a level of 3.9 per cent of GDP in year 2008 is expected to be less than 2 per cent of GDP in year 2009 and further declining in 2010.¹⁵

Asset prices have followed a European trend with the general stock index showing a dramatic decline of more than 50 per cent during the year 2008. After several years of increase, (old) housing prices started to decline in the third quarter of year 2008.¹⁶ In March-April 2009 stock prices signalled some restoration of confidence, but the underlying real economic figures are still a fragile basis for these expectations.

Proposed and imposed measures. The main sources of the fiscal stimulus stems from three sources:

- the budget proposal for year 2009, decided on 15th September 2008
- the complementary budget proposal for the year 2009 of 21st November 2008 and,
- the first supplementary budget proposal of the year 2009 at 3rd February.¹⁷

9 In June 2009 the Ministry of Finance reported a 35 per cent decrease in January-April 2009 relative to the same period in 2008. *Economic Bulletin* 16.6.2009/2.

10 Bank of Finland (www.bof.fi)

11 CFI

12 Bank of Finland 1.8.2009

13 Government Communications Unit Press release 31/2009 (3.2.2009 16.10)

14 *ibid.*

15 Bank of Finland

16 Statistics Finland

17 The supplementary budget of 2009 signaled a clear intention to mitigate the economic downturn and slow the rise in unemployment. In the end of January 2009, a stimulus package, with an effect of about EUR 660 million, was adopted by the Finnish Government for inclusion in the 2009 supplementary budget. The overall deficit of the supplementary budget was EUR 5,6 billion and Government borrowing was expected to reach 8 billion euros in 2009 (Press release 17/2009 Ministry of Finance, February 3rd, 2009).

A measure that describes the extent of the stimulus is according to Hetemäki (2009) that the budget balance in relation to GDP will decrease by 6 per cent in year 2009 and by an additional 2 per cent in year 2010.¹⁸

As the financial crisis has affected the confidence in the economy, hardly any sectors have remained uninfluenced. However, in Finland the export sector has been traditionally seen as being of vital importance in sustaining economic growth. Targeted measures to improve the situation in the export sector are presented in Box 2 below:

Box 2

Targeted measures to improve the situation in the export sector in Finland

- Securing the availability of financing to exports and exporting industry
- Removal of the firms' responsibility to contribute to the national pension fund ¹⁹
- Improvement of the unemployment benefits during periods of layoffs
- Mitigating the rules in procurement of schooling of labour
- Tax relief on profit from sales of roundwood
- Extension of rights concerning write-offs

The construction industry has received special attention, due to its apparent vulnerability in the downturn. In March 2009, the Parliament legislated on (27.3.2009/176) loans with interest subsidies and state guarantees for housing construction, with emphasis on rental apartments. The motivation behind the legislation was to improve the employment in construction industry and increase the supply of rental apartments. At the same date, the Parliament legislated on state subsidies for renovation of residential buildings. In addition to the fiscal stimulus measures come measures to stabilize financial markets. Although the situation in the Finnish financial markets had remained quite stable, the Cabinet Committee on Economic Policy decided in October 2008 on an increase of the coverage of deposit guarantee from EUR 25,000 to EUR 50,000. The decision, effective immediately, was a part of coordinated EU efforts to stabilise the financial markets and was agreed on at the ECOFIN Council on 7 October 2008. The coordinated decision was thought to level out the interbank distortion of competition that has emerged after an increase of the level of deposit guarantee in certain countries.²⁰ The most important measures to stabilize financial markets and to boost the recovery of the commercial paper market, include the following measures:

- On 12th December 2008, the Parliament authorized the Government to grant state guarantees for refunding of Finnish banks to maximum value of EUR 50 billion. In February 2009 the State Council decided on the conditions of these guarantees.
- The Ministry of Finance decided to grant the State Pension Fund the right to a limited use of the assets in its possession to acquire commercial papers of significant and financially solid Finnish companies.
- In February 2009, a legislative proposal was made, that aimed at guaranteeing the stability of the financial market.²¹

18 Hetemäki, M. (2009) Finanssipolitiikan elvytyksestä (On the Stimulus of Fiscal Policy). The Finnish Economic Journal 105 (2), 146–167.

19 See <http://www.valtioneuvosto.fi/tiedostot/julkinen/pdf/2009/Lisabudjetti-300109/luottamuspaketti.pdf>, page 5.

20 Press release 303/2008 Government Communications Unit October 8th 2008.

21 According to this proposal a deposit bank could be put under an obligation to apply for assistance from the State Guarantee Fund, when the solidity of the bank is threatened. A denial to apply for assistance in due time, could result in that the State could redeem a bank's shares or business activity. The proposal is at present being handled by the legislative Committees of the Parliament. (Government proposal to the Parliament (HE 5/2009) on February 20th, 2009).

2.6 Greenland

For several reasons, among which is a block grant from Denmark amounting to 1/3 of Greenland's GDP Greenland has been relatively untouched by the crisis until very recently. 2008 saw a rise in Greenland's GDP growth and a modest fall in unemployment, while higher import prices made consumer prices surge. However, a sharp decline in GDP growth from 1.5 per cent in 2008 to between -1 per cent and -3 per cent is expected in 2009 while unemployment is thought to remain low at about 3 per cent. In addition, the growth in the consumer price index is expected to fall sharply from 8.2 per cent to 1 per cent.

Negative consequences of the crisis are thus first expected in Greenland this year. The major negative impact will happen in the fishing industry. Falling prices on many fish species as well as smaller quotas for shrimp, Greenland halibut, and codfish will affect negatively as the fishing industry accounts for 85 per cent of all exports.

Also mining activities accounting for the residual 15 per cent of the exports will be affected. The credit crunch, low global demand, and falling prices on raw materials will squeeze activities. Even so, particular expectations are connected to the completion of the ALCOA aluminium melting project in Maniitsoq, which will entail investments of about 3½ billion EURO – or more than twice the size of Greenland's GDP.

While the credit crunch definitely will stall some projects, particularly in the mining industries, the banking sector of Greenland is very healthy. No subprime loans have been offered in Greenland and mortgage credit is only allowed in larger towns to which migration is continually expected. Moreover, the housing sector is kept stable by a heavily subsidised building sector. Thus house prices probably will remain stable. To this day the credit crunch has been felt only in the case of Royal Greenland, which has very recently been bailed out by the Government for the sum of 70 million EURO. The banking sector is regulated by the Danish authority, Finanstilsynet, and private banks are covered by the two Danish bank aid initiatives – the Bank Rescue Package and the Credit Package.

The real challenge for Greenland's economy in coming years will be to control a continuing and possibly rising budget deficit as efforts are needed to improve education, the health sector, and the labour market. With the implementation of self-government in Greenland 21 June this year the yearly block grant from Denmark will be frozen at the current level without possibility of extension.

2.7 Iceland ²²

The global financial crisis hit Iceland hard in the fall of 2008 and quickly culminated into wide-spread financial difficulties. Iceland's three largest banks were struggling to refinance their short-term debt and a run on deposits in their UK customer savings accounts.

At the end of the nineties the Icelandic public banking sector was privatized. At that time Icelandic banks had easy access to international capital. The banking sector expanded rapidly and in only a few years Icelandic banks went from being small public domestic banks to being significant players internationally. In 2004 the assets of the three largest banks amounted to 100 per cent of GDP but only three years later, in 2007, the assets had grown to 900 per cent of GDP.²³

²² More detailed information on this section is available at <http://www.iceland.org>

²³ The International Monetary Fund, Country Report No. 08/362.
<http://www.imf.org/external/pubs/ft/scr/2008/cr08362.pdf>

As a lender of last resort the Central Bank became weak. In the fall of 2008 the foreign exchange reserves were 375bn króna, ca. 30 per cent of GDP, compared to the enormous relative size of the banking sector with short-term liabilities at 211 per cent of GDP.²⁴

In October 2008 the three largest banks, Glitnir, Kaupthing and Landsbanki, all collapsed. As soon as in 2007 and during the year 2008 signs of an upcoming crisis were visible. Icelandic stock prices had started declining after a rapid growth in the previous years and the real estate market was at a standstill. International credit markets were fighting a credit crunch and channels kept closing for the Icelandic banks. In early fall 2008 Glitnir was faced with an upcoming liquidity problem and approached the Central Bank for help. On the 29th of September the Central Bank acted by buying 75 per cent of the shares in Glitnir. Still the financial sector remained turbulent and on the 6th of October Parliament enacted the “emergency act” where the Government was granted permission to take over banks and financial firms and Icelandic deposits were made priority claims. The same day the Financial Supervisory Authority (FME) took over both Glitnir and Landsbanki, and Kaupthing later that same week. The three largest banks were now under government administration.

In the months since the crash numerous Icelandic firms have run into financial difficulties. As a result many financial and commercial firms have been taken over by the state banks and are thus indirectly stateowned through the banks. Understandably, because of the size of the domestic market, this has presented challenges to competition.

One of the largest problems the Icelandic government has faced following the banking collapse is related to foreign deposits. In the year 2006 it had become more difficult for the Icelandic banks to rely on funding in international credit markets. Two of the largest banks, Kaupthing and Landsbanki, opened up high interest internet accounts to attract deposits from outside Iceland. Kaupthing used its subsidiaries to launch the Edge accounts, which were therefore not insured by the Icelandic deposit guarantee fund. However, Landsbanki opened its accounts, Icesave, under local branches of the Icelandic entity which were therefore insured in Iceland in accordance with EU-legislation. Icelandic authorities have now negotiated a contract with the UK and the Netherlands about repayments of the Icesave accounts. The Government's liabilities over the Icesave accounts have been estimated by the Central bank to be 705 bn ISK, or 49 per cent of estimated GDP in 2009.

Real economy and economic Perspectives. Since 2001 the monetary policy has been based on an inflation target. The Central Bank's main weapon against rising inflation, high interest rates, did not succeed in lowering inflation. Moreover, high interest rates worked as an incentive for domestic households and firms to borrow in foreign currency. High interest rates also attracted carry traders – investors borrowing in low-yielding currencies and lending in high-yielding currencies – which lead to the appreciation of the króna, which again led to even more exposure of domestic households and firms in foreign currencies.

Following the collapse of the banking sector there was a severe depreciation of the Icelandic króna. During the year 2008 the exchange rate fell by nearly 75 per cent, starting in March and falling sharply in September and October. The currency crisis has had major effects on Icelandic firms and households. According to estimations, between 33 and 60 per cent of Icelandic non-financial firms are now technically bankrupt as $\frac{3}{4}$ of corporate borrowing was in foreign currency. Similarly, households are greatly affected by exchange rate depreciations as loans are either directly linked to foreign currencies, or indirectly through loan indexation.²⁵

24 Zoega, Gylfi and Danielsson, Jón (2009). The Collapse of a Country. http://www.hi.is/files/skjol/felagsvisindasvid/GZ_og_JDeng-published-3-jdgz-final.pdf

25 The International Monetary Fund. Country Report No. 08/362. <http://www.imf.org/external/pubs/ft/scr/2008/cr08362.pdf>

A clear contraction has now been witnessed in the economy. In 2008 the GDP growth was 0.3 per cent, but the Ministry of Finance expects a contraction in GDP in 2009 of -10.6 per cent and an increase in 2010 of 0.5 per cent. Unemployment has increased rapidly. In 2009 unemployment is expected to be 9 per cent compared to 1.7 per cent in 2008. A further decrease in employment is expected in 2010, with the unemployment rate at 9.6 per cent.²⁶

The Icelandic Government is now tackling sharp increases in public sector debt. In 2007, one year before the crisis, the treasury debt was 41 per cent of GDP increasing to 165 per cent in 2009. The net position has not worsened correspondingly though because of assets offsetting the increased liabilities.²⁷ On 19 June 2009 the Icelandic government published its revised fiscal policy, announcing a decrease in the Government deficit by 22.4 bn ISK this year and by 63.4bn ISK next year, the majority of which will be achieved by considerable cuts in public spending.²⁸

Multilateral assistance from the International Monetary Fund (IMF) is playing a key role in the restructuring of Iceland's economy. The economic policy of the Government will be based on the programme already established by the authorities and the IMF. Among the key challenges ahead are preventing further depreciation of the króna, implementing a comprehensive and collaborative strategy for bank restructuring and ensuring fiscal sustainability. In accordance with the IMF agreement, the bank regulatory framework and supervisory practice are being reviewed to strengthen the safeguards against potential new crises.

Imperative to the process of recovering from the current financial crisis in Iceland is to give a comprehensive and transparent account of the events that led to the downfall of the three Icelandic banks in the fall of 2008. To that end, the Icelandic Parliament has established a special investigation commission that will investigate the processes leading to the collapse of the three main banks in Iceland. The investigation will be concluded in the fall of 2009 and the report of the commission will be made public. Similarly, a special prosecutor has been appointed to investigate suspicions of criminal actions in connection with or in the wake of the downfall of the Icelandic banks and as appropriate, to follow up these investigations by bringing charges against those concerned. Several other steps have been taken to assist recovery.

26 The Ministry of Finance. Þjóðarþúskapurinn, Vorskýrsla 2009.
http://www.fjarmalaraduneyti.is/media/Thjodarbúskapurinn/THBUSK_Vorskýrsla_2009.pdf

27 The Central Bank of Iceland. Monetary bulletin 2009-3.
<http://www.sedlabanki.is/lisalib/getfile.aspx?itemid=7226>

28 The Ministry of Finance. Markviss skref að jafnvægi í ríkisfjármálum, June 2009.
<http://www.fjarmalaraduneyti.is/frettir/frettatilkynningar/frettatilkynningar/nr/12254>

Proposed and imposed measures.²⁹ The Icelandic Government has proposed numerous measures to cope with the difficulties currently encountered by the households and businesses of Iceland. Following are several important policy goals of the Icelandic Government.

Box 3

Imposed measures in Iceland

- As an emergency measure the Parliament of Iceland enacted a law in October 2008 authorizing the Treasury to provide capital for establishing new banks or to acquire ailing banks, partly or wholly, given the extraordinary situation in the banking sector because of the international financial crisis. The act also gave far-reaching powers to the Icelandic Financial Supervisory Authority (FME) to intervene in the affairs of ailing banks under the prevailing extraordinary circumstances.
- Under the “emergency act” adopted at the outset of the banking collapse the Minister of Finance is permitted to contribute capital to certain types of banks, up to the value of 20 per cent of shareholder’s equity.
- The Icelandic Government has stated it will fully cover all deposits in domestic commercial and savings banks.
- The state banks have been instructed to make every effort to facilitate businesses to ensure ongoing operations if the business is sustainable.
- A parliamentary bill was passed on mortgage payment adjustments in order to allow people in financial difficulties to postpone mortgage payments.
- Amendments have been made to the legislation on bankruptcy in order to improve the position of debtors.
- Bankrupt individuals/families that have lost their home will be allowed to reside in the property for up to 12 months after receiving the eviction notice.
- Legislation was enacted on savings funds which will permit savers temporarily to receive an advance from the fund to address urgent financial problems.
- The valuation of the assets of the new Glitnir (now Íslandsbanki) and the new Kaupthing state banks has been completed in conjunction with their refinancing.
- A bill has been passed giving the Minister of Finance the authority to found a public company that has the purpose of assisting with the reorganization of companies and if necessary, to buy, own, restructure or sell them.
- A special government agency is being established to help rebuild a strong and healthy financial system for the future. The agency will operate for 5 years before being disbanded.
- The Icelandic authorities have now negotiated a contract with the UK and the Netherlands about repayments of the Icesave accounts.

²⁹ This section is based largely on information at <http://www.iceland.org>. Additional information on proposed and imposed measures is available at this site.

Box 4**Proposed measures in Iceland**

- The valuation of the assets of the new Landsbanki will be completed urgently and in conjunction with its refinancing.
- The uncertainty hampering the operation of the banks, related to such matters as agreements with foreign and domestic creditors, including claims due to deposit guarantees must be lifted.
- A special emergency project will be launched with powerful employment market measures to counteract unemployment.
- Ways will be explored to stimulate investment by domestic and foreign parties and to stimulate the creation of new jobs in the private employment market.
- The Government will set loan targets for the new banks for the year 2009 in order to stimulate the economy.
- Structural changes will be made to the administrative system to ensure more effective implementation of the authorities' economic measures and to renew trust in the country's financial system.
- An overview will be compiled of loans and overall liabilities of the national economy and this will be communicated to the public.
- Negotiations have been held with the claimants of the old Icelandic banks regarding ownership of stakes in the new banks. There is therefore a possibility that the future majority shareholders of the new banks are the foreign creditors of the old banks.

As previously stated the full amount of the Icesave debt is still unclear and will depend on how much the sale of Landsbanki's assets will contribute to reduce the debt. Also, there is still a lot of uncertainty about the Government's revised fiscal policy and what additional actions will be taken to revive an economy that was highly damaged by the collapse of its financial system.

2.8 Norway³⁰

The escalating unrest in the financial markets has hit Norway the same way as other countries, however not to the same extent. Stock values have diminished significantly, and there was a general distrust with banks being reluctant to offer interbank loans. The result was firms having difficulties with financing or refinancing business loans. This has affected the real economy and has resulted in reduced activity levels in the Norwegian economy. According to Statistics Norway, 3 per cent of the work force was unemployed in June 2009. The same figure for June 2008 is 2.5 percent. The export industry has been affected most severely, and most occupational groups have experienced an unemployment growth, where the strongest growth in unemployment has been within building and construction (187 per cent), industrial work (123 per cent) and engineering and ICT (133 per cent).³¹

However, the Norwegian economy and the solid state finances and reserves puts the country in a relatively good position to counteract the worst symptoms of the crisis, and extensive fiscal policy and monetary policy measures have been implemented. These are, however, unlikely to prevent the GDP growth for mainland Norway from becoming

30 An overview over how the crisis has affected the Norwegian economy and the different measures undertaken can be found in

<http://www.regjeringen.no/nb/dep/fin/tema/finansmarkedene/finansuro.html?id=531544>

31 Source: <http://www.nav.no/binary/209212/file?download=true> Figures are based on unemployed in July 2009, percentage change from previous year.

negative in 2009. Moreover, the most recent reports by Statistics Norway forecast that the unemployment level will reach its top in 2010 with 4.6 per cent. GDP growth is expected to reach more 'normal' levels of 3 per cent in 2012.³²

Proposed and imposed measures. A host of measures have been implemented. Furthermore, the measures against unemployment, which is proposed through a very expansive budget for 2009, are according to the Ministry of Finance the strongest in more than 30 years.

In the earliest phases of the crisis in the fall of 2008, Norges Bank undertook different measures to improve liquidity in the market. Furthermore, the Norwegian Banks' Guarantee Fund provided liquidity support to Glitnir in order to prepare for a sale, Kaupthing Banki Hf in Norway was put under public administration, as well as the bank's deposits were guaranteed. It is important to note also that the State Budget for 2009 presented in October, has enabled Norges Bank to reduce the key policy rate gradually during the following months.³³

The measures implemented throughout the winter and spring contain three main items as well as a host of supplementary initiatives.

1. Credit package I
2. Financial package of measures against unemployment
3. Credit package II

The **Credit package I**, proposed and approved in October, contained first of all measures where banks can trade bonds with priority (OMF) against government securities (up to 350 bill. NOK). In addition, Norges Bank provided liquidity through F-loans³⁴, mainly directed towards minor banks which were not able to utilize the OMF trading arrangement.

In November, the authorities gave notice that supplementary measures would be proposed just after the turn of the year. The proposed measures, part of the **Financial package** of measures against unemployment, were presented as amendments to the Norway's Fiscal Budget for 2009 to the Storting in January and aimed at addressing the emerging problems in the Norwegian labour market. The proposed measures amounted to NOK 20 billion, of which the main items are presented in Box 5.

Box 5

Measures in Norway – The Financial Package

- A NOK 16¾ billion increase in budget expenditures:
 - Communications budget increased by 3.8 billion
 - Municipal budgets increased by 6.4 billion
 - New construction projects amounting to 2.8 billion
 - Energy saving and renewable energy: 1.2 billion
 - Readjustment and innovation in trade and industry: 2 billion
- NOK 3¼ billion is targeted in tax relief for the business (trade and industry) sector. Companies get a temporary possibility to carry back company losses in 2008 and 2009 of up to NOK 5 million yearly against profits of the two preceding years. The Storting however adopted a higher cap of NOK 20 million per year. In total for both years this will mean at least NOK 9 billion in lower taxes and enhanced liquidity for these companies.
- Furthermore, the structural non-oil deficit will increase by an additional NOK 7 billion as a consequence of revised estimates for some budget items. Thus, the use of petroleum revenues, as measured by the structural, non-oil budget deficit, was estimated to increase by NOK 27 billion compared to the initial 2009 Fiscal Budget.
- In addition, the Storting adopted temporary increased depreciation of new investments in certain assets, including machinery.

It should be noted that in the revised national budget of 2009 presented in May, the budgetary deficit was further increased, i.e. with NOK 9.5 billion, related to the frame and measures that was approved by the Storting in February.

The **Credit package II** was proposed in February. This package contained a proposal for establishing two funds, aimed at improving access to credit for households and industry. Both these funds are now established and operating.

Box 6

Credit package II

- A Norwegian **State Finance Fund** with a capital of NOK 50 billion (corresponding to a lending capacity of NOK 400-500 billion) intended to strengthen the banks' core capital "in order to counter a weaker economy and enhance their competitiveness."
- A Norwegian **State Bond Fund** with a capital of NOK 50 billion with the intention of making it possible for industrial companies to get funding not only directly from banks, but also in a strengthened bond market. The State Bond Fund will be administered by Folketrygdfondet.

Measures also include increased lending from the Norwegian State Housing Bank and increased equity capital in Kommunalbanken (KBN) by NOK 300 million. The latter measure ensures that KBN can increase its lending to the Norwegian local government sector by NOK 15-20 billion in the short to medium term.

In addition to these measures and packages, it can be mentioned that the export guarantee scheme of GIEK (Guarantee Institute for Export Credits) was increased by NOK 50 billion, and that a special lending program of NOK 50 billion to Eksportfinans was introduced to facilitate continued financing of contracts that qualify for the use of supported export credits (so called CIRR-loans). Measures have also been introduced to strengthen the capacity of Innovasjon Norge to e.g. grant innovation related loans.

2.9 Sweden

The global financial crisis arrived in Sweden in the wake of the collapse of Lehman Brothers. In September and October 2008, spreads between mortgage backed securities and government bonds reached levels of over 1.7 percentage points.³⁵ General mistrust between banks resulted in little or no liquidity in credit markets, except for overnight loans.³⁶ The mistrust between Swedish banks might have been exacerbated by some major banks having considerable exposure to the Baltics. A Swedish investment bank, Carnegie, was nationalised in November 2008 but is now back in private ownership. As credit markets ceased to function, consumers as well as firms faced restricted access to credit.

32 This unemployment level, however, can be contrasted with the last banking crisis, where unemployment levels reached almost 8 per cent in 1992-94.

33 In Norway, the key policy rate is the interest rate on banks' deposits in Norges Bank.

34 An F-loan is a loan extended against collateral in the form of securities with a fixed rate of interest and a specified maturity. The maturity varies and depends on the liquidity situation in the banking system (Norges Bank)

35 Pre-crisis levels were 0.2-0.4 percentage points.

36 Riksbanken. *Penningpolitisk rapport 2008:3*. Stockholm, Sweden: Riksbanken, 2008.

Restricted access to credit has fed into the real economy. A likely effect of this is weaker domestic demand. The global downturn means demand for Swedish exports is also weak. This has been particularly noticeable in the automotive industry.³⁷ In the fourth quarter of 2008 GDP fell by 4.8 per cent compared to the fourth quarter of 2007. Confidence indicators indicate a pessimistic attitude towards the future development of the Swedish economy. Unemployment is rising, with 11.4 per cent of the workforce expected to be unemployed by 2010.

Global recession will continue to put downward pressure on the demand for Swedish exports. The Swedish economy is expected to return to growth in 2010 or 2011.³⁸ Credit markets appear to be stabilising. Bond and interbank spreads have decreased considerably since late 2008. While the four major banks in Sweden appear to be sufficiently well capitalised to survive considerable capital losses, there is a fear that significant losses due to exposure to the Baltics might restrict business' access to credit further.

Box 7

Swedish Measures to Strengthen Financial Stability and Support the Real Economy

- In early October, the Government's deposit guarantee for transaction accounts was increased from SEK 250 000 to SEK 500 000.³⁹
- In late October 2008, a stability programme for the financial system was launched. This gave the National Debt Office the possibilities of guaranteeing banks' loans, injecting new capital into banks and, as a last resort, nationalising banks.⁴⁰
- The Government has issued credit guarantees for loans issued to the automotive industry by the EIB, provided that the credit thus raised is used to 'green' the industry.⁴¹
- Some companies held by the Government⁴² have been given new directives in order to facilitate business' access to credit.⁴³
- In its 2009 spring fiscal bill, the government proposes spending SEK 7 billion, to be paid in December, on support to municipalities and county councils in order to avert layoffs in the public sector due to falling tax receipts. A further 5 billion to be spent in 2010 and 2011 is also announced.⁴⁴
- Increased spending on labour market programmes and tax-breaks to increase demand for labour, in particular in the construction sector, to the tune of SEK 8 billion.⁴⁵

37 SAAB, a car maker owned by GM, has been in bankruptcy protection since early 2009.

38 Konjunkturinstitutet. *Konjunkturläget Mars 2009*. Stockholm: Konjunkturinstitutet, 2009.

39 Riksgälden. *The Swedish National Debt Office's website*. den 21 April 2009. https://www.riksdagen.se/templates/RGK_Templates/TwoColumnPage_17103.aspx (as of April 21, 2009).

40 Ibid.

41 Finansdepartementet. *Regeringens åtgärder mot finansoro och konjunkturedgång*. den 21 April 2009. <http://www.regeringen.se/sb/d/11577> (as of April 21, 2009).

42 These include SBAB (mortgages), The Swedish Export Credit Corporation (export credit and other financial services) and ALMI Företagspartner (venture capital).

43 Finansdepartementet. *Regeringens åtgärder mot finansoro och konjunkturedgång*. den 21 April 2009. <http://www.regeringen.se/sb/d/11577> (as of April 21, 2009).

44 Ibid.

45 Ibid.

3. EU Commission – policy and measures related to the current financial crisis

As the financial crisis hit Europe, it prompted a widespread action, involving not only ECB, but national governments and the European Commission as well. Much of the initiative to deal with the crisis in a concerted way has come from the EU Member States. At later stages the ECOFIN has actively developed common principles to guide Member States in their reactions to the crisis, resulting in a concerted action plan, which was subsequently endorsed by the European Council of mid October 2008.⁴⁶

The European Commission has played an active role in the design and implementation of the financial recovery plan. The Commission enjoyed the explicit support of the European Council which confirmed that the EC competition rules, also referring to the principles of single market and State aid rules, should be applied despite the exceptional circumstances.⁴⁷ As noted by Gerard (2008), the Commission's role was important in:

- providing legal certainty to economic operators,
- acting as stabilizing force through the crisis, and in
- preventing negative spillover effects from individual Member States actions in relation to the crisis.

The provision of the legal certainty builds on two principles and two phases of the crisis. The principles are "clarity in the applicable legal framework" and "the rapidity of action". The stabilizing role was emphasized in the flexibility of approved measures, while strictly adhering to the legislation, and the negative spillovers were targeted with prevention of a widespread systemic crisis.

The first temporal phase of the crisis, between September 2007 and September 2008, derived from the subprime crisis reaching Europe, which was unable however to induce widespread fears of a systemic crisis. During this first phase of the crisis, the Commission tackled the individual cases according to Article 87 (3) (c) of the EC Treaty and the "Community Guidelines on State aid for rescuing and restructuring firms in difficulty." The second phase of the crisis was, however, to reveal the potential severity of the crisis at hand.

The Commission and the systemic crisis. A second phase of the financial crisis started as fears of a systemic crisis arose, partly due to the chapter 11, or "reorganization" bankruptcy filing of Lehman Brothers.⁴⁸ The eroding confidence in the banking sector from October 2008 resulted in a severely restricted access to liquidity. There were doubts whether the "Guidelines" would still provide an appropriate framework to tackle the crisis, as the systemic nature of the crisis was now realized to threaten sound financial institutions as well.⁴⁹

46 Gerard, D. (2008) Managing the Financial Crisis in Europe: Why Competition Law is Part of the Solution, Not of the Problem. *Global Competition policy*. December-2008.

47 "In the current exceptional circumstances, European rules must continue to be implemented in a way that meets the need for speedy and flexible action The European Council supports the Commission's implementation, in this spirit, of the rules on competition policy, particularly State aids, while continuing to apply the principles of the single market and the system of State aids." (European Council 15 & 16.10.2008 Presidency Conclusions 14368/08, paragraph 5)

48 When bankruptcy is filed under Chapter 11, the debtor will in most instances remain in control of its business operations: a debtor "in possession", and is subject to the oversight and jurisdiction of the court. A detailed description of Chapter 11 bankruptcy can be found at: <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/chapter11.html>.

49 Commission Decision Oct 10 2008 case NN51/2008-Denmark/Guarantee Scheme for banks in Denmark C(2008)6034. See also Gerard (2008), footnote 13.

In this phase the importance of “rapidity of action” was further emphasized. In early November 2008, the European Union's Heads of State and Government agreed on the need for a coordinated response to the crisis. The Commission's *European Economic Recovery Plan*, was a response to the Member States coordinated effort to deal with the crisis.⁵⁰ The plan intends, among other things, to stimulate demand and confidence, and to boost long-term competitiveness. It proposes a countercyclical macroeconomic response to the crisis in the form of a set of actions to support the real economy. Some of the proposed measures include State aid.

The Commission, and the state aid control as an integral part of the EU's competition policy, play key roles in this countercyclical macroeconomic response. The latest overviews of actions taken confirm that EU State aid policy has indeed provided a framework for coordinated and rapid implementation of national measures. The role of the Commission as a stabilizing force is highlighted in that, while showing some reluctance to compromise the interpretation of EC competition law principles, it has shown that the current legal framework is rather flexible in the face of exceptional circumstances.

During the second phase of the crisis, the Commission approached the resolution of the financial crisis in three steps:

1. The Banking Communication adopted on 13 October 2008.⁵¹
2. Recapitalisation Communication of 5 December 2008.⁵²
3. Impaired Assets Communication of 25 February 2009.⁵³

The *Banking Communication* allowed rescue operations in order to stop or prevent runs on financial institutions.⁵⁴ In this context, Art 87 (3) (b) of the EC Treaty was considered to be an appropriate legal basis for State intervention. The *Recapitalisation Communication* identified a set of standards and safeguards allowing Member States to recapitalise banks to ensure adequate future levels of lending. Concerns about adequate lending volumes were raised in view of the reluctance shown by fundamentally sound banks to continue lending at usual volumes and conditions.

The *Impaired Assets Communication* provides the framework for a so called “clean-up phase” of financial institutions' balance sheets by removing toxic assets and underperforming loans. This phase is assumed to require restructuring in the market, but is considered being an essential step in order to restore confidence in the financial sector and the economy.

In December 2008 the Commission adopted a “Temporary Framework”, with measures available to the end of 2010, to allow Member States to mitigate or remedy the effect of the credit crunch on the real economy in minimally distortive way. The two main objectives pursued by the temporary measures are:⁵⁵

1. to unblock bank lending to companies and thereby guarantee continuity in their access to finance
2. to encourage companies to continue investing in the future, in particular in a sustainable growth economy including the development of green products.

50 Communication from the Commission to the European Council, A European Economic Recovery Plan; COM(2008) 800 of 26 November 2008.

51 Communication from the Commission – The application of the State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis, OJ C 270, 5.10.2008, p. 8–14.

52 Communication from the Commission– The recapitalisation of financial institutions in the current financial crisis: limitation of the aid to the minimum necessary and safeguards against undue distortions of competition, OJ C 10, 15.1.2009, p. 2-10.

53 Communication from the Commission on the Treatment of Impaired Assets in the Community banking sector, of 25 February 2009, OJ C 72, 26.3.2009, p. 1.

54 The British Northern Rock Bank was subject to a bank run in September 2007.

55 OJ C 16, 22.1.2009 p. 1-9. The consolidated version, integrating the amendments adopted by the Commission on 25 February 2009, is published in OJ C 83, 7.4.2009, p. 1-15.

According to this temporary framework, Member States may grant, under certain conditions:

- a. a lump sum of aid up to €500,000 per company for the next two years, to relieve them from current difficulties
- b. state guarantees for loans at a reduced premium
- c. subsidised loans, in particular for the production of green products (meeting environmental protection standards early or going beyond such standards)
- d. risk capital aid up to € 2.5 million per SME per year (instead of the current €1.5 million) in cases where at least 30 per cent (instead of the current 50 per cent) of the investment cost comes from private investors.

The need for and implementation of financial aid has been large and widespread. By late April 2009 (mid February 2009), the European Commission had approved 49 (42) separate financial aid schemes and was investigating 11 more. These schemes concerned 19 of the Member States (among which were all 15 pre-2004 Member States). According to the Commission the temporary framework was respected, and by late May/April/(mid February), the Commission had authorized a total of 37/27/(8) measures in 16/12/(4) Member States under the Framework.⁵⁶

Box 8

Commission Decisions and Policy

Commission Decisions	Definitions of Policy
Phase I September 2007-september 2008	
• 5th of Dec 2007 UK Rescue aid to Northern Rock (NN 70/2007) • April 30th 2008 WestLB riskshield Germany (NN 25/2008) • June 4th Sachsen LB Germany (C 9/2008) Conclusion that a liquidity facility and a state guarantee for Sachsen LB, in the context of the sale of Sachsen LB to Landesbank Baden Württemberg (LBBW), are compatible with EC Treaty state aid rules. • July 31st 2008 Denmark /Roskilde Bank A/S Decision not raise objections to rescue aid to Roskilde bank • October 1st 2008 UK/Bradford & Bingley (NN 41/2008) Approval of measures: nationalisation and winding down of the bank, the sale of Bradford & Bingley's retail deposit book and branches along with a matching cash element to Abbey National, the provision of a working capital facility and guarantee arrangements. • October 2nd Germany/Hypo Real Estate Holding AG (NN 44/2008) Authorization of loan guarantees totaling €35 billion by German Federal Government and a group of German financial institutions, to provide for covering Hypo Real Estate's re-financing needs until April 2009	Application of standard rules on rescue and restructuring aid (2004/C 244/02).
Phase II post September 2008-	
• October 13th UK/financial support measures to the banking industry in the UK (N 507/2008) For an exhaustive list and further information on the numerous cases on Commission approvals of aid to the financial sector please see: http://ec.europa.eu/competition/sectors/financial_services/financial_crisis_news_en.html	• October 1st temporary empowerment SEC (2008) 2575/2.

⁵⁶ European Commission (2009). Report from the Commission. State aid Scoreboard-Spring 2009 Update-Special Edition on State Aid Interventions in the current Economic Crisis. Brussels, 08.04.2009 COM(2009)164, Lyons, B. (2009), 3 and EC MEMO/09/67). See also MEMO/09/111 and MEMO/09/174 and MEMO/09/246.

Decisions concerning Nordic countries

Denmark

- October 10th 2008: Denmark/Guarantee Scheme for Banks in Denmark (NN 51/2008)

Approval of scheme to provide liquidity facilities for banks operating in Denmark and protect depositors and ordinary creditors in case of insolvency.

- November 5th 2008: Denmark/Roskilde Bank

Authorisation of measures to liquidate Roskilde Bank in Denmark.

- February 3rd 2009: Recapitalisation scheme and amendment of the guarantee scheme

Decision not to raise objections to scheme which enables the State to subscribe hybrid capital qualifying as tier 1 capital. Capital endowment will be up to a level of 12 per cent of tier 1 capital. The total budget for the measure will be around €13.5 billion.

- May 20th 2009: Rescue aid for Fionia Bank

Decision not to raise objections to aid in the form of a credit facility of up to €685 million (DKK 5.1 billion) and a €134 million (DKK 1 billion) capital injection to bring the level of solvency up to a constant 11.5 per cent.

Finland

- November 14th 2008: Finnish guarantee scheme

Decision not to raise objections to a Finnish support scheme to stabilise financial markets by providing guarantees to eligible financial institutions.

- January 21st 2009: Approval of Finnish state guarantee for Kaupthing Bank.

Decision not to raise objections to a Finnish state guarantee accompanying a private sector arrangement to the benefit of depositors in the Finnish branch of the insolvent Kaupthing Bank.

- April 30th 2009: Prolongation of guarantee scheme

Approval of prolongation of guarantee scheme with broadened scope, with guarantees covering instruments with a maturity of up to five years.

Sweden

- October 29th 2008 approval of Swedish support schemes for financial institutions.

Decision not to raise objections to scheme covering new issuances of short and medium term non-subordinated debt, to support solvent banks and mortgage institutions that have difficulties in accessing financing

- December 15th 2008 Emergency rescue measures/ Carnegie Investment Bank

Decision not to raise objections to emergency liquidity assistance worth €225 million (SEK 2.4 billion) that the Swedish authorities have granted to Carnegie Investment Bank AB.

- January 28th 2009 Modifications to Swedish support schemes for financial institutions.

For details see press release IP/09/186 of 29th January

- February 11th Recapitalisation scheme

Decision not to raise objections to Government to provision of share capital or hybrid capital to be counted as bank Tier 1 capital.

- April 28th 2009 Approval of amendments Swedish guarantee scheme for Financial institutions

For details see press release IP/09/652 28th April 2009.

- October 1st temporary empowerment SEC (2008) 2575/2.

- October 13th Guidelines "The application of State aid Rules to measures taken in relation to financial institutions in the context of the current global financial crisis" OJ 2008, C270/2.

Resorting to Article 87(3)(b) of the EC Treaty

- November 26th Communication from the Commission "Temporary framework for State aid measures to support access to finance in the current financial end economic crisis"

- December 5th "Recapitalisation Communication"

- December 17th "Temporary Framework"

- February 25th Impaired Assets Communication

Subsequently the Commission has, as a standard procedure in cases involving large scale aid, launched in depth investigations of some rescue measures in which Member States may have altered the previously authorized packages.⁵⁷

⁵⁷ See for example (IP/09/713) "State aid: Commission extends in-depth investigation into UK aid package for Northern Rock" 7th May 2009 and (IP/09/712) "State aid: Commission opens in-depth investigation into aid package for German bank Hypo Real Estate" 7th May 2009. For cases under formal investigation in May 2009 see MEMO/09/246.

4. Experiences from previous financial crises

In times of crisis it is likely many proposals that call for amendments to the competition law or changes in its implementation are put forward. These opinions build on the view that sheltering domestic industries and lessening of competition is the way out of a crisis. In order to be able to assess the rationale of such a standpoint, it is helpful to look at experiences and evidence from earlier economic setbacks, recessions or depressions. Lessons can be learned from the Norwegian banking crisis of the 1920s, the Great Depression and how it was dealt with in United States and by the Nordic countries, as well as the Scandinavian/Nordic banking crisis of the 1990s.

4.1 The Norwegian banking crisis of 1920-28⁵⁸

The second half of the 19th century witnessed a significant growth in the number of banks in Norway, savings banks in particular, as seen in Figure 6 below.

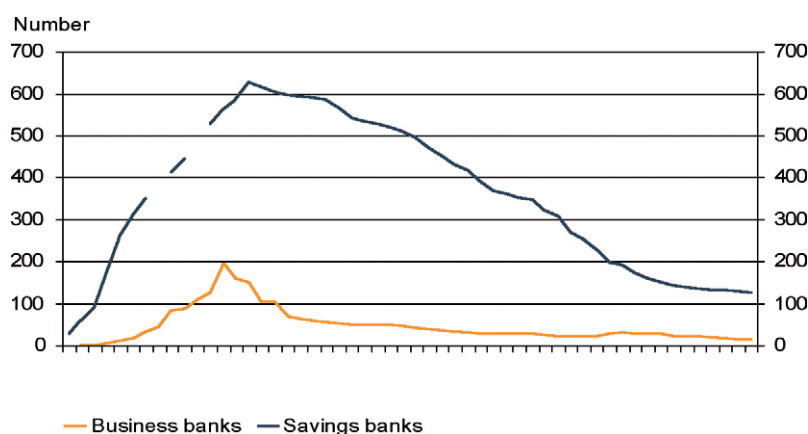


Figure 6. Number of banks in Norway 1840-2005

Source: Statistics Norway and the Financial Supervisory Authority of Norway

However, the banking sector was highly fragile, and when the speculative stock market bubble which had built up during WW1 burst, the banks were highly exposed. Falling asset prices coincided with a period of macroeconomic instability, unrest in labour markets, monetary contraction and deflation.

58 Gerdrup, K. R. (2003). "Three episodes of financial fragility in Norway since the 1890s", BIS Working Papers, no. 142.

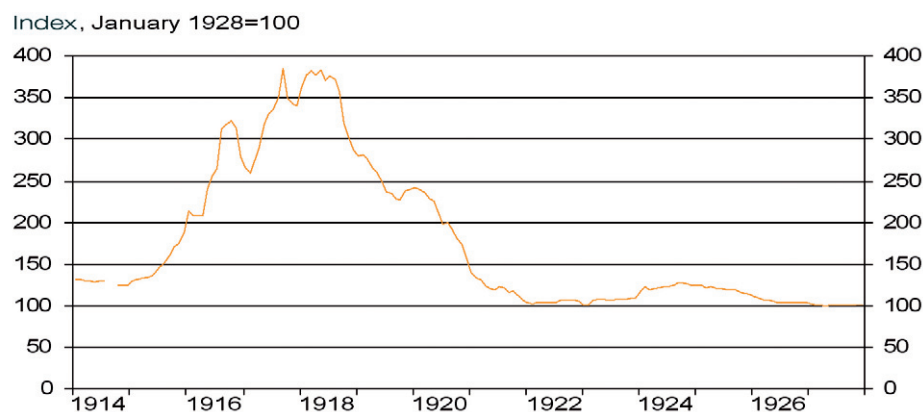


Figure 7. Stock price index 1914-1927

Source: Klovland, J.T.(2004). "Historical stock price indices in Norway 1914-2001", 329-348, Chapter 8 in Eitheim, Ø., J.T. Klovland and J.F. Qvigstad (eds.), *Historical Monetary Statistics for Norway 1819-2003*, Norges Bank Occasional Papers no. 35, Oslo, 2004.

From 1921 to 1922, GDP fell by 10 per cent, and the result were huge banking losses, in particular in commercial banks. A stocktaking after the banking crisis concludes that 131 banks either went bankrupt (generally small banks), were liquidated, merged with other banks or restructured. The banking structure became more concentrated as a result. There was no particular system in place to handle bank failures, like guarantee funds or a supervisory authority, in place at the time being. However, the state bank Norges Bank (NB) provided liquidity support to banks deemed solvent, in some cases in cooperation with other banks, and exposed itself to losses as part of an orderly restructuring or liquidation of insolvent banks if they were considered to be of importance to the stability of the financial system.

Many banks were placed under public administration, and separate rules for the public administration (receivership) of failing banks were introduced 1923. Separate legislation for commercial banks was introduced in 1924, with regulation of establishment, organisation and management, as well as providing limits on exposure. Also, a new law for savings banks was established. A guarantee fund for savings banks came in place from 1921 with obligatory membership from 1924. However, a guarantee fund for commercial banks was first introduced in 1938. Both funds had measures for liquidity or solvency crises as well as deposit insurance schemes.

Important lessons from this crisis from a competition point of view is that it resulted in a more concentrated banking sector – but also a banking sector which was better regulated and better prepared to meet the next crisis.

4.2 The Great Depression in the United States

The Great Depression, which is sometimes referred to as the World Depression, is thought to have originated in the United States. What began as an economic downturn during the summer of 1929 culminated in a collapse of the stock markets in October of that year.⁵⁹ During a fifteen-month period between April 1931 and July 1932, industrial production decreased by around 43 per cent and the industrial production index reduced to below half the value of its peak in July 1929. Unemployment in the country rose sharply and is generally thought to have reached 20 per cent. From 1930 to 1933

59 Romer, C. D. (1993). "The Nation in Depression", *Journal of Economic Perspectives*, Vol 7, No. 2, spring 1993, pp. 19–39.

repeated bank runs occurred as large numbers of people withdrew their deposits over a short period of time.⁶⁰

One of the measures resorted to under the Hoover administration was the enactment of the Smoot-Hawley Tariff Act for the purpose of countering the depression, which president Hoover signed in the summer of 1930. The tariffs introduced were either specific amounts or a percentage of the price of the imported goods and represented an average increase of 20 per cent in tariffs. This large increase in tariffs is a major factor in imports and exports between the United States and Europe dropping by two thirds during the period 1929–1932. The act was enacted despite the signatures of a group of more than 1,000 economists who advised against its enactment. It is generally considered that the enactment of the act contributed to both a deepening and prolongation of the depression.⁶¹

Roosevelt and the NIRA Act. Between 1933 and 1936 the President of the United States, Franklin D. Roosevelt, set forth various measures that were intended to counter the harmful effects of the Great Depression and to contribute to the restoration of the economy in the United States. One of the components of this policy, which was called the “New deal”, was the enactment of the NIRA Act (the National Industrial Recovery Act) in 1933.⁶² The instigator for the enactment of NIRA was the US government’s assessment that too much competition had been conducive to the depression. It was considered that competition had lowered prices and wages and thus unreasonably reduced employment and demand for goods and services.⁶³ The application of the NIRA Act effectively meant that the US competition laws were to a large extent repealed. The NIRA Act permitted specific industries to establish their own rules in order to counter what was perceived as harmful competition. Consequently, the relevant companies could, through collaboration, significantly reduce competition among themselves and, for example, resort to price-fixing. Shapiro (2009) states that the “quid pro quo was that part of the resulting higher profits would be shared with labor through higher wage: the NIRA provided antitrust exemptions to industries that accepted collective bargaining with labor unions”.⁶⁴

A government agency was established, the National Recovery Administration (NRA), to implement the Act. In 1934 almost all industries in the United States apart from agriculture had made use of the NIRA act.⁶⁵ Thus, in 1934, the rules were being applied to

60 In a paper from 1983 on the great depression in the United States, Ben Bernanke, the present governor of the Federal Reserve pointed out that banks are an important source of capital for small companies that are not able to issue bonds or stocks. When a bank goes into bankruptcy, all information that is to be found in the bank concerning which of the bank’s customers are sound and which are not is lost. It will therefore be costly for a new bank to expect to lend money to this group of customers because the new bank does not possess the information concerning the group of borrowers which the old and now bankrupt bank possessed. This effect caused the deepening of the Depression during the period of 1931–1932. For further details see Bernanke, B. S. (1983). “Non-monetary Effects of the Financial Crisis in the Propagation of the Great Depression”, *The American Economic Review*, Vol. 73, No. 3 (June 1983) pp. 257–275, see p. 259.

61 Beaudreau, B. (2005). “How the Republicans Caused the Stock Market Crash of 1929”, *iUniverse*, Lincoln, U.S.

62 For this in general, see, for example, Cushman, B. (2005). “The Great Depression and the New Deal”, *Cambridge History of law in America*, Tomlins & Grossberg.

63 Stelzer, I. (2007). “Coping with Market Power in the Modern Era”, *Hudson Institute, White Paper 2007*: “When the nation was in the throes of the Great Depression, many critics of antitrust policy received a sympathetic hearing from policy makers and the courts when they argued that the solution to the perceived ills—low prices and high unemployment—was a relaxation or repeal of the laws that prevented businesses from conspiring to raise prices. . . . The Roosevelt administration attempted to raise prices for agricultural and many manufactured products, and key FDR advisers such as Rexford Tugwell and Adolph Berle believed that free market competition was impossible and a cause rather than a cure of the Depression.”

64 Shapiro, C. (2009). “Competition in Distressed Industries”, U.S. Department of Justice. Remarks as preprepared for a speech made to the ABA Antitrust Symposium on May 13, 2009, p. 8.

65 Cole, H. L. & L. E. Ohanian (2004). “New Deal Policies and the Persistence of the Great Depression: A General Equilibrium Analysis,” *Journal of Political Economy*, 2004 vol. 1. 112. They show the economic effect of strategy by applying a general equilibrium model using strategy simulation. The results indicate that price-fixing by employers and the increase in wages through comprehensive wage contracts will explain circa 60% of the difference between what the outcome was and what could have happened if the economy had not become the victim of the depression.

over 500 different industries that employed almost 80 per cent of employees working for private companies in sectors other than agriculture (i.e. private, non-agricultural employment).⁶⁶ All in all, the NRA agency had instituted 557 industry-wide codes that affected 22 million employees.

In 1935 the United States Supreme Court found that the NIRA Act was unconstitutional.⁶⁷ However, the effects of the Act continued for many years since the US competition authorities did not assert themselves against the competition restrictions and collusion that had resulted from the Act. This can be explained by the above view concerning the harmful effects of competition.⁶⁸

Arguments have been set forth that the NIRA Act did not contribute to the restoration of the US economy; rather, on the contrary, it made the situation significantly worse and counteracted any progress.⁶⁹ It has been pointed out that after the enactment of the Act the cost of doing business in the United States increased on average by 40 per cent and industrial production contracted by one quarter.⁷⁰ Studies by economists at the University of California point in the same direction. The research states that the NIRA Act and the policy of the US government against competition prolonged the Great Depression by seven years.⁷¹ The US economy was on the brink of a recovery but the NIRA Act and the restriction of competition resulting from this Act counteracted the recovery and the reconstruction of the industrial sector.

In 1938 the US government made a change in its policy and emphasised that competition and the application of competition rules were necessary to ensure economic progress and public welfare.⁷² The competition authorities in the United States then began a massive campaign against competition restrictions, and these measures became an important part of the economic policy of the US government.⁷³ It has been argued that this initiated the recovery of the US economy.⁷⁴ This new policy from 1938 has been maintained until this day.

66 Ibid, pp. 779–816. See p. 784.

67 *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495.

68 Cole & Ohanian (2004), op.cit.

69 See, for example, Wallace, S.W. (2004). "The Antitrust Legacy of Thurman Arnold," *St. Johns Law Review*, vol. 78 no.3: "The goal of the NIRA was to restrict production, raise price, create profits, and restart business investment. Not surprisingly, to the extent prices were increased, the increase further limited production, employment, and the purchasing power of consumer, leaving the country in even worse straits than at the beginning of the Great Depression. Over time, consumer interests, labour groups, smaller producers, antitrusters, and government purchasers became increasingly concerned with higher prices and began to vocally oppose the National Recovery Administration (NRA) and its codes." See also article by Clive Crook in the *Financial Times* from 8 November 2008: "The NRA slowed the recovery".

70 See, for example, Reed, L.W. (2005). "Great Myths of the Great Depression," Mackinac Center

71 Cole & Ohanian (2004), op.cit. See also the announcement by the UCLA because the publishing of this paper, dated 8 August 2004: "FDR's policies prolonged Depression by 7 years, UCLA economists calculate".

72 In April of 1938 President Roosevelt introduced "The Anti-Monopoly Message" and recommended that the following points be taken up for consideration. "1) Improvement of anti-trust laws by placing the burden of proof of innocence on those charged with certain violations, such as presenting identical bids, uniform price raises; 2) more careful scrutiny of mergers and interlocking relationships; 3) supervision of investment trusts and gradual separation of banks from holding companies; 4) supervision and publicizing of activities of trade associations; 5) amendment of patent laws to prevent use of patent controls for suppression of new inventions; 6) correction of tax laws to encourage competition and dividend distribution." See *Time.com*.

73 It is considered that this campaign began after Roosevelt appointed Thurman Arnold as the head of the competition department of the US Department of Justice in 1938. See, for example, Wallace, S.W. (2004). "The Antitrust Legacy of Thurman Arnold," *St. Johns Law Review*, vol. 78 no.3: "For the next five years, Thurman Arnold revitalized antitrust law and enforcement and changed the entire focus of the New Deal from corporatist planning to competition as the fundamental economic policy of the Roosevelt administration."

74 See an announcement from UCLA from 8 August 2004: "Recovery came only after the Department of Justice dramatically stepped enforcement of antitrust cases nearly four-fold and organized labour suffered a string of setbacks, the economists found." The Participation of the United States in the second world war also had a great effect on industry. It has been argued that the Great Depression was over during the period of second world war, see Romer, op. cit., p. 35.

Shapiro summarizes the lessons by stating that “The actions of the Roosevelt administration, and subsequent research by historians and economists, support the conclusion that the expansion in output resulting from competition is part of the solution to tough economic times, not one of the causes of economic downturns”.⁷⁵

The new administration in the US is accordingly taking a strong stance on competition issues in tackling the current financial crisis. On May 12, 2009, the new chief of the Antitrust Division at the Justice Department in the US, Christine A. Varney, made a speech to the United States Chamber of Commerce.⁷⁶ She discusses the mistakes made during the outset of the Great Depression with the relaxation of antitrust enforcement and how the NIRA act “effectively foreclosed competition”.⁷⁷ She goes on to say that the industrial codes created under NIRA relegated competition to the sidelines and resulted in restricted output, higher prices and reduced consumer purchasing power. Varney emphasizes consequently: “First, there is no adequate substitute for a competitive market, particularly during times of economic distress. Second, vigorous antitrust enforcement must play a significant role in the Government’s response to economic crises to ensure that markets remain competitive.”

4.3 The Great Depression in Norway⁷⁸

The great depression hit Norway with full force in 1931. That year, Norway left the gold standard, a move that was followed by an increase in the key policy rate to 8 per cent to prevent capital flight. Moreover, Norway had for some time experienced massive labour market unrest, high and rising unemployment, and the gold standard move coincided with one of the most encompassing labour market conflicts in the mid-war period. Thus, when the Wall Street crash of '29 hit Europe and Norway, with its bank failures and bankruptcies, the result was a GDP falling with more than 8 per cent from 1930 to 1931.

Norway did however not experience the same bank and currency crisis as many other countries in this period. Following the acute liquidity crises in the major banks, Norges Bank approved a three months moratorium and provided credit to the banks worst hit, providing a shield against collapse. The fiscal policy to counteract the crisis was Keynesian in nature, generating purchasing power through public spending.

What is interesting from a competition policy point of view is the wilful suspension of competition in important sectors. Actually, Norway got a Trust law in 1926, but this was not really an anti-trust law: The law was practiced in a way that accepted agreements restricting competition insofar as they were considered beneficial from a socio-economic perspective. According to Nordvik (1995), the Director General of the Trust Control Authority was rather trust friendly, and, in practice, it was he that decided which agreements were beneficial.

As in the U.S., the depression led to an impaired belief in markets and competition. Thus, to counteract the crisis, several special laws were introduced suspending competition and cartelising important industries, in particular in the primary sectors of fishing

75 Shapiro, op, cit, p. 11.

76 See e.g. <http://www.usdoj.gov/atr/public/speeches/245777.htm>. The same message was conveyed by Shapiro, op. cit.

77 See e.g. <http://www.usdoj.gov/atr/public/speeches/245777.htm>, section on “Lessons Learned from Prior Economic Crises: National Industrial Recovery Act and Industrial Codes”.

78 This section is based on Nordvik, H. W. (1995). “Mellom marked og kartell: Amerikanske og tyske forbilder i norsk konkurransepolitikk før 1940” in Hope, E., P. Munthe, A. C. S. Ryssdal and S. Undrum “Festkrift til Egil Bakke”, Fagbokforlaget, Bergen, as well as Hodne, F. (1981). “Norges økonomiske historie 1815-1970”, J. W. Cappelén Forlag, Oslo.

and farming. Forced cartels were implemented in e.g. primary fish trading, exports of salted and dried cod and canned herring. Cartels created in the 1890s were revitalised, together with the creation of new cartels within production of margarine, painting, canned food and tin can production, as well as tobacco. Minimum prices and measures to secure a certain profit were introduced for many products, often at the expense of consumers. Norwegian industry did also participate in many international cartels, e.g. pulpwood, shipping, timber and steel. This was accompanied by protectionist policies with e.g. trade barriers regulating imports through tariffs and preferential treatment of Norwegian firms. All this was approved, and even encouraged by the Trust Control Authority. The Director General of the Trust Control Authority even suggested implementing a paragraph in the Trust law giving the office powers authority to force cartel creation, if considered necessary. Based on the recommendations from a committee led by the Director, the Government put forward a proposition to Storting. However, the Committee for Justice advised against dealing with it both in 1937 and 1938, and in 1939 the motion was withdrawn.⁷⁹

To what extent the measures actually prolonged the crisis in Norway can be discussed. Notwithstanding, many cartels and a host of agreements restricting competition existed (and were registered in the “Cartel register”) until the approvals started to be withdrawn in the late 1970s, and the belief in competition was again revitalised in Norway.

4.4 The Nordic banking crisis of the 1990s

In this section, the competition policy experiences from the Nordic banking crises is described by way of two examples, Finland and Norway.

In the early nineties **Finland** was hit by a deep economic depression, a combination of an economic and a banking crisis. During the period 1991–1993 national production dropped by 12 per cent and unemployment increased from 3.5 per cent in 1990 to 18.4 per cent in 1994. There was a slump in the price of stocks and real estate and a large number of companies went bankrupt. This was one of the worst economic crises that a western country has faced in recent years.⁸⁰

On the causes. The cause of these economic difficulties is basically twofold. Firstly, Finland was experiencing a major slump in exports, in combination with a preceding credit boom and growing current account deficit. The disintegration of the Soviet Union resulted in a significant reduction in Finland’s exports to the Soviet Union⁸¹ and exports to other states were also reduced.

The extent and nature of foreign trade with Soviet Union contributed to important Finnish industries being isolated from competitive pressure. That fact, together with the culture of cartelization and an exchange rate policy that was apt to work in favour of the exporting industry, may have lead to inefficiencies and cost disadvantages in the Finnish business sector. The lack of competitiveness of the rather narrow group of export industries such as the timber industry and metallurgy was evident as the industry facing the export slump sought for alternative export markets. In addition, the past deregulation of the financial markets, the overheating and gearing, high domestic interest rates and the relatively strong currency had induced increased borrowing in foreign currencies.

The monetary policy in defence of a fixed exchange rate, that was considered to be overvalued, did not withstand the speculative attacks and forced in November 1991 a devaluation of about 5.75 per cent of the Markka. The devaluation did not restore confi-

79 See Preben Munthe (1993). “Trek av norsk pris- og konkurransepolitikk historie”, Prididende nr. 5/93.

80 The discussion of the Finnish economic crisis is based on the following extensive report on the crisis: The Research Programme on the Economic Crisis of the 1990s in the light of economic and social research, Down from the heavens, Up from the ashes, Government Institute for Economic Research, Helsinki 2001.

81 In 1985 21.5 per cent of Finland’s exports went to the Soviet Union but in 1991 this was within 5 per cent. See Morgunbladid news article from 5 November 1991.

dence in the exchange rate and in September 1992 the Markka was set to float which resulted in a depreciation of around 13 per cent, which further accentuated the problems related to loans in foreign currency. As expected, the export sector gained from the depreciated currency, restoring the confidence and inducing the post-crisis growth. Finland joined ERM in 1996 and introduced the Euro in 1999.

Banking crisis. The depression in 1990s had fundamental implications for the future structure of the Finnish banking sector. Between 1990 and 1995, the Finnish banking sector was shrinking, making losses of 39.5 billion Markkas, which amounted to 6 per cent of the banks' total assets. These years also constituted the phase of the so-called "crisis mergers" in the banking industry, which was followed by a period of "consolidation mergers" during the years 1996 to 2000. A figure that describes the extent of bank mergers is that in 1990 there were 502 banks, in contrast to 344 in 1999. During the phase of the "crisis mergers", the merger activity was mainly focused around savings banks, of which the largest ones were subject to severe distress in 1991. SKOPBANK, which acted as a central bank to its' owners, the savings banks, also faced difficulties in 1991. In September 1991, the Bank of Finland decided to take control over SKOPBANK due to evident risk of its failure.⁸²

By the end of 1995 with the merger of Kansallis Osakepankki and Union Bank of Finland, which both had been making negative results during the four preceding years, the phase of "crisis mergers" had already shaped the banking market in a fundamental way: less than a fourth of the savings banks survived the crisis.

Policy measures and the resolution of the crisis. In order to overcome the difficulties the Finnish Government took various measures, of which the most important included the commitment to stringent fiscal policy and to influence the broad economic policy, including the monetary policy. Foregoing the policy in defence of a strong currency was a political touchstone for the Governments in its determination to curb the downward spiral of the economy.⁸³

However, actions were not taken only to improve the competitiveness of, but also to intensify competition in the Finnish industries.⁸⁴ For this purpose a bill was introduced to strengthen Finnish competition laws. There were opinions in the Finnish Parliament that lack of competition was an important cause for the economic downturn, in consequence of which the Finnish legislator found a reason to go one step further than the Government bill in strengthening competition rules.⁸⁵ The Economic Committee of the Finnish Parliament was opposed to specific exemptions for smaller companies for competition-restrictive collaboration, as had been foreseen in the Government bill.⁸⁶ This act

82 Kjellman, A. (1997) Essays on performance and financing decisions during the 1990s recession in Finland. Doctoral thesis, Åbo Akademi University.

83 For brief overviews of the recovery process see "Sound government finances and low inflation – the road to success!" Bank of Finland Press release 25 at 27th September 2006 and Speech by Governor Erkki Liikanen: Finland, EMU and euro. International Bankers' Club, Luxembourg 1st December 2006.

84 See Tapio Korhonen, Finnish monetary and foreign exchange policy and the changeover to the Euro, Bank of Finland Discussion Papers, 25, 2001: In the discussion surrounding the measures of the Finnish Government to combat the depression it states: "The Government implemented a broad scheme of structural reform, affecting, inter alia, the tax system and competition policy." See also Hátækniðnaður, Thróun og stada á Íslandi, Staða og stefna á Norðurlöndum og Írlandi (The Hi-tech industry, Development and status in Iceland, Status and policy in the Nordic Countries and in Ireland), November 2005: "The economic crisis in the early nineteen nineties, the financial crisis and the collapse of exports to the Soviet Union the government formulated a policy of growth built on cluster analysis and network collaboration ... In 1994 unemployment in Finland was over 16%. A new policy was needed to strengthen the position of Finland in the international market. Free competition was its cornerstone."

85 The opinion of the Economic Committee of the Finnish Parliament: 1992 rd-EkUB 14-RP 162/1991 rd, Ekonomiuuskottets betänkande nr 14 om regeringens proposition med förslag till konkurrensbegränsningslag.

86 OECD, Finland – The Role of Competition Policy in Regulatory Reform, 2003: "Finland was enduring a severe recession, which was magnified by the disruption of its traditional markets in what had been the USSR. The Government proposed to prohibit restrictive agreements and to reform the Competition Council by ending the practice of interest group representation in its membership. The Parliament appeared to agree generally that restraints on competition were an important reason for the country's poor economic performance. Indeed, the lawmakers wanted an even tougher competition law than the Government proposed."

was passed in the parliament, and a new and tougher competition act entered into force in 1992 in the midst of the economic crisis. It has been argued that the increased competition brought on by government action contributed on its part to economic growth and increased productivity in Finland.⁸⁷

On the other hand, the significance of the active roles competition policy or the competition authorities in the resolution of the crisis in the 1990s should not be overemphasized. The merger waves within the savings banks and the subsequent restructuring of Finnish banking market, was not specifically questioned or challenged. There were some individual exemptions, although they were granted to ensure a flexible restructuring both during and in the aftermath of the crisis. However, the main explicit influence in the advent of a recovery was the more strict competition law, prepared and adopted in midst of the depression. This was in pronounced contrast to the New Deal policies in United States in the 1930s, especially as the aim was to clamp down on cartel activity. Moreover, competition policy and the view of competition as an evolutionary process may have affected the, then actual, drafting of bankruptcy legislation in order not to excessively protect the survival of unviable firms. The number of bankruptcy proceedings instituted increased sharply in 1991 reaching almost 7400 in 1992. The decrease in the number was also swift, with the number dropping gradually until 2007, followed by an increase in 2008 that is likely to continue in 2009.

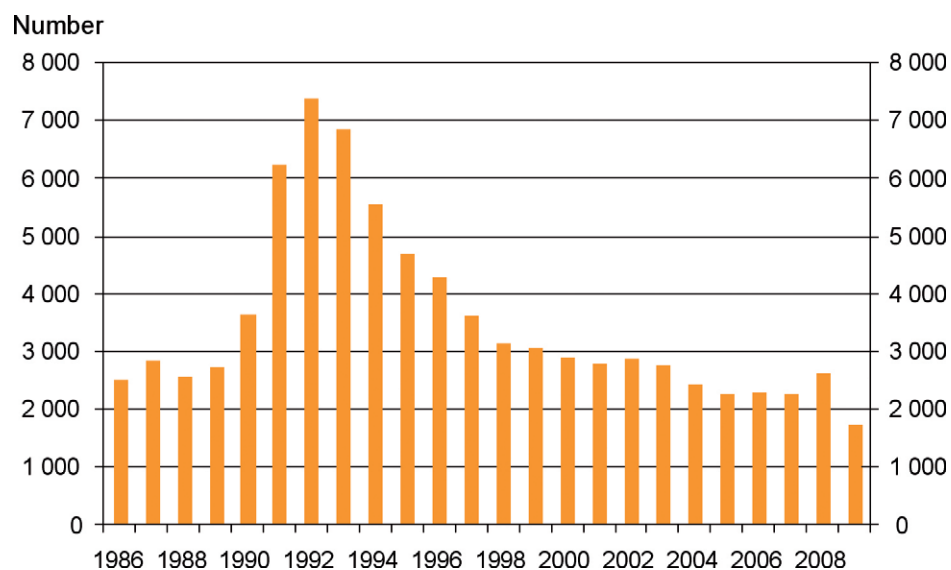


Figure 8. Bankruptcy procedures in Finland, 1986-2009⁸⁸

Source: Statistics Finland

During the most critical phase of the crisis, there was a growing concern that the banking sector was restructuring the parts of the Finnish industry that was in its control in a coordinated manner to increase the profitability of the surviving firms. Competition au-

⁸⁷ See, for example, Finland's Economy, McKinsey&Company, 2007. See also OECD, Product Market Competition and Economic Performance in Finland, 2004: "Following the deep recession in the early 1990s growth has been strong, but the scope for economic catch-up remains considerable and cross-country empirical evidence suggests that enhancing competition is an important means of achieving this. Structural reforms to strengthen competition in the early 1990s did boost growth and were also ahead of similar developments in the EU."

⁸⁸ Note that the 2009 figure is for the first half year only.

thorities reacted promptly to these signals, but eventually no evidence was found to verify the existence of such coordinated behaviour.

Post crisis - how did it all turn out? In contrast to the present financial crisis, Finland was in the early and mid 1990s optimistic that it will manage to fulfil the criteria for a membership in the European Union. The budget deficits, the foreign debt inherited from the times of crisis and the new commitment to inflation targeting restricted possibilities for a fiscal stimulus. Tight budget discipline and saving programmes were criticized both then and afterwards, but in the end the goals of a recovery, growth, price stability, an EU membership together with a more competitive economy were all achieved. The current account showed a surplus in the mid 1990s and symbols the swift recovery. It also reveals that the Finnish economy was relatively stronger prior to the present crisis, although the future seems increasingly challenging.

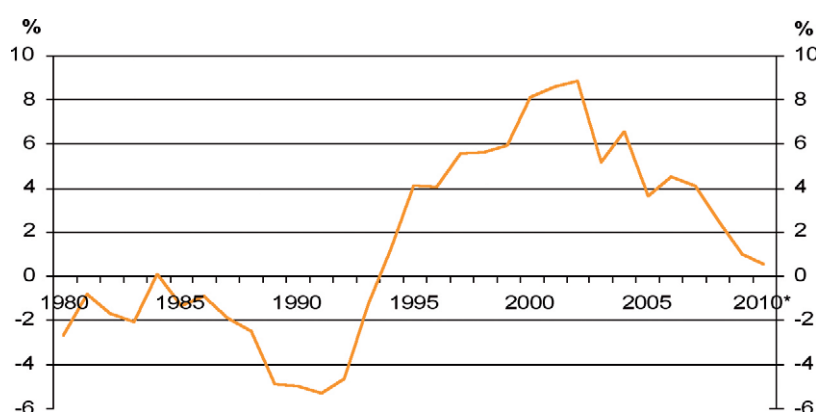


Figure 9. Current account balance relative to GDP 1980-2010

Source: IMF, World Economic Outlook Database

The banking sector was further reshaped during the phase of consolidation mergers (1996-2004). The number of bank mergers was reduced, but these mergers now involved larger entities, including cases where the Finnish influence ended up being relatively diluted. In 1997 the Finnish Merita Bank merged with the Swedish Nordbanken. In 2000 the new MeritaNordbanken acquired the Norwegian bank Kreditkassen and decided to merge with the Danish Unidanmark, thus creating Nordea. In 2001 a merger between state-owned Leonia (which was created 1998 by a merger between Postipankki Plc and Suomen Vientiliutto Plc), and the insurance company Sampo, led to the establishment of Sampo Pankki. In short, the above mentioned mergers and the increased cooperation inside the OKO bank Group⁸⁹ have shaped much of the prevailing concentrated structure in the Finnish banking market. The more recent changes are some significant mergers between insurance companies and banks together with entry of both domestic and foreign banks.⁹⁰

In the end of 2008 there were 336 banks in Finland, where 322 were of domestic origin and 227 were members of the OP-Pohjola Group. With the three largest banking groups holding a market share of about 77 per cent (HHI > 2200) of loans to and 79 per cent

89 252 cooperative banks decided to consolidate their balances within the OP Bank Group. OP Bank Group Central Cooperative was established in 1997. 42 banks chose to join and form the Local Cooperative Bank. (see Kjellman & Sillanpää (2002) Konsolideringen inom Andelsbanksguppen. Aronia Business Papers 2 (5).

90 For example, the non-life insurance became a new business area of the OKO bank group with the acquisition of listed company Pohjola Non-Life Insurance Company in 2005 and that the Danish Danske Bank acquired Sampo-Pankki Plc in 2007 from Sampo Plc. In addition an insurance company and a daily grocery trading group have also entered the banking market.

(HHI > 2400) of deposits of the public, the market can be considered to be rather concentrated.

The banking crisis in Norway.⁹¹ Norway experienced a general boom from 1983. It was characterized by capital inflows and rapid credit expansion, and a strong growth in domestic spending. This was accompanied by an increase in the number of bank branches following the liberalisation of branch establishment. In the financial sector, the quantitative regulation of banks' lending was lifted in 1984 and the regulation of interest rates was repealed in 1985. Also, the secondary market for housing was deregulated in the early 1980's.

It should also be added that the Norwegian fixed exchange regime lost credibility due to many devaluations in the period 1977-1984 resulting in heavy speculation against NOK. The devaluation in 1986 by almost 10 per cent was followed by a contraction of the fiscal policy to restore confidence.

Falling housing prices in real terms from 1988 to 1992, contributing to lower household spending and reduced economic activity, coincided with the deepest recession internationally since the interwar period, reflecting the unsustainable boom in to mid 1980s. The result was bankruptcies and heavy bank losses, as seen in the figure below, and zero growth in GDP.

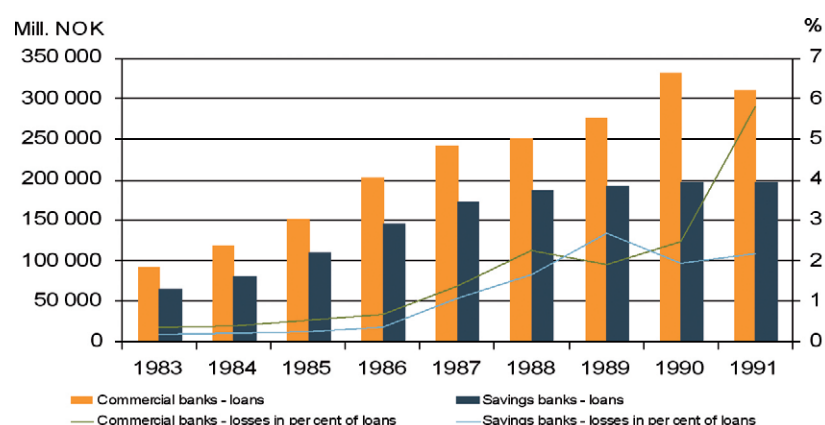


Figure 10. Banking losses in Norway 1983-91

Source: Statistics Norway

In the first phase of the crisis (1988-90), the banks' problems were mostly resolved and financed by the banking industry's own guarantee funds. However, these were depleted by the late 1990. In addition, Norges Bank provided liquidity support on an individual basis.

The crisis escalated in late 1991. The Government established the Government Bank Insurance Fund (Statens Banksikringsfond). The banks' own guarantee funds were not designed to handle systemic crises on their own. With a view to ensuring the stability of the financial system – also in the case of systemic crises – the Government Bank Insurance Fund was established with a mandate to lend capital to the two bank guarantee funds.

The Government Bank Insurance Fund was intended as a pure crisis management body, and support should only be provided if the stability of the financial system was imperilled as a result of liquidity or capital deficiencies in one or more banks, and the capital deficiency could not be remedied by the bank itself or by the bank's guarantee fund.

In addition, a separate fund was established to provide capital to banks on a commercial basis, i.e. the Government Bank Investment Fund.

Furthermore, an arrangement with loans from Norges Bank to all banks at below market interest rates was introduced, but in the second phase of the crisis (1990-1992) the share capital of the three major banks (Kredittkassen, Fokus and then Den norske Bank) was nullified. After failing to attract equity capital from private investors, new capital was provided from the Government Bank Investment Fund, which effectively led to nationalisation of the banks. The state equity shares in the banks were gradually reduced throughout the 1990s.

Seventeen local and regional banks with problems were merged with larger banks. Some were forced to do this by the savings banks own guarantee fund. Some savings banks got regional dominant positions as a result of these forced mergers.⁹² One small and newly established commercial bank was liquidated.

Thus, we see that a crisis again led to increased concentration in the banking sector, and even dominance in some regional markets.

92 See e.g. www.sparebankforeningen.no

5. The benefits of competition

In order to ensure that the positive effects of competition benefit consumers and the economy, more than one hundred states all over the world have enacted competition laws.⁹³ It is generally found that the protection of and the bolstering of competition is necessary to promote increased productivity, rationalisation and economic growth.⁹⁴ Competition laws that have been enacted by states all over the world generally have the purpose of protecting competition by prohibiting anti-competitive actions that harm the interests of both consumers and the economy. At the same time, competition acts are intended to ensure that all businesses have the opportunity to participate in healthy competition and do not need to be subjected to unreasonable or harmful business methods by other companies. Competition laws are, therefore, intended to be conducive to new entities being able to start business operations and smaller companies being able to expand, and are vital to the reinforcement or preservation of a strong economy.

Economic theory supports the view that competition in business is desirable because it increases efficiency in economic activity and contributes to the welfare of consumers⁹⁵. More specifically, active competition is considered to have the following qualities:

- Competition is conducive to consumers getting goods and services for the lowest prices.
- Competition is conducive to an increased supply of goods and better services and goods.
- The self-control imposed by competition pushes businesses towards rationalising their operations and counters waste.
- Competition is conducive to innovation and progress in businesses operations.⁹⁶
- Competition is conducive to macro-economic growth of the national economy (gains for the consumers and for the producers).

Not all markets are characterised by effective competition. Market failure can occur and businesses can find it to their advantage to reduce competition through certain actions. The next section presents some key points relating to the benefits of competition for economic growth and productivity which is based on a recently published report by the Danish Competition Authority.

93 The number of these states is growing. It can be mentioned that on 1 August of last year a competition act entered into force in the People's Republic of China.

94 See, for example, the address by Philip Collins, chairman of the BoD Office of Fair Trading, Competition law: challenges and opportunities for business and agencies in an international context, 30 July 2008. See also speech by Neelie Kroes, EU Commissioner responsible for competition policy, In defence of competition policy, 13 October 2008: "The core of our understanding of the world is that markets do NOT work best when left alone ... this is what our enforcement record and independent evidence shows, and it is the only practical approach to take. Competition policy is a tool that has worked well for 50 years – for Member States, for Europe, for consumers and for law-abiding companies everywhere. It has spread to more than 100 economies, including every major economy in both the developed and developing world – and for one reason: because it helps to increase and protect prosperity."

95 DTI Economics Paper no. 9, "The Benefits from Competition: some illustrative UK cases", July 2004: "Almost from their (academic) cradle, economists learn the virtues of competition. Whether couched in the elegant prose of Georgian English, or in the more direct style of the 21st century, the message is the same. Competition is a good thing; it makes markets work well, and is in society's interests."

96 See e.g. Sørsgard, L. (ed.) (2006). "Competition and Welfare - The Norwegian Experience", Konkurransetilsynet, p. 9 etc. See also Andersen T. M., Holmström, B., Honkapohja, S., Korkman, S., Söderström, H. T. and Vartiainen, H., (2007). "The Nordic Model, Embracing globalization and sharing risks", The Research Institute of the Finnish Economy, e.g. p. 136 etc. On the positive effect of competition and competition rules on innovation in particular, see e.g. Baker, J. B. (2007), "Beyond Schumpeter vs. Arrow: How Antitrust Fosters Innovation", Working Paper Series.

5.1 Competition, economic growth and productivity

Competition is rivalry between individual firms.⁹⁷ Rivalry ensures that only the most efficient and innovative firms are in the market.

Competition is an ongoing process that works through utilization of company resources, entry and exit in the market and innovation, see Figure 11.

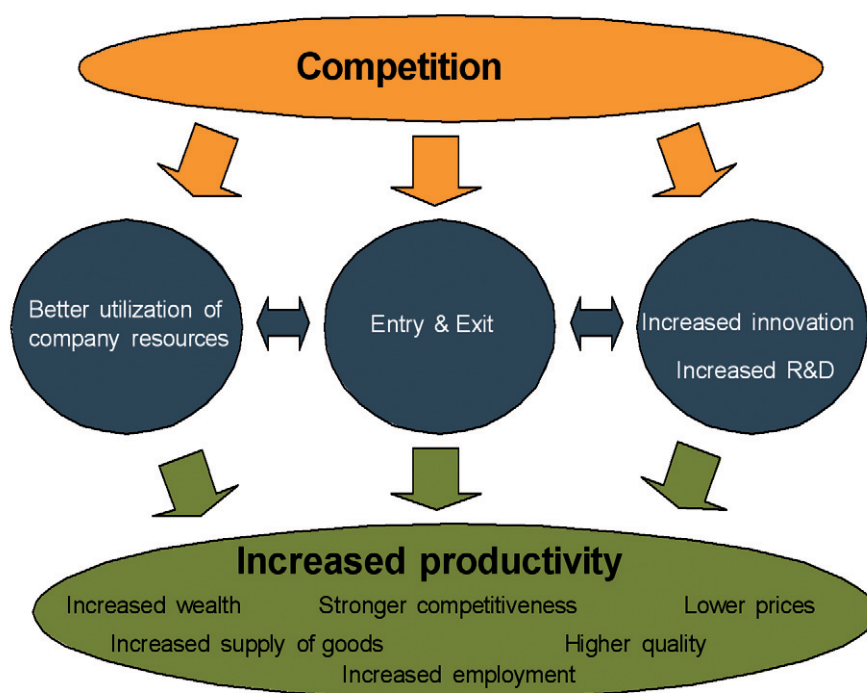


Figure 11. Competition increases productivity

Source: The chart is from the publication "Konkurrence – vækst og velstand" available at www.ks.dk.

Competition improves the *utilization of company resources*. This is because company gains from increased efficiency are greater in markets with competition, and therefore managers have greater incentive to implement efficiency. Thus it reduces waste in companies and increase productivity.⁹⁸

Entry by new companies is one of the main sources to an effective competition. Companies that cannot accommodate the development in the market will gradually exit the market. This allows more efficient companies to gradually replace the less efficient companies. This leads to higher productivity in the economy as a whole. The share of total productivity growth, due to entry and exit vary from country to country. An OECD analysis shows, that firm turnover can explain approximately 10-40 per cent of productivity growth in manufacturing industries in 6 OECD countries over the period 1987 to 1999.⁹⁹

97 See, for example Stigler, G. J. (1987), "Competition" in Eatwell, J., Milgate, M. and Newman, P., "The New Palgrave", London, Macmillan.

98 See, for instance Bloom, N. and Van Reenen, J. (2007), "Measuring and Explaining Management Practices across Firms and Countries", The Quarterly Journal of Economics, Vol. 72(4) s. 1351- 1408 and Green, A. and Mayes, D. (1991), "Technical inefficiency in Manufacturing Industries", The Economic Journal, Vol. 101(406), s. 523-538.

99 Scarpetta, S., Hemmings, P., Tressel, T. and Woo, J. (2002), "The role of policy and institutions for productivity and firm dynamics: Evidence from micro and industry", OECD Economics Department Working Paper No. 329.

The incentives to *innovate* will in general increase if competition is more vibrant. Innovation creates new products and services to the benefit of consumers and other companies. The link between innovation and competition is complex however, because the market structure and competition in itself plays a crucial role with respect to the incentives to innovate. The empirical analysis of competition and innovation is substantial. In general a stronger competitive environment leads to more innovation.¹⁰⁰ The reason is that companies innovate to escape competition, (the "escape competition" effect). Some research has found an inverted U-shaped relationship between innovation and competition, where innovation activity is lower when competition in the market is very strong, and when the competition is very weak.¹⁰¹

It is difficult to quantify how much an efficient competition affects productivity and the economy more generally. A number of extensive studies have found a positive connection between productivity and competition, see Table 1. The studies find that higher entry, low margins and a lower concentration in the markets each contribute to higher productivity in businesses, in terms of higher productivity and higher productivity growth. Productivity is measured as either total factor productivity (TFP) or labour productivity.¹⁰²

100 See, for instance Blundell, R., Griffith, R. and van Reenen, J. (1999), "Market Share, Market Value and Innovation in a Panel of British Manufacturing Firms", *Review of Economic Studies* nr. 66, s. 529-554. and Geroski, P.A. (1990), "Innovation, Technological Opportunity, and Market Structure", *Oxford Economic Papers*, Vol. 42(3), s. 586-602.

101 See, for instance Aghion, P., Bloom, N., Blundell, R., Griffith, R., and Howitt, P. (2005), "Competition and innovation: An inverted-u relationship", *The Quarterly Journal of Economics*, s. 701-728. and Kilponen J. and Santavirta T. (2007), "When do R&D subsidies boost innovation? Revisiting the inverted U-shape" Bank of Finland Research Discussion Papers 10.

102 The link between competition and productivity have been analysed by the Danish Competition Authority in the publication "Konkurrence – vækst og velstand", the report is available at www.ks.dk. In the report several papers are reviewed among others the papers in table 1.

Table 1. Empirical studies of the link between competition and productivity

Analyses	Statistical basis for analysis	Results
Aghion, Blundell, Griffith, Howitt and Prantl (2004) ¹	Statistical data on 3,827 companies in 166 industries from 1980-1993.	Increasing entry increases productivity growth.
Nickell (1996) ²	Statistical data for 700 UK companies from 1972-1986.	There is a higher Total factor productivity growth in businesses with low profits and productivity levels are higher in less concentrated markets.
Haskel (1991) ³	Statistical data from 81 UK industries from 1980-1986.	Increased competition leads to higher labour productivity.
Baldwin and Gu (2006) ⁴	Statistical data from 28,000 Canadian manufacturing industries from 1973-1999.	Competition contributes to 70 per cent of productivity growth.
Jorgensen and Nomura (2007) ⁵	Statistical data from 42 industries in the U.S. and Japan from 1960-2004.	Open markets and increased competition from abroad increases productivity.
Asplund and Nocke (2006) ⁶	Statistical data and interviews from 1030 Swedish hairdressing salons.	There is a higher turnover of firms in competitive markets, and efficiency of existing firms is higher when there is effective competition.
Maliranta (2005) ⁷	Statistical data from 12 industries in Finland from 1974-1998.	Some evidence is found that imports stimulate productivity-enhancing restructuring, especially when domestic R&D is low.

Note 1: Aghion, P., Blundell, R., Griffith, R., Howitt, P. og Prantl, S. (2004), "Entry and Productivity Growth: Evidence from micro-level panel data", Journal of the European Economic Association, Papers and Preceedings 2 s. 265-276.

Note 2: Nickell, S. J. (1996), "Competition and corporate performance", Journal of Political Economy, Vol. 104(4).

Note 3: Haskel, J. (1991), "Imperfect Competition, Work Practices and Productivity Growth", Oxford Bulletin of Economics and Statistics, Vol. 53(3).

Note 4: Baldwin, J. R. og Gu, W. (2006), "Competition, Firm Turnover and Productivity Growth", Economic Analysis Research Paper Series No. 42, Statistics Canada.

Note 5: Jorgensen, D. W. og Nomura, K. (2007), "The Industry Origins of the US-Japan Productivity Gap", KEO disc. paper 105.

Note 6: Asplund, M. og Nocke, V. (2005), "Firm Turnover in Imperfectly Competitive Markets", Review of Economic Studies, Vol. 73(2), s. 295-327.

Note 7: Maliranta, M. (2005), "R&D, International Trade and Creative Destruction – Empirical Findings from Finnish Manufacturing Industries", Journal of Industry, Competition and Trade, 5:1, 27-58.

The significantly lower level of prosperity in the past and present, planned economies gives an example of what happens in the longer term in the absence of competition. When the Berlin Wall fell in 1989, productivity in East Germany was less than half the productivity level in West Germany. Before WW2, productivity of the two parts of Germany were at about the same level.¹⁰³ The absence of free markets and market conformist incentives was probably the main reason why East Germany was so extensively behind.¹⁰⁴

Thus, competition is the driving force behind a wide range of activities in companies, including the launch of research and innovation. Other conditions such as a high education and research level in society, a good investment climate and sound macroeconomic policies are also important factors.¹⁰⁵

103 Schleifer, J. (2006), "Planning ahead and falling behind: the East German economy in comparison with West Germany 1936-2002", Akademie Verlag.

104 There are many examples where it is documented that liberalization gives lower prices, increases employment and productivity. See for instance Boylaud, O. (2000), "Regulatory Reform in Road Freight and Retail Distribution", OECD Working Papers, no. 255. and Lewis, W.W. (2004), "The power of Productivity", The University of Chicago Press.

105 OECD (2004), "Understanding Economic Growth", Paris.

5.2 The disadvantages of competition restrictions

In the same way that it is clear that competition in business has a positive impact, it has also been established that competition restrictions may cause great damage to the public and the economy. Without competition codes there is increased risk of undesirable conduct among corporations and of job losses and reduced legal certainty for consumers.¹⁰⁶ Also, companies in dominant positions could drive lesser competitors out of the market and prevent new parties from gaining a foothold in the markets. If there were no rules to combat anti-competitive mergers, corporations might merge and create monopolies, thereby destroying all competition and consumer options in important markets. Competition restrictions that competitors are able to take up through restrictive agreements are particularly prone to cause great damage to the public and to the economy.¹⁰⁷

Institutions and scholars agree that price-fixing among competitors or collusion to keep new parties out of the market is very harmful and may be quite profitable for the relevant companies. Until recently it was considered cautious to consider the price rise of price-fixing to be on average 10 per cent of the sales price, and that the loss to society because of this form of collusion could amount to 20 per cent of the volume of the business transactions that were covered by the price-fixing.¹⁰⁸ Recent studies, however, indicate that these figures underestimate the loss to the public and the economy caused by the price-fixing.¹⁰⁹ A 2005 OECD report states that research indicates that illegal price-fixing may lead to prices being up to 60–70 per cent higher than they would otherwise have been.¹¹⁰ There is reason to believe that losses caused by price-fixing may be greater in smaller economies than in larger ones.¹¹¹

106 See, for example, the speech made by Neelie Kroes EU Commissioner for competition policies, "In defence of competition policy", 13 October 2008: "Without a solid competition policy such as this, the European economy would descend into chaos. With diminished incentives for companies to compete on their merits, cheating would be rewarded and go unpunished, jobs and wealth would be lost and consumers would lose protection as the law of the jungle ruled."

107 See, for example, US Federal Sentencing Guidelines: 2003 Federal Sentencing Guidelines. Chapter 2 Part R- Antitrust Offences: "...there is near universal agreement that restrictive agreements among competitors, such as horizontal price-fixing (including bid-rigging) and horizontal market-allocation, can cause serious economic harm."

108 A report on implementing the hard-core cartel recommendation and improving co-operation. OECD Journal of Competition Law and Policy, Volume 2/No. 2.

109 See e.g. Tackling Cartels, Simon Williams and Philipp Giradet, 22 February 2007 (published in <http://www.konkurransetilsynet.no>): "Academic studies have in the past suggested that cartel conduct imposes on average a surcharge around 10% on the price of goods or services supplied. Today the emerging consensus is that this figure is probably too conservative and that it is likely to be closer to 20–30% and can in certain cases be much higher still."

110 Cartels: Sanctions against Individuals (2005). Report issued by the OECD.

111 Primary assessment in the case E-4965/2005, dated 3 October 2008.

6. Challenges to competition policy

The preceding parts of this report, referring to economic evidence and past experience, show that anticompetitive and protectionistic measures may slow recovery and even prevent full recovery from the current financial and economic crisis. Less competition implies higher prices and less production, i.e. less economic activity. It also implies less innovation and restricts an effective restructuring of the economy.

Thus, the current economic crisis poses several challenges to competition policy. Some challenges are general to all the Nordic countries and some are country-specific. The challenges are listed in the following order. First general challenges related to mergers, illegal cooperation, abuse of dominance, public procurement, advocacy, state aid and challenges related to imposed and proposed measures to alleviate the crisis. Then follows country-specific sections.

6.1 Mergers

It is important to note that the same basic principles for analyzing a merger apply during a recession as an economic expansion. Notwithstanding, the *economic realities* of a financial and economic crisis is certainly relevant to the competition analysis.

When it comes to merger control, competition authorities may envisage an increased reference to the failing firm defence. The failing firm defence consists of showing i) that the firm being acquired would exit the market in the near future were it not for the merger; ii) that the firm is unable to reorganize its operations and iii) there is no less anti-competitive alternative purchase to the merger. Crisis notwithstanding, establishing the counterfactual is important in such cases. The crisis will inevitably increase the probability for firms exiting the market because of economic difficulties and reduce the probability for finding alternative buyers. The current circumstances do, however, not require a fundamentally different test than the one that has been applied in the past. Competition authorities may also experience a demand for faster procedures in non-problematic mergers. The rules have a built-in flexibility in these aspects and there is no need to adjust them. Every case is unique and must be analysed on its merits. Failing firms and indeed failing industries are not only present in recessions so competition authorities are faced with such cases even in good times. The only difference now is that the share of such cases may increase. The same case-by-case analysis can still be applied.

In some markets, the crisis makes it harder than usual to assess future competition by looking at past and present competitors. In a fast moving market, firms that were competitive a year ago may no longer exist.

Another issue that may call for a different approach is the treatment of remedies. It may be harder to find suitable buyers of divestments in structural remedies. This can increase the shares of behavioural remedies and outright prohibitions.

6.2 Illegal cooperation

Firstly, the crisis as such might affect the incentives for illegal price cooperation. Market cooling, underutilized capacity, and increased concentration are among the factors that contribute to this. It is, however, not obvious in what direction the incentives point, and the incentives might differ between continuous markets and bidding markets. Firms strive to make use of their capacity. In a downturn, competition may be fiercer when firms have to compete hard to sell their products. Another way to tackle falling demand is to engage in a coordinated reduction of the capacity, so the incentives to take part in

a cartel can also be strong in that respect in a downturn. Based on experiences from previous crises, in particular the great depression, it might also be that the incentives differ between new and incumbent firms, where the older or incumbent firms seek protection and might be tempted to resolve to cooperation instead of competing, and the new firms seeing and seeking new opportunities.¹¹²

The sudden drop in demand that many firms face at the moment may result in the collapse of some cartels. This could lead to an increase in the number of leniency applications. Competition authorities must have the capacity to handle this potential inflow of cases. On the other hand, studies of discovered cartels show that many cartels have been initiated in an economic downturn. If the perceived risk of detection is low, firms may disregard the illegality of cartels and see a cartel agreement as the best way to reduce overcapacity and reduce uncertainty. The crisis can also affect the notion of what are legitimate responses to the downturn. Competition authorities will certainly see arguments that firms must be saved from too hard competition. The costs of competition appear immediately whereas the benefits are delayed. The costs of restrictions of competition are less visible in the short run, but may hit severely in the long run. Competition authorities must remain vigilant and warn firms and politicians that cartels are never the solution to an economic crisis. Cartels are the most serious violations of the competition law because the loss for the public and the economy is considerable.

6.3 Abuse of dominance

Abuse of dominance occurs when a dominant firm adopts exclusionary business practices with the aim of eliminating or substantially lessening competition and excluding competitors. Abuse of dominance may entail different exclusionary practices, for instance predatory pricing, bundling and tying and refusals to deal.

There are several reasons why a recession may lead to more cases relating to abuse of dominance.

The rise in bankruptcies in various industries has led and will lead to increased concentration in some markets. The surviving firms may have an advantage when demand recovers and will have incentives to discourage new entry.

Moreover, firms' restricted access to credit may imply increased barriers to entry, which is something to take into account when analyzing markets. This could, for example, mean that large firms with good access to credits become dominant players and that it may become easier and cheaper for these firms to exclude others from the market. In countries with a depreciation of the currency, imports have become more expensive and are of less importance in the assessment of competitive pressure.

A recession will be tough on smaller firms with higher costs and weaker balance sheets than their bigger rivals. These firms may contribute with innovative new products and services, or act as mavericks limiting the bigger firms' ability to raise prices - if they can gain a foothold in the market. However, new and innovative firms are also particularly susceptible to exclusionary tactics by dominant firms.

Thus, more markets may witness dominant firms and dominant firms may more easily succeed with exclusionary tactics, i.e. abuse their dominance. Consequently, and especially during a recession when their smaller rivals are particularly vulnerable, the Competition Authorities have an important task in preventing dominant firms engaging in exclusionary behaviour.

112 See e.g. Hodne, F. (1981). *Norges økonomiske historie 1815-1970*, p. 511.

6.4 Public procurement

As substantial parts of the fiscal stimulus are channeled subject to public procurement, it might be needed to further underline the risk or propensity of cartel formation among participants in tenders. This means that work in providing instructions to public procurement officials on how to identify and prevent potential cartels is important.

Effective competition in the procurement process is vital in order to get the most out of the stimulus packages. Bid-rigging would reduce the positive effects of the stimulus. The more effective competition there is in the process the more e.g. infrastructure can be built.

Moreover, a consequence of the crisis is the opening up for the use of urgency – or accelerated - procedures in public procurement. In practice, this implies that the time from announcement to signing contract can be reduced from three to one month. The Commission and ESA have in this regard stated¹¹³ that; "...the exceptional nature of the current economic situation can justify the use of the accelerated procedure reducing considerably the overall time limit of the procedure from 87 days to 30 days. Such presumption of urgency should apply throughout 2009 and 2010 for all major public projects."

The use of urgency procedures obviously strains as well as increases the importance of professional procurement, not the least to detect attempts of bid rigging. To assist public procurers in this regard, competition authorities in several Nordic Countries have published check lists which provide advice on detecting warning signals as well as advice on how to design the tender to reduce the risk of collusion.

6.5 Advocacy

Public measures that imply a restriction or distortion to competition might be proposed and be more politically acceptable in times of crisis. The competition authorities will as part of their normal operations consider carefully all public measures, and will point to any negative effects in this regard. It is always an important task to work to raise public awareness on the importance of competition policy, and even more so in times of crisis. The last decades have seen reductions of inefficient forms of regulation and instead wide-spread regulatory reform for the benefit of consumers. The process towards enhanced competition can however be reversed unless competition authorities continue to advocate the virtues of competition.

Politicians desire to boost the domestic demand may result in policies that come close to protectionism.¹¹⁴ These measures must be kept under close scrutiny. The crisis is global and the solution is not to limit trade. Protectionist measures will only prolong the crisis.

Moreover, the incentives for illegal cooperation might be affected. As already mentioned, this will result in increased workload for competition authorities, but these measures must also be supplemented with advocacy efforts in the form of competition law awareness campaigns.

113 See e.g. Commission press release of 19 December 2008 available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/2040&format=HTML&aged=0&language=>.

114 "G20 leaders signed a pledge on 15 November 2008, to avoid protectionist measures. However, since then, several countries, including 17 of the G20, have implemented 47 measures whose effect is to restrict trade at the expense of other countries." Elisa Gamberoni and Richard Newfarmer, "Trade Protection: Incipient but Worrisome Trends" *Vox*, 4 March 2009, available at <http://www.voxeu.org/index.php?q=node/3183>

Finally, market structures and balances will be affected and competition problems may arise in markets which used to be competitive. Consequently, the competition authorities must ask how this will change priorities with respect to market studies and advocacy efforts.

6.6 State aid

Although the existing state aid programmes are scrutinized by the European Commission or the EFTA Surveillance Authority, attention needs also to be paid to the effects of the aid covered by the *de minimis* regulation (1998/2008). The threshold for this type of aid was increased to 500.000 euro per firm until 31. December 2010.¹¹⁵ The threshold was increased in order to, by necessary and proportional means, overcome undertakings difficulties in getting access to finance. This may constitute a relatively substantial advantage to a single firm in a narrowly defined market. In small economies like the Nordic countries, such an aid to one company in a market may severely distort the competition in the market.

We will see an increased pressure for state aid and other government interventions that may distort competition. Some groups point to the banking sector and argue that their sectors are equally important to save. Competition authorities will remind the politicians of the negative effects of granting state aid and imposing restrictions of competition. Recessions are temporary but restrictions of competition may last for a long time.

6.7 Imposed and proposed measures.

Restoring the confidence in the financial sector is necessary because of the systemic risks that occur when depositors withdraw their money, causing banks to hold back on lending to investors. Government measures to strengthen the financial stability should focus on restoring the confidence in the sector and rescuing of the banks whose failure would cause a systemic risk. The rescuing of financial institutions that are not vital to system may however cause concerns. These institutions, that without assistance would fail to survive, may with the help of the assistance distort the competition on the market. All new policy proposals should be assessed on competition grounds. The OECD competition assessment toolkit¹¹⁶ is a good guide.

If banks are taken over by the government, there is a risk that they will receive state aid and face less restrictive budget constraints to an extent that may distort competition on the market. Competition authorities may receive complaints from private firms competing with these players. It must be ensured that the government keeps the banks and firms separate from the other government operations.

Government measures to rescue firms or sectors in the real economy cannot be justified in the same way as the rescuing of banks. Whereas the collapse of one bank may cause other banks to collapse as well, the collapse of e.g. one car manufacturer would increase other car manufacturers' chances of recovery. Letting the current economic crisis drive out the inefficient firms may in fact shape better companies and promote the recovery from the crisis.¹¹⁷

115 For aid provided under a member state scheme notified to and approved by the Commission in accordance with the "temporary framework"

116 OECD competition assessment toolkit available at http://www.oecd.org/document/38/0,3343,en_2649_40381664_39680550_1_1_1_37463,00.html

117 "A recession can facilitate strong growth in long term productivity. Unlike a boom, when inefficient players may survive and even grow, an economic downturn will tend to drive out the less efficient market players. This process of creative destruction leaves a stronger and more efficient supply base, thus driving innovation and productivity growth in the next period of expansion. This is a reason why competition agencies should apply a rigorous failing-firm 'defence,' especially in a downturn." John Fingleton, CEO, Office of Fair Trading, "Competition Policy in Troubled Times," January 20, 2009, available at http://www.offt.gov.uk/shared_offt/speeches/2009/spe0109.pdf.

6.8 Denmark

Mergers. The Danish Competition Authority (DCA) has received a number of merger notifications, especially in the financial sector, as a direct result of the financial crises. The DCA has not complied to a more lenient merger control, due to the crises. Every merger case has been considered and analyzed to the same extent as in the absence of the financial crisis. A more lenient merger control would also effect the competitive environment in the longer run.

All notifications have involved small banks with market shares below five per cent as the target of the acquisition, and all of the notifications were approved without remedies. In addition, the DCA has approved an acquisition of a commercial bank by the Central Bank of Denmark. The DCA has not been presented with a failing firm defence as a result of the financial crisis. All proposed mergers have been approved without remedies. This reflects that only small banks needed to merge to avoid insolvency. In one merger case there was a need to react quickly to avoid a possible bankruptcy. The DCA may accept a failing firm defence in merger cases where the alternative is remedies or prohibition.¹¹⁸ However, it is the view of the DCA that if such a case arose, e.g. in the form of a large scale bank merger with likely anti-competitive effects, a more suitable outcome would be for the Danish government to acquire and operate the distressed bank until it could be sold with no or only negligible competitive concerns. In such a scenario the Government would be in a position to adhere to competition concerns to a far greater extent than would have been possible if an initial failing firm defence had been accepted by the DCA.

Advocacy. The DCA has increased its efforts concerning the public awareness on the positive impact of an intense competition. In May 2009 the DCA published the report "Konkurrence – vækst og velstand". The report makes it clear, that competition is crucial for productivity growth. Furthermore, the Danish government has announced that it will present a new competition strategy this autumn which will set the course of action in the field of competition in the coming years.

Imposed and proposed measures. As a result of the crisis the Danish government has on two occasions intervened to maintain the stability of the financial system. It is the view of the DCA that competition law should not be set aside during a systemic crisis. However, the DCA accepts that financial instability with possible detrimental economic consequences may warrant specific rescue measures. The use of such instruments should be conducted in the form of special legislation and should be temporary in nature. Hereby potential anti-competitive effects of rescue measures can be minimized.

On October 10th, 2008 the Danish parliament adopted legislation (in retrospect dubbed the *first bank package*) ensuring that all claims by depositors, debt holders (senior debt) and other simple creditors in Danish banks will be fully covered by a state guarantee until September 2010. On February 3rd, 2009 the Danish parliament passed a bill with the aim to preserve a sufficient capital base in Danish banks, (the *second bank package*).¹¹⁹

The first and the second bank package have been scrutinized by the European Commission with respect to conformity with the EC Treaty provisions on state aid. It is important that all measures used to countervail the effects of the financial crisis are temporary, objective, transparent, necessary, non-discriminatory and proportionate in order to avoid distortion of competition. These are the criteria applied by the European Commission to assess the conformity with the Community State aid provisions in order to prevent distortion of competition and trade.

¹¹⁸ Acceptance of the failing firm defence requires that a number of specific claims are fulfilled.

¹¹⁹ The second bank package has been slightly modified so that the banks are provided with an option to convert hybrid tier 1 capital into normal shares.

6.9 Finland

In Finland the competition policy does not appear to meet any country specific challenges. It is evident, that the economic crisis will bring along merger cases where performing a swift assessment of the effect of the merger to competition may be rather challenging, due to that the views of the contra factual may be very case specific and subjective. A new competition Law has been under preparation and is expected to be adopted in 2010. This will bring further challenges to the above mentioned merger assessments, as the new law updates the merger regulation and contains a merger test more similar to that of the EU Competition Law.

A second theme that may raise competition concerns refers to the State Aids in the context of the stimulus package. It is known, that the number of firms that have received state aid has not varied substantially, and there may be a need to ensure that such a pattern does not accumulate to distort the competitive process.

The threshold increase for unnotified aid under the “temporary framework” may constitute an additional challenge to safeguard the level playing field in relevant markets.

6.10 Greenland

The main challenge for the competitive policy of Greenland derives from the fact that Greenland's large firms are owned by the Government. This makes bailing out of firms more likely. However the newly elected government seems clear in their intentions to separate politics and business life.

One concern is that the Government appoints board members of the government owned enterprises, typically the chairman and 2 or 3 others out of 5 members. It has been claimed that nepotism or cronyism often have replaced professional qualifications as criterion for appointment but also on this point the new government is expected to ensure high professional standards.

As to the debate over the failing firm argument it is the opinion of the Competition Authorities of Greenland that firms should not be allowed to become so large that a bail out automatically occurs in times of crisis. If a firm reaches such a size, it should be broken up. In the current crisis we have witnessed that the confidence of large financial institutions in an automatic bail out rule completely contorted the incentive structures of these institutions and turned them into overly risk seeking agents. (One single institution, Lehman Brothers, was allowed to fail, yet this was probably a mistake considering the further contractive consequences for the credit markets.)

The Competition Authority of Greenland so far has experienced no pressure from the Government to administer rules more leniently in the face of the possible consequences of the crisis.

Greenland's banking sector is regulated by the Danish authority, Finanstilsynet, and private banks are covered by the two Danish bank aid initiatives – the Bank Rescue Package and the Credit Package (see the section on Denmark).

6.11 Iceland

The economic crisis in Iceland, beginning with the collapse of the three largest commercial banks in October 2008, as well as a sharp depreciation of the Icelandic króna, inevitably affects competition in Iceland. With drastic increases in corporate debt in the wake of the depreciation, a number of firms have already gone bankrupt and many others are technically bankrupt. Competition authorities are therefore challenged with enormous difficulties retaining active competition under these circumstances. Furthermore, the crisis has put and will continue to put, pressure on competition policy.

Advocacy - lowering barriers to entry is a priority. It is self-explanatory that the economic crisis has led to severe difficulties in many business areas and there is a real threat that important markets will see reduced numbers of participants because of financial difficulties. Competition restrictions and the presence of oligopolies may increase. This situation means that there is an urgent need to begin effective reconstruction of the Icelandic economy. In this regard it is very important to maintain and, as the case may be, promote competition.

In view of the present situation, the ICA has initiated actions to preserve and promote competition. To this end, the ICA published in November 2008 a detailed report No. 2/2009, *Vigorous development – the opening of markets and strengthening of economic activities*. The report emphasises ways to combat barriers to entry and barriers to expansion. The ICA takes the view that fighting/combating such barriers under the present circumstances will lead to many benefits for society. In the report 15 markets are analysed, identifying the main obstacles that new undertakings or smaller undertakings face when they begin operations or attempt to further establish themselves. Moreover, actions are pointed out that could remove these obstacles or reduce them. As a follow-up to the report, the ICA has initiated several investigations, where identified barriers to entry are addressed. Around 40 cases are currently being pursued in relation to barriers identified in the report.

Direct and indirect state ownership of undertakings affects competition. On the basis of the Emergency Act, enacted in early October 2008, the three biggest commercial banks were taken into government administration. Several other financial undertakings have applied for government assistance in accordance with the Act, which allows the state to contribute capital to banks, up to the value of 20 per cent of shareholders equity.

At the same time, many Icelandic undertakings are struggling with financial difficulties, some of them being taken over by the relevant state-owned banks. Under these circumstances the state-owned banks and relevant public authorities have extensive decision-making powers as concerns the future operations of many significant undertakings. The ICA has indicated clearly that the state-owned banks are independent undertakings and that the provisions of the Competition Act applies fully to them, i.e. ban on collusion, even though they are subject to the same ownership.

Furthermore, the ICA issued a formal opinion, No. 3/2008, *Decisions made by banks and government agencies regarding the future of companies in competitive markets*, as early as in the beginning of November 2008. In the opinion, banks and public authorities making significant decisions affecting competition, i.e. when restructuring undertakings, were asked to produce a competition impact assessment, taking into account the long-term interests of the public and the economy, in order to ensure the continued survival of active competition in the greatest possible number of markets in Iceland. The opinion includes ten principles that should be given consideration when assessing the impact of important business decisions to competition. These principles are supplementary to the statutory powers of the ICA, e.g. in the case of mergers.

The reorganisation and ownership structure of the state-owned banks is being developed by Icelandic authorities. Furthermore, there is direct state-involvement in the restructuring of distressed enterprises, as a bill of law allowing for the establishment of a public management company has been passed. The ICA has, in this process, stressed the need for competition under these circumstances and opposed any ideas resulting in competition restrictions.

The high degree of direct or indirect state involvement in the financial sector as well as in other markets, calls for speculations and complaints on discriminative actions of public or state-owned bodies and other distortions to competition. Some of these are in the domain of state aid. Complaints have been brought before the EFTA Surveillance Authority.

Merger control. During the past few years the number of merger notifications has indicated a move towards higher concentration. In 2006, 30 decisions were made in merger cases, 47 in 2007, 40 in 2008 and 8 in the first six months of 2009. According to these figures, the early phases of the crisis resulted in fewer merger notifications. As banks are seizing control over many undertakings struggling with financial difficulties, the ICA has for the past few weeks experienced an increase in notified mergers. A continuation of this development is expected, as restructuring of business undertakings, controlled by the state-owned banks, escalates.

Mergers otherwise harmful to competition can be accepted, according to Icelandic law, on grounds of the failing firm doctrine or in relation to efficiency arguments. The underlying tests are identical to failing firm and efficiency tests applied by the EU Commission. It is the opinion of the ICA that there is no reason to believe that these rules need reconsideration due to the crisis.

So far two mergers have been accepted on grounds of the failing firm doctrine, as the ICA accepted the merger of Kaupþing with one of the largest savings banks, SPRON, as well as with a smaller savings bank, SPMýr, in October 2008, just before the banking collapse. In other cases the failing firm defence has been rejected as being insufficiently founded.

There are a few examples of a lack of notification of mergers to the ICA. This can create unnecessary harm to competition and additional workload.

Illegal cooperation. The ICA has seen an increase in requests by competitors for an exemption from prohibition against anti-competitive agreements, especially in the financial market. The ICA has granted such exemptions when necessary, due to urgent consumer needs. In alignment with the Competition Act these exemptions are limited to the extent possible. In general such requests will not be treated differently because of the crisis.

Under current circumstances in Iceland, undertakings in distress can easily resort to illegal cooperation to improve their financial situation. The ICA considers it to be highly important to discover and eliminate hard core cartels at times like these. It is also important that the ICA surveys co-operation amongst competitors that distort competition by effect.

Abuse of dominance. Traditionally and as a result of the economy's relatively small size, many important markets in Iceland are of an oligopolistic nature. Changes in ownership of companies, restructuring and bankruptcies of competitors are likely to worsen this situation. Furthermore, undertakings considered to be dominant can under the current circumstances resort to abusing their position to improve their situation. Since abuse of dominance is usually to the detriment of society and consumers, it is important that the ICA monitors possible abuses of dominant positions at times of crisis.

Public procurement. The ICA is not responsible for supervising public procurement. Despite that the ICA intends to play an important advocacy role in the field of public procurement. It is important to acknowledge that effective competition in the procurement process is essential in times of crisis, where public and state-owned bodies play an important role in revitalizing the economy.

Furthermore there is need for supervising and identifying possible cartel formations among tenders, taking into account that many undertakings are basing their livelihood on being successful as tenders in the procurement process.

State aid and intervention. The ICA is not solely responsible for state aid issues. Before the ICA can rule on state aid the EFTA Surveillance Authority has to give its opinion about it.

However, the ICA can intervene if; a) the Government is active player in a competitive market the ICA can decide that it has to separate its competitive operations from other operations b) the Government takes actions that have a detrimental effect on competition and are not based on a special legal provision. Also, the ICA can direct to the Government an opinion where the view of the ICA is expressed regarding competition problems.

Box 9

Ten principles from the ICA to the state-owned banks - opinion No. 3/2008.

1. If two or more possible measures are being considered (e.g. measures relating to corporate reconstruction) , then those measures should be selected that enhance competition or restrict competition the least.
2. If possible, measures should not result in increased oligopoly, and undesirable corporate cross-management and cross-ownership ties should not be established in the affected markets. This is particularly relevant in markets that are of key importance to the economy and/or where barriers to entry are significant.
3. The scope available to reduce oligopoly, barriers to entry, undesirable management ties and cross-ownership or market domination should be used to the extent possible. This will make it possible to observe in the long term whether it may be reasonable to split up companies rather than merge them.
4. Care should be taken that undertakings are not discriminated against in an unfair manner.
5. The operation or financial restructuring of two or more competitors who are customers of the same bank should not be undertaken by the same party on behalf of the banks. At the same time, the ownership role and the service role of banks must be kept separate. For example, different interests should be managed by the establishment of holding companies or operating companies.
6. If companies or their assets are offered for sale, it should be ensured that all prospective buyers have an equal opportunity to bid and that buyers are selected on the basis of objective criteria. Efforts should be made to the extent possible to keep the process open and transparent.
7. Opportunities should be created for new parties and, as the case may be, foreign investors, to enter markets, e.g. by purchasing companies or assets.
8. When rescuing undertakings, a decision should be taken in regard to the feasibility of creating room for the entry of new undertakings for the purpose of increasing competition. For example, when banks bring new share capital into companies, this could entail the share of the former owners being reduced or eliminated.
9. In connection with all major arrangements or measures that have an impact on the operation of a business concern in Iceland, there should be an assessment of the competitive impact of the arrangements or measures. In order to ensure the effectiveness of such an assessment, it is desirable that a person be appointed who is knowledgeable of competition issues to supervise and, as the case may be, take part in the decisions. It is preferable that this person is independent.
10. In order to ensure transparency and to preclude suspicion, the process involving corporate restructuring and other important measures should be recorded, e.g. by the party appointed pursuant to principle 9.

Box 10

Main conclusions of report No. 2/2008 - Vigorous development, opening of markets and strengthening of economic activities.

- The banking crisis means that there is an urgent need to begin effective reconstruction of the Icelandic economy. In this regard it is very important to maintain and, as the case may be, promote competition.
- In view of the present situation, the ICA initiated discussions on how to preserve and promote competition with its report.
- The report emphasises ways to combat barriers to entry and barriers to expansion. The ICA takes the view that fighting/combating such barriers under the present circumstances will lead to many benefits for society.
- In the report 15 markets are analysed, identifying the main obstacles that new undertakings or smaller undertakings face when they begin operations or attempt to further establish themselves. Moreover, actions are pointed out that could remove these obstacles or reduce them.
- It is also pointed out in the report that it would be prudent for the Government to perform an evaluation of the competitive implications in preparation for enactment of new law, administrative directive or decision. It is important that competition assessment is performed for the purpose of promoting the opening of markets and innovation.
- The report also discusses innovation and entrepreneurship where, in the same manner, obstacles are identified and recommendations made for improvements.
- Furthermore, the report discusses experience in other countries of the importance of competition in economic depressions and what lessons may be learned.
- The recommendations and ideas deal both with the activities of public entities and private undertakings, and some of these recommendations can be incentives for the relevant bodies to take positive action on their own initiative that serve to bolster the economy. As a follow-up to the report the ICA has taken up several cases and investigations, as well as advocacy actions.

6.12 Norway

Merger control. Based on the dramatic changes relating to major international banks and finance institutions since 2007, it was actually expected an increase in merger and acquisition activity in this sector also in Norway. This did not happen. As Figure 12 clearly shows, the number of merger notifications has been significantly reduced throughout 2008, but the decline seems to have stopped somewhat in 2009.

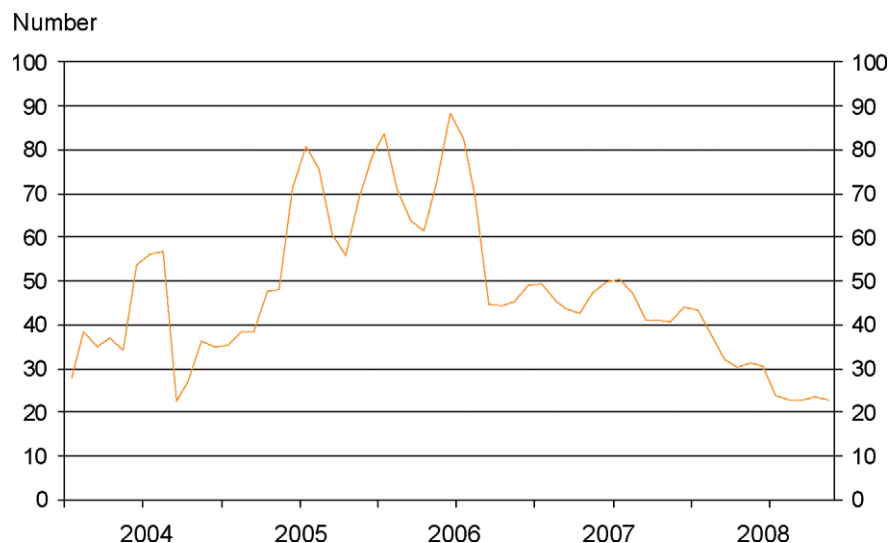


Figure 12. Merger notifications in Norway, monthly running average¹²⁰

Source: Konkurransetilsynet

As the crisis evolved and deepened, the NCA expected to be challenged on particularly two specific merger related issues:

- i) the failing firm defence and
- ii) the implementation prohibition in section 19.¹²¹

The failing firm defence has so far not been invoked. Apart from the Glitnir collapse which led to Glitnir ASA being bought by banks in the Sparebank 1-alliance, and that RS Platou ASA took over Glitnir Securities AS in 2008, no notified mergers in the financial sector can be clearly related to the financial crisis. It can be mentioned however, that even though none of the above mentioned cases were challenged by the NCA as such, or the failing firm defence invoked, an infringement fine was imposed on a firm for infringing the implementation prohibition in section 19 in the Norwegian competition Act. The firm chose to implement the transaction and immediately notify the NCA that the transaction was implemented in breach of section 19.

However, the same section in the Competition Act also state that the Competition Authority can make exemptions from the prohibition against implementation in individual cases. Exemptions have been granted in a few cases in the first part of 2009, which illustrates that the NCA has the necessary tools to act expedient in merger control in times of crisis.

The increase in bankruptcies has led banks to enforce its security interests in different companies. This is, however, not something that so far has happened to a worrying degree, neither has it led to an increase in concentration creating or strengthening a significant restriction of competition.

Finally, it can be mentioned that the NCA anticipated that the financial crisis could imply some challenges relating to implementing required structural remedies.

Illegal cooperation. Thus far the tendency relating to approaches to the NCA with information on potential section 10 (collusion) or 11 (dominance) cases seems to be that these have been declining. To what extent this is symptomatic or random, is difficult to decide at this point.

However, an overall fiscal stimulus in 2009 amounting to 55 bill NOK or 3.0 per cent of mainland, non-oil GDP from 2008 to 2009, consisting of i.a. an increase in the communications budget, increases in municipal budgets as well as many new major construction projects, will obviously imply challenges both relating to potential bid rigging as well as public procurement.

As an effective competitive process in markets in general and tenders in particular, is a prerequisite for efficient use of the crisis measures and means, the NCA budget was increased extraordinarily by almost 3 MNOK in 2009 in order to intensify the fight against cartels. This increase will result in increased investigating capacity, intensified market surveillance as well as information campaigns. This extra funding supplemented the more than 4 MNOK allocated extraordinarily in 2008.

120 Running average over three months. The significant drop between 2006 and 2007 is due to a change in notification rules effective from January 1st, 2007.

121 This section states that concentrations can not be implemented before the deadline to order submission of a complete notification has expired. If an order to submit a complete notification is received by the parties, or a complete notification is submitted, the concentration can not be implemented until the Competition Authority has processed the case.

Abuse of dominance. In the first quarter of 2009, the number of bankruptcies in Norway was 1418, a rise of 88 per cent compared with the same period last year (see Figure 5). The result of these structural changes will inevitably be increased concentration, notably in some sectors and some local markets, and in the longer term it may even raise issues of dominance and abuse. However, and as alluded to above, thus far the NCA has not seen any increase in approaches to the NCA with information, neither on potential section 10 (collusion) nor on section 11 (dominance) cases. Nevertheless, a challenge will be to follow the development in the most important markets closely to discover potential competition concerns and problems as early as possible.

Central and local government procurement. As mentioned above, the measures to counteract the crisis in Norway imply a significant increase in public expenditures, i.e. on minor and major construction projects, at the state as well as a municipal level. The use of urgency procedures obviously strains as well as increases the importance of professional procurement, not the least to detect attempts of bid rigging. To assist public procurers in this regard, the NCA issued in February a check list which provides advice on detecting warning signals as well as advice on how to design the tender to reduce the risk of collusion.

Advocacy. It is always an important task to work to raise public awareness on the importance of competition policy, and even more so in times of crisis. The Norwegian Competition Authority soon realized that competition policy could be put under pressure as the financial and economic crisis evolved. Thus, in the fall and winter of 2008/09 the media strategy resulted in several feature articles and interviews in the major business newspapers with warnings on the dangers of using the crisis as an argument to be more lax on competition policy. The NCA also hosted a conference in the spring of 2009 on competition policy challenges in a globalised economy, where the Minister of Government Administration and Reform Heidi Grande Røys repeated the warnings.

Nevertheless, the NCA has identified some specific potential crisis related challenges involving advocacy. First of all, public measures that imply a restriction or distortion to competition might be proposed and be more politically acceptable in times of crisis. The NCA will as part of its normal operations - and is obliged by the competition law to do so - consider carefully all public measures, and will point to any negative effects in this regard.

Moreover, the incentives for illegal cooperation might be affected. As already mentioned, this has resulted in increased investigating capacity, and these measures have also been supplemented with advocacy efforts in the form of competition law and leniency awareness campaigns.

Finally, market structures and balances will be affected, and consequently, the NCA must ask how this will change priorities with respect to market studies. It can for instance be mentioned that preliminary figures indicate that low price grocery chains have strengthened their position in the grocery market. This has, however, thus far not affected focus or priorities.

State aid. State aid is not a specific NCA responsibility. This is, however, an area where both the EU Commission and the EFTA Surveillance Authority have important responsibilities. The main task of the EFTA Surveillance Authority is to ensure that the EEA rules are properly enacted and applied by the EFTA States. The EEA state aid rules aim at ensuring that conditions of competition are equal and not distorted by State measures favouring certain industries or enterprises. The responsibility of the EFTA Surveillance Authority and the EU Commission in this regard is particularly pertinent in times of crisis.

Challenges due to imposed and proposed measures. One important task for the NCA is to assess to what extent there are any restrictive effects on competition of imposed and proposed measures. So far, none of the crisis measures have been explicitly scrutinized by the NCA.

However, some of the Norwegian measures have been or will be treated by ESA – the EFTA Surveillance Authority. This applies to Credit package I and II. Funding measures relating to Eksportfinans ASA and Innovasjon Norge to help businesses deal with the current economic crisis have also been assessed and not found to constitute problematic state aid within the meaning of the EEA Agreement.

6.13 Sweden

The Government measures to strengthen the financial stability have been scrutinized by the European Commission with respect to conformity with the EC Treaty provisions on state aid. It is important that all measures used to countervail the effects of the financial crisis are temporary, objective, transparent, necessary, non-discriminatory and proportionate in order to avoid distortion of competition. These are the criteria applied by the European Commission to assess the conformity with the Community State Aid provisions in order to prevent distortion of competition and trade.

The stability program is open for all banks. There have not been any major mergers in the sector yet. The nationalized investment bank Carnegie is now back in private ownership. One challenge is the instruction to the state owned firms in the sector to compete with private companies to a greater extent than before the crisis. We will monitor them in order to make sure that there is no unfair competition.

So far, the Swedish government has resisted the demands of state aid for distressed industries¹²², but with an upcoming election next year there is a risk that politicians on local and central level will soften. As competition authority, we will remind the politicians of the negative effects of granting state aid. The Swedish Competition Authority has however no mandate to control state aid. We have proposed to the Government further study whether to introduce state aid control on state aid below the EU threshold.

¹²² A possible exception is the automotive industry. The proposed loan guarantees have been scrutinized by the European Commission.

7. Summary, conclusions and recommendations

There is a clear rationale for the Nordic countries to share a common view on the role and importance of competition and active competition policy in the present economic crisis. Being relatively small and open economies, the international competitiveness of our economies is vital to protect and sustain the Nordic welfare model. This competitiveness is preserved or improved, when we both allow and provide incentives for mechanisms that increase both productivity and innovation in our economies. There is enough evidence for us to argue, that protection of competition is a proper means to serve these ends. A strong policy is the common view of the Nordic competition authorities on the merits of competition, most importantly in a time of crisis.

As in a large part of the world, the Nordic countries - and Iceland in particular - have experienced a serious economic downturn in the wake of the financial crisis. Businesses struggle to keep their operations going and to preserve their assets in a climate where financing was hard to come by. Important markets have seen and will probably see a further reduction in the numbers of companies because of bankruptcies. Competition restrictions and oligopolistic markets may arise, and protectionist measures may be tempting to call upon.

The international financial crisis has had serious consequences for a number of financial institutions. In order to stabilize financial markets and banks and to facilitate financing for businesses in the current situation, the EU has provided opportunity for Member States to adopt temporary aid measures that can be used for a limited period. It is important that the new measures, adopted in the Nordic countries to counter the effects of the crisis are temporary, so that these initiatives do not ultimately inhibit competition in the banking and finance sector and in other parts of the economy.

There is nothing to suggest that competition in itself has caused or contributed to the crisis. On the contrary, academics who have assessed other economic crises have pointed to the importance of competition for the speedy economic recovery of the state in question.¹²³ The impetus for rationalisation and innovation that comes with the discipline of competition is considered to be of great importance.¹²⁴ In this respect one may also take into account the emphasis the EU Commission has placed on the importance of competition and competition codes in view of the economic difficulties that the European nations are now faced with.

This report has substantiated why, during the global economic crisis, continued and watchful competition enforcement is important to boost recovery from the crisis. The crisis is global and the report underlines that the solution is not to limit or distort competition or trade. Protectionist measures will only prolong the crisis, and state aid initiatives must comply fully with EU/EEA rules and guidelines. The result: A sound competitive environment with efficient firms well suited to compete in global markets can only be achieved if we actually succeed in facilitating competition through vigilant enforcement and advocacy of competition.

123 See Kehoe & Prescott, *Great Depressions of the Twentieth Century*, *Review of Economics Dynamics*, vol. 5, issue 1 2002.

124 In this respect you can take into consideration that Porter a.o. have pointed out that in the wake of the economic difficulties in Japan only those industries in Japan that were confronted with domestic competition have been able to compete in the international market. See Porter, Takeuchi & Sakakibara, *Can Japan Compete?*, MacMillan Press 2000.

Consequently, the Nordic competition authorities unanimously stress that effective competition is important to boost the recovery from the crisis, and create a better basis for employment and long term growth. Competition policy is an important and integral part of the solution to the problem.¹²⁵

Box 11

The importance of competition to recover from the crisis

- Competition contributes to economic growth and increases welfare.
- Experiences from the United States, the Nordic countries and elsewhere show that:
 - Actions to restrict competition prolong economic difficulties and work against recovery.
- The importance of effective competition increases when nations are confronted with economic crises.
 - Actions that maintain or promote competition contribute to a speedier recovery in the economy.
- Because policies to counter the crisis unnecessarily or unintentionally may hinder the competitive process, it is important in times of economic downturn to review policies and regulations to:
 - Identify those that may hinder the process of competition and to
 - Improve such policies so that competition is not unnecessarily prevented.
- In particular, the Nordic competition authorities recommend that state, regional and local authorities:
 - Reconsider regulations that imply barriers to entry as well as consider opportunities to stimulate entry by new actors.
 - In circumstances where regulations cannot be avoided, policymakers should seek the least anti-competitive alternative that would achieve the policy goal.

One of the objectives of this report is to be more specific on the role competition policy can and should play in recovering from the financial and economic crisis.

To answer this question, we have looked back at experiences from previous economic crises, the interrelation between competition policy, innovation and economic growth, and we have seen how competition policy so far has been challenged in the Nordic countries during the financial and economic crisis.

When faced with the implications of a financial or economic crisis, governments take actions in order to limit the negative effects of the crisis. Thus, one of the challenges faced by the competition authorities is to assess the implications of imposed and proposed measures to deal with the crisis, and the ramifications that these measures have - good or bad - from a competition policy point of view.

Decisions relating to the crisis may have a negative impact on the future competitive environment and thus on the functionality of important markets as well as the whole economy. Measures must be consistent with long-term goals. Today's solutions must not be tomorrow's problems. It is therefore essential that a professional and transparent procedure for such decisions is formed. The Nordic competition authorities therefore advise that the following points are taken into account when measures to combat the economic crisis are being considered:

¹²⁵ See the speech made by Neelie Kroes EU Commissioner for competition policies, In defence of competition policy, 13. October 2008: "As we face the uncertainty of this financial crisis, we are fortunate to know that competition policy not only has a proven track record, but is proving to be part of the solution. ... In the clearest possible terms I say that competition policy is here for consumers, here for jobs, here for growth and here to stay."

Box 12
Government measures to deal with the crisis

- In preparation for the enactment of new measures, laws or administrative directives to deal with the crisis, an evaluation of the competitive implications should be performed. Measures should not distort or weaken competition by:
 - Reducing the number of companies or raising barriers to entry.
 - Limiting the ability of companies to compete, for instance by imposing measures that benefit some companies but not others.
 - Limiting the incentive for companies to compete, for instance by exempting the activity of a particular industry or group of suppliers from the operation of general competition law.
- The Nordic competition authorities will as part of their normal operations carefully assess all proposed measures, and will call attention to any restrictive effects on competition.
- The Nordic competition authorities stress the importance of temporary measures and government involvement being temporary, and that public stakes are sold back to the private sector:
 - in a time frame that is reasonable and
 - in a way that is transparent and where
 - competition is stimulated and
 - create room for new entrants.
- Government involvement must include a clear exit strategy.

As it has been presented in section 2 in report, all the Nordic countries have, in addition to the systemic crisis in the financial sector, experienced a growth in bankruptcies as the financial and economic crisis evolved. Thus, when it comes to merger control, competition authorities envisage an increased reference to the failing firm defence. Some of the Nordic competition authorities have also experienced a demand for faster procedures in non-problematic mergers and acquisitions of assets of bankrupt firms.

As it has been stressed in the report, existing competition law in the Nordic countries has built-in flexibilities in these aspects and there is no need to adjust it. Every case is unique and must be analysed on its merits. Failing firms and indeed failing industries are not only present in recessions, so competition authorities are faced with such cases even in good times. Thus the normal case-by-case analysis will be applied.

Nevertheless, the competition authorities must on their own adapt to new realities with flexibility and resources to handle emergency decisions.

Box 13
Mergers and acquisitions

- When necessary, for instance to secure continued operations, the Nordic competition authorities will be flexible, expedient and allocate the necessary resources to the assessment process to achieve this goal.
- To the extent mergers are required as a prerequisite for bailout, for instance in the banking sector, the Nordic competition authorities will treat these cases expediently, but according to the normal principles of assessment.
- Mergers and acquisitions will be assessed according to the normal criteria for assessment. Mergers or acquisitions that imply a significant restriction of competition will not be accepted.
- To the extent the failing firm defence is asserted, it must be clearly substantiated by the parties, and the cumulative requirements must be fulfilled:
 - the company must undoubtedly be on the way to bankruptcy;
 - no better alternative buyer from a competition point of view can be found and
 - bankruptcy is not a better alternative from a competition point of view

With falling demand, many firms strive to make use of their capacity. Consequently, firms may have an incentive to compete more fiercely to sell their products. Thus, the sudden drop in demand that many firms face may result in the collapse of some cartels. This may lead to an increase in the number of leniency applications. Under the economic recovery, however, incentives might be reversed again.

However, and as history has taught us, another way to tackle falling demand is for the incumbent industry to engage in a coordinated reduction of capacity. Some may even be tempted to argue that firms must be saved from too hard competition and lobby that cartel-like agreements are the best way to reduce overcapacity and reduce uncertainty. The increases in bankruptcies we have witnessed the last year also imply increased concentration, notably so in some industries and in some markets. In addition to the temptations posed by the financial packages stimulating demand to boost the recovery from the crisis, with i.a. major new public construction projects, these structural changes may have implications for the possibilities and incentives to collude.

In addition to the negative effects on consumers as well as delayed crisis recovery, it is important to remember that restrictions of competition might have severe long run effects. It is therefore vital that there is widespread understanding that cartels are never the solution to an economic crisis.

Box 14

Prohibited restrictions of competition

- Based on experiences, increased concentration, notably in some sectors and some local markets, is expected due to firms exiting the market. The Nordic competition authorities will:
 - Monitor market changes closely and continuously to assess consequences of changes on opportunities and incentives for collusion or abusing a dominant position
 - Be flexible on priorities and follow up with intensified surveillance where necessary
- To achieve maximum effects of financial stimulus packages and create new employment and business opportunities, the Nordic competition authorities stress the importance of effective competition in local, regional or state procurement
 - Local/ authorities are advised to use a checklist to detect illegal cooperation and bid rigging in procurement (see Box 15 below)
- The Nordic competition authorities will react if illegal cooperation in tenders is suspected
- The Nordic competition authorities have all implemented leniency programs, and the first company that cooperates and meets the requirements will be exempted from fines

A part of the fiscal packages to stimulate demand in the Nordic countries will be reflected in public construction projects at the state, regional or municipal levels. Effective competition in the procurement process is of utmost importance to get the most out of the stimulus packages. Bid-rigging would reduce the positive effects of the stimulus and delay recovery from the crisis.

There is a continuous need to inform of the risk and propensity of cartel formation among participants in tenders. In these times with major financial stimulus packages coming up, this work on providing information to public procurement officials on how to identify and prevent potential cartels will be particularly important.

Box 15

Public procurement

- To achieve maximum effects of financial stimulus packages and create new employment and business opportunities, effective competition in local, regional or state procurement is vital
 - Local/ authorities should implement necessary measures to secure effective competition and stimulate new entrants
- Local/ authorities are advised to use a checklist to detect illegal cooperation and bid rigging in procurement
 - FCA has instructed the Association of Finnish Local and Regional Authorities on cartels and how to identify them in public procurement:
http://www.kunnat.net/k_perussivu.asp?path=1;29;349;4332;110026;51293;39005
 - A checklist in Norwegian can be found here: http://www.konkurransetilsynet.no/ImageVault/Images/id_1802/ImageVaultHandler.aspx
 - A checklist in Swedish can be found here:
http://www.konkurrensverket.se/t/Page____385.aspx
 - The OECD checklist can be found here:
<http://www.oecd.org/dataoecd/27/19/42851044.pdf>
- The Nordic competition authorities stress the importance of adhering to public procurement law and regulations
- Urgency procedures should not be applied in a way that lessens or restricts competition or transparency
- Public procurers should be explicitly aware of the potential for collusion, and the Nordic competition authorities can provide advice on how to detect and avoid this.

As the crisis has evolved, the Nordic competition authorities have witnessed and still expect an increased pressure for state aid and other government interventions that may distort competitions. Groups point to the banking sector and argue that their sectors are equally important to save.

Recessions are temporary but restrictions of competition may last for a long time. The existing state aid programs are scrutinized by the European Commission and the EFTA Surveillance Authority. The Nordic competition authorities will draw attention to some general and important principles that are important to consider in the design and thinking behind all potential schemes.

Box 16
State aid

- It is important that state aid comply with EU/EEA rules and guidelines.
- Government policies relating to state aid or restructuring should be applied in a way that is non-discriminatory and targeted at creating viability respecting community/EEA rules in order to minimize distortions to competition and trade
- Government measures to stabilise financial markets should be restricted to financial healthy undertakings whose failure could cause a systemic risk, and be focused on restoring the confidence in the sector and the stability in financial markets.
- The rescuing and restructuring of financial institutions must take into account and balance the effect of distorting competition and trade.
- Even small amounts of temporary aid, including schemes covered by de minimis regulation, that are potentially distortive should be avoided if their effects are not thoroughly assessed
- If government intervention results in a governmentally controlled entity becoming an active participant in the market, it must be ensured that the competitive entity is kept entirely separate from other government operations and is operating on market terms.



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