

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**ROUNDTABLE ON COMPETITION ISSUES IN FOOD CHAIN INDUSTRY**

-- Note by Norway --

*This note is submitted by Norway to the Competition Committee FOR DISCUSSION under Item XII at its forthcoming meeting to be held on 30-31 October 2013.*

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## ROUNDTABLE ON COMPETITION ISSUES IN FOOD CHAIN INDUSTRY

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### 1. Introduction

1. The food chain industry in Norway has attracted a lot of attention over the past few years. One important reason is that consumers in Norway face the highest prices in Europe on food and non-alcoholic beverages. In addition the Norwegian consumers have smaller range of products to choose from. Important explanations for this picture are high cost and tax levels as well as high import barriers for agricultural products. Because of the import protection, the volatility in world market prices of commodities will only to a small extent affect commodity prices in Norway.

2. The Norwegian food markets are small and concentrated at both the supplier and retail level. As in many developed countries, the retail sector in Norway has undergone a significant transformation over the last two decades, mainly driven by economies of scale in retailing. This trend has shifted the bargaining power from suppliers to retailers. When the retailer's increased buyer power is exercised as a countervailing power to achieve better prices and from suppliers, and the savings are passed on to the consumers, buyer power has beneficial effects for consumers.

3. However, consolidation at the retail level also has the potential to raise horizontal and/or vertical competition concerns. Moreover, suppliers in particular have raised questions of whether there exist unfair trading practices between suppliers and retailers.

4. Section 2 describes the policy framework as well as recent trends in the food chain in Norway, while section 3 focuses on developments in concentration at different levels of the value chain. Section 4 discusses the enforcement of competition law in the food sector in past few years, focusing on recent cases and how competition law can address issues related to buyer power. Recent sector reviews are also described. Section 5 shortly summarizes the Competition Authority's (the NCA's) advocacy role in the food markets in recent years.

### 2. Trends in recent years

#### 2.1 *Background – the agricultural policy in Norway*

5. The functioning of the food supply chain in Norway is closely linked to agricultural policy. Important policy tools are tariffs on a wide range of products<sup>1</sup>, an exemption from the Competition Law for agriculture and the determination of prices on a range of commodities set in yearly negotiations between The Ministry of Agriculture and Food and the farmers' organizations. In addition, some of the large suppliers, often with market shares above 50 %, are given the role of regulating the production volume in the market. In some markets and segments large suppliers have lost market shares due to stronger

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<sup>1</sup> E.g. milk, cheese, meat, grain, fruit and vegetables.

competition from private labels and vertically integrated retailers. However, in other segments and markets, the largest suppliers maintain high market shares above 80 %.

## **2.2 *How international commodity prices affect prices in Norway***

6. The regulations mentioned above may shelter a number of commodity markets in Norway, such as meat, milk, eggs, grain and fruit and vegetables from price shocks in foreign markets.<sup>2</sup> As a consequence, retail prices will not fully reflect changes in world commodity markets for many products in Norway. Nevertheless, Norway still needs to import other products, such as coffee, sugar and spices. For such commodities, price increases on the world market will have a direct effect on Norwegian suppliers' input costs.

7. Another group of products that could be affected by an international price increase is the so-called industrial processed commodities. In Norway differences in input prices (prices on commodities) between Norwegian and foreign processed products traded in Norway are leveled out through a specific regulation on industrial processed commodities. When prices on such commodities increases on the world market, the subsidy transferred to Norwegian suppliers for using Norwegian commodities in the production process will decrease. Hence, the Norwegian suppliers who benefit from this regulation will face higher prices on commodities when international prices increase.

8. Moreover, the supply of certain commodities in Norway, such as grain, is not sufficient to meet the domestic demand. Whether increases in prices on grain on the world market will have an effect on the prices faced by Norwegian suppliers, depends on the Norwegian price level on grain compared to the price on the world market. Generally, the price level on Norwegian grain has exceeded world market prices. Under such circumstances there is a tariff on imported grain, and foreign price increases will not affect the Norwegian price level. However, if the foreign price level exceeds the level in Norway, which was the case in 2008, the tariff will be removed and the total effect on prices in the Norwegian markets will among other things depend on the share of imported grain.

9. In 2009 the NCA did a comparative study of the development in retail prices in Norway and other Nordic countries.<sup>3</sup> The study was done after the world commodity price spikes in 2007 and 2008. On an aggregated level, the retail prices in Norway increased less than in the other Nordic countries. This may indicate that changes in world commodity prices affect retail prices to a lesser extent in Norway than in other Nordic countries.

## **2.3 *The monitoring of food prices in Norway***

10. The Norwegian Agricultural Economics Research Institute (NILF), an independent research institute under the Ministry of Agriculture and Food, monitors foreign and domestic food prices at different levels of the supply chain. Information on the development in prices is published monthly.

## **2.4 *Trends in the retail market***

11. During the last 20 years the retail sector in Norway has grown substantially and expanded both horizontally and vertically. Today there are five grocery retail chains in Norway, see Box 1 for detailed overview of each chain. Each of the four largest chains has its own integrated wholesale business, and

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<sup>2</sup> In order to allow Norwegian producers to maintain prices on an appropriate level, a few modifications have been implemented in how tariffs are calculated in recent years. The modifications have resulted in a stronger protection from foreign competition for raw milk and cheese in Norway.

<sup>3</sup> The other countries in the study were Sweden, Denmark, Iceland and Finland.

there are no independent wholesalers. The grocery retail market is highly concentrated compared to most European countries. However, the concentration is quite similar to the other Nordic countries.

12. A study<sup>4</sup> from 2011 suggests that the productivity growth in the Norwegian retail sector has been high compared to other sectors. It is likely that the productivity growth could be explained by the consolidation in the market.

13. Another trend is an increase in private label products. However, even though the market share of private labels varies between different markets and segments, it is still relatively low in Norway compared to other European countries. The overall share was 12.6 % in 2012, increasing from 6 % in 1996 and 9.8 % in 2008.

14. Discount supermarkets have also continued to expand and increase their markets shares. In 2012 discount chains had a market share of 57.4 %, increasing from 52.7 % in 2010.<sup>5</sup>

15. Following the increase in concentration at the grocery retail level in Norway, the government has initiated studies on the functioning of the value chain, focusing on the relationship between retailers and suppliers. Based on these studies, a new Act on negotiations and fair trading practices in the grocery sector has been proposed, see chapter 0 and 0 for a closer description of the proposed act. The government has also proposed a grocery web portal to improve the consumers' opportunities for checking assortment, quality and prices.

#### **Box 1: The retail chains in Norway**

##### **Norgesgruppen ASA (Norgesgruppen):**

Norgesgruppen is the largest retail chain in Norway. It has different concept stores; discount store chains, convenience store chains, supermarket chains and hypermarket chains. Noregsgruppen owns the chain concepts Meny, Ultra, Kiwi and Kjøpmannshuset. Kjøpmannshuset owns and operates the chain concepts Spar and Joker. Outlets are partly owned by the shopkeeper and operated by franchise contracts.

Through the company ASKO Norge AS, Norgesgruppen is active on the wholesale level.

Norgesgruppen is also active in some supply markets, mainly in the segments of fruit and vegetables, coffee and bakery products.

##### **Coop Norge (Coop):**

113 cooperatives are owners of the joint organization, Coop. The cooperatives are independent legal entities and owned by the members.

Coop has different concept stores; discount store chains, convenience store chains and hypermarket chains. The stores are named Coop Prix, Coop Extra, Coop Marked, Coop Mega and Coop Obs. Coop is active on the wholesale level through Coop Norge Handel AS, and also active on the supply level, inter alia in the segments of bakery products and coffee.

<sup>4</sup> "Produktivitetutvikling i leveringskjeden for matvarer" in "Dagligvarehandel og Mat 2011", Ivar Pettersen and Tommy Staahl Gabrielsen (red), Norsk Institutt for landbruksøkonomisk forskning (NILF).

<sup>5</sup> Source: The Nielsen Company, 2013.

**Rema 1000 Norge AS (Rema 1000):**

Rema 1000 is owned by Reitangruppen. Reitangruppen is a vertically integrated operator that operates both distribution and retail of groceries through service trade and grocery stores. Business includes Rema 1000 in Norway, Sweden and Denmark as well as Reitan Servicehandel. Rema 1000 has only one concept store; discount store chains. This is based on franchise contracts.

Rema 1000 also has business on the supply level, inter alia in the markets of poultry, fruit and vegetables, bread products and in the brewery sector.

**Ica Norge AS (Ica Norge):**

Ica Detalj AS, a subsidiary of Ica Norge, owns and operates the concept stores; Rimi, Ica Supermarket and Matkroken. These cover different segments.

Outlets are partly owned and operated as filial stores by Ica Norge, and partly operated on franchise contracts. Ica is active on the wholesale level through ICA Norge Logistikk AS, and on the supply level through Totenpoteter AS.

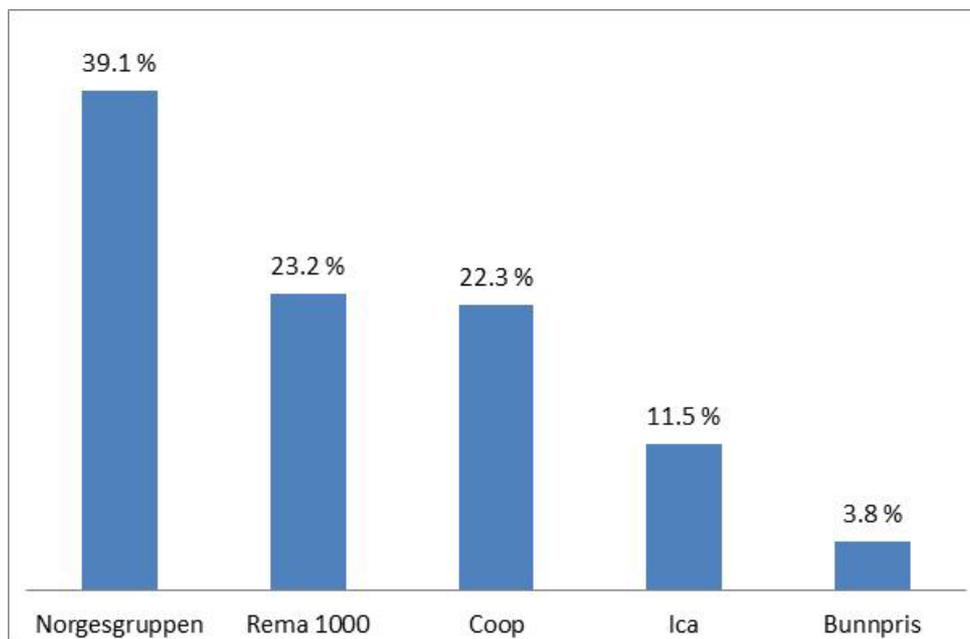
**Bunnpris**

Bunnpris is managed by I. K. Lykke AS. In 2011 Bunnpris had 216 grocery stores in Norway. Bunnpris sources most of its products from Rema 1000.

**3. Developments in concentration****3.1 Retail markets**

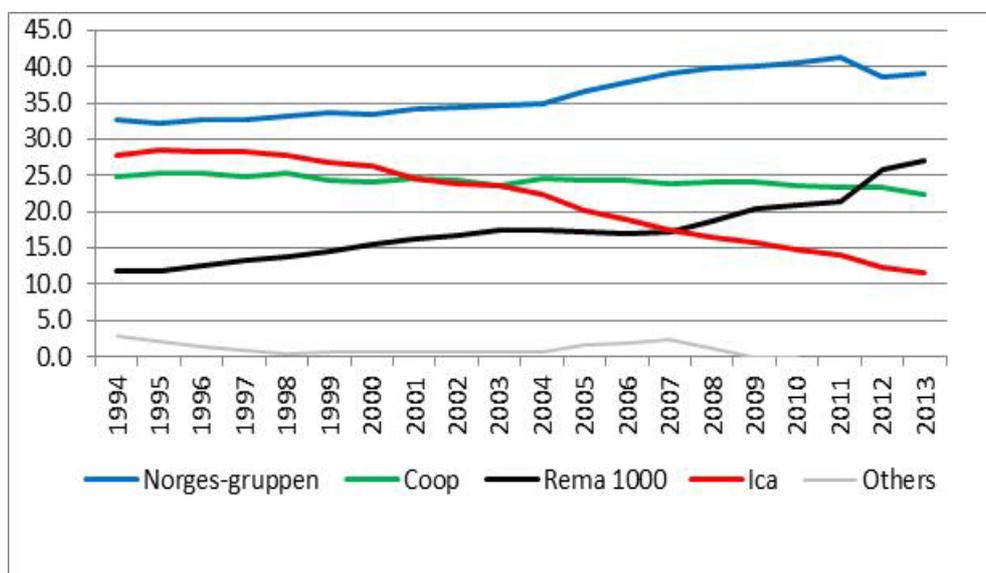
16. The Norwegian grocery retail market is concentrated compared to most European countries. In 2013 there are five grocery retail chains in Norway. Norgesgruppen is the largest, with a market share of almost 40 %. Rema 1000 and Coop have over 20 % of the market each, while Ica has 11.5 % of the market. Bunnpris has about 4 % market share.

**Figure 1: Market shares retail<sup>6</sup>**



17. Each of the four largest chains has its own integrated wholesale business. There are no independent wholesalers. The development in concentration in the Norwegian wholesale market is illustrated in Figure 2 below

**Figure 2: Market shares wholesale level<sup>7</sup>**



18. As Figure 2 shows, Rema 1000 has over a relatively short period of time grown to become the second largest player in the market in 2013. Simultaneously Ica has lost significant market shares from 1994 to 2013. To counter this development, Ica has entered into an agreement giving Norgesgruppen the

<sup>6</sup> Source: Dagens Næringsliv and Dagligvarehandelen.

<sup>7</sup> Source: NOU 2013:6 and market shares in figure 1.

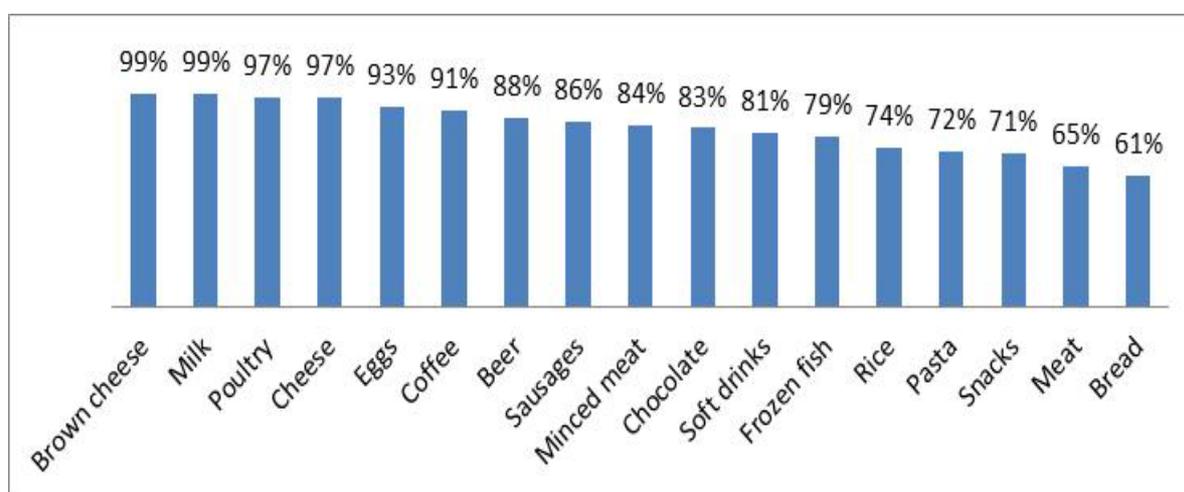
responsibility for purchasing and distribution in the Norwegian market. This agreement will give Norgesgruppen and Ica a combined market share of approximately 45-55 % in the procurement markets. The agreement is currently under review at the Competition Authority in Norway, see chapter 0 below for a description of this case.

19. A final point relates to the German retail chain Lidl's entry into the Norwegian market in 2004. Their entry in the Norwegian market failed, and Lidl sold their business in Norway to Rema 1000 in 2008. This may indicate that the barriers to entry and expand in the Norwegian retail market are significant, c.f. chapter 0 below.

### 3.2 Supply markets

20. The supply side in Norway is even more concentrated than the retail market. A study<sup>8</sup> from 2011 showed that the combined market share for the three largest suppliers in different product groups varied from 61 % to 99 %, c.f. figure 3 below:

**Figure 3: Market shares in supply markets**



21. The development in concentration varies between different markets and segments. Foreign suppliers might find it challenging to enter small Norwegian markets, in particular if protective regulations are present. The degree of competition will however vary in different markets. High concentration in supply markets may be indicative for dampened competition, high prices and a lower selection of products. Some markets might have a wider geographic scope than Norway. In such markets competition could be stronger than in domestic markets: However, many markets are characterized by dominant domestic producers mainly supplying Norwegian retailers.

22. For instance, in the dairy segment, the dairy cooperative Tine SA has a high market share in most markets. In the field of dairy production a market regulation system is implemented, leaving Tine SA tasks linked to the regulation of the production volume. Tine SA faces competition mainly from one minor competitor in each segment, and the import of dairy products is limited. The share of private labels varies between different segments, however it is generally low.

<sup>8</sup> The report NOU 2013:6 "Mat, makt og avmakt, om styrkeforholdene i verdikjeden for mat", attachement 12

23. Some domestic markets have however undergone significant changes in the past few years. One example is in the poultry sector. The market regulation scheme in the poultry sector was revised in 2008, and the cooperative Nortura is no longer the market regulator in this sector.

24. 97 % of the Norwegian consumption of poultry comes from domestic production.<sup>9</sup> Domestic markets are sheltered from import by high tariffs. During the five past years there have been a number of mergers in these markets, both horizontally and vertically. The retail-chain Rema 1000 is now vertically integrated with affiliated chicken-farmers and its own hatchery and slaughterhouse. Two other large suppliers, Nortura and Cardinal Foods, supply the rest of the retail-chains.

25. In the poultry market there have been significant changes in the market shares in the latter years. Cardinal Foods and Rema 1000 have captured market shares, while Nortura has lost market shares.<sup>10</sup> Moreover, the share of private labels has increased substantially in the product group of fresh poultry, from 18 % in 2008 to 40 % in 2010.<sup>11</sup> At the same time, innovation in the market, measured by the number of new products, has increased.<sup>12</sup>

#### **4. Competition in the food sector**

##### **4.1 Introduction**

26. The Norwegian Competition Act was revised in 2004. This revision constituted a harmonization with the EC competition rules. The prohibition against agreements that restrict competition as stated by article 101 TFEU and by article 53 of the Agreement on the European Economic area (EEA Agreement) corresponds to the Norwegian Competition Act's section 10. Furthermore, the Norwegian Competition Act's section 11, which prohibits abuse of a dominant position, corresponds to article 102 TFEU of the EC Treaty and article 54 of the EEA Agreement. The merger control regime in Norway is also partly harmonized with the merger control in the EU. A further harmonization of the Norwegian Competition Act with EU will follow with the new revision of the Competition Act in Norway. The newly revised Competition Act becomes effective 1. January 2014.

##### **4.2 Exemptions from the competition law**

27. Section 3 in the Norwegian Competition Act states that the King in Council can decide to exempt from Article 10 and 11 (corresponding to TFEU 101 and 102) to implement agriculture and fisheries policies. This exemption is implemented through a specific regulation.<sup>13</sup> The exemption allows farmers to reduce quantity or fix prices in the market without breaching the Competition Act. The only requirement is that such actions are in accordance with other laws and regulations and/or the agreement between the government and the farmers' organizations.

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<sup>9</sup> The report "Mat, makt og avmakt, om styrkeforholdene i verdikjeden for mat", attachement 4.

<sup>10</sup> Ibid, attachement 12.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid, attachement 11.

<sup>13</sup> 2004.04.23 nr 0651: (FAD) "Forskrift om unntak fra samarbeid mv. innen landbruk og fiske".

### 4.3 *Enforcement of competition law and recent cases*

#### 4.3.1 *Introduction*

28. Enforcement of the Competition Act in the food sector has been a priority for the NCA in recent years. The NCA has carried out more investigations in antitrust cases and examined more mergers in the food markets than in any other sector. The NCA has also been active in its advocacy role in these markets, c.f. chapter 0 below. In the following sections some of the most important cases and monitoring actions are briefly presented.

#### 4.3.2 *Antitrust-cases*

##### 4.3.2.1 The AC-Nielsen case (2007)

29. In 2007 the NCA considered intervening in grocery retailers' exchange of weekly price information through the marketing information company AC Nielsen. AC Nielsen provided detailed information on each retailer's prices within a given geographic area. The NCA considered that this reduced uncertainty in the market and contributed to suppressing competition between grocery retailers. After having been presented with the NCA's assessment, the parties themselves chose to amend the practice.

##### 4.3.2.2 The Tine-case (2007)

30. In 2007 the NCA imposed a fine of 5.5 million Euros on the dairy producer Tine for infringement of the Norwegian Competition Act, section 11, corresponding to article 102. According to the NCA Tine violated the Norwegian Competition Act through its behavior during the negotiations with the grocery chain Rema 1000, resulting in Tine becoming the sole supplier of certain types of cheese to Rema 1000. It was the NCA's opinion that there was a great risk of Tine's sole competitor, Synnøve Finden, could be excluded in the market due to Tine's behavior.

31. However, a Supreme Court judgment in 2011 reversed the decision.

##### 4.3.2.3 The Norgesgruppen – Ica-case (pending)

32. In January 2013 Norgesgruppen and Ica entered into a joint purchase and distribution agreement in the grocery market. In April 2013 the agreement was temporarily banned by the NCA. The parties appealed this decision. The decision was upheld by the Ministry of Government Administration, Reform and Church Affairs in July 2013.

33. However, the parties offered to suspend the joint distribution part of the agreement. Provided these commitments the parties were given the opportunity to implement the joint purchasing agreement.

### 4.4 *Mergers*<sup>14</sup>

#### 4.4.1 *The Gilde – Prior-case (2007)*

34. In 2007 a merger between the largest poultry processor and the largest meat processor in Norway was prohibited. It was considered that the merger would eliminate a potential competitor in the market for

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<sup>14</sup> In addition to the cases mentioned here, NCA in 2008 cleared a merger in the grocery market between Rema 1000 and Lidl, subject to certain conditions. In the supply market for poultry the Authority in 2007 cleared the merger between Nortura and Hå Rugeri with conditions, while the merger between Findus and Gro in the frozen vegetable market was cleared with conditions in 2006.

poultry and therefore lead to a further weakening of competition in the market for poultry products. The decision was overruled by the Ministry of Government Administration, Reform and Church Affairs, which cleared the merger. The Ministry disagreed with the NCA's opinion that the merger would lead to a weakening of the competition in the market.

#### 4.4.1.1 The Prior – Norgården-case (2006)

35. In 2006 the NCA prohibited a merger in the market for eggs. The prohibited merger would have strengthened the position of the acquiring party, which already had a 60 % market share prior to the merger. In addition, it would have acquired one of its largest competitors in the market for processing and sale of egg products. The decision was overruled by the Ministry of Government Administration, Reform and Church Affairs, on political grounds.

#### 4.4.2 *Monitoring in the food supply chain*

36. In 2005 the NCA decided that the four largest grocery chains are required to notify their annual contracts with large suppliers. The notification requirement implies that the grocery chains must submit their agreements with leading suppliers to the NCA. The arrangement allows the Authority to examine the contracts and assess whether they have adverse competitive effects. As part of this arrangement, the NCA also arranges yearly meetings with the grocery chains where agreements and relevant topics are discussed. In 2010 the NCA decided to extend the grocery chain's obligation to notify until 2015.

37. The NCA has also established a gross margin surveillance scheme in the dairy sector which came into force on 1 January 2008. The purpose of this scheme is to monitor whether anti-competitive margin squeeze occurs in the dairy markets.

#### 4.5 *How competition investigations could address buyer power*

38. In economic theory there is no generally accepted definition of what constitutes buyer power.<sup>15</sup> However, usually the term broadly refers to the ability for a buyer to obtain more favourable terms of trade from its suppliers, either compared to other buyers or to the terms it would obtain under normal competitive conditions.<sup>16</sup> Economic theory predicts that buyer power often has beneficial effects for consumers. This could be the case if countervailing buyer power is used to achieve better prices and terms from the suppliers, and such savings are passed on to consumers. Generally, with sufficiently intense competition on downstream markets, lower prices obtained on upstream markets will be passed on to consumers.<sup>17</sup> Buyer power may also increase output in the upstream markets and thus increase the welfare of consumers in the long run.

39. However, the exercise of buyer power may also harm consumers. For instance, this may happen through the so-called "waterbed effect".<sup>18</sup> It also seems to be a growing concern that buyer power may have negative welfare effects in the long term. For example, if the exercise of buyer power causes lower profitability for suppliers, this may in certain circumstances induce suppliers to invest less in new products and may lead to a loss in product diversity and quality for end consumers.<sup>19</sup> The European Commission in

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<sup>15</sup> C.f. Johansen, 2011.

<sup>16</sup> C.f. Johansen, 2011.

<sup>17</sup> C.f. Commission staff working document, Competition in the Food Supply Chain, 2009.

<sup>18</sup> C.f. Dobson and Inderst, 2008.

a report from 2009 underlines that this aspect "*is taken into account by EC Competition policy when assessing the impact of the exercise of buyer power on consumers. Consumer welfare encompasses prices, diversity and quality*". In its enforcement of the Norwegian Competition Act the NCA applies a similar approach.

#### **4.6 Sector reviews in the food chain in recent years**

##### *4.6.1 Introduction*

40. Since 2005 a great deal of interest and debate has focused on the vertical relationship between retailers and suppliers in the Norwegian food sector. Several reports have been published on the topic.

##### *4.6.2 Payment for shelf space (2005)*

41. In 2005, the NCA conducted a market survey, "Payment for shelf space", looking at the types of fees and payments requested by retailers from suppliers for allocation of shelf space. It found that this type of payments can be regarded as one of the several means that retailers have to exercise buyer power. If competition between retailers is fierce in downstream sales markets, such fees may be passed on to the consumers in terms of lower prices. However in certain cases such fees, in conjunction with other arrangements, may have foreclosure effects for smaller competitors. The NCA concluded that any ban on shelf fees would have limited effects on competition to the extent that retailers could achieve the same purpose through other tools (volume rebates, rebates for stocking certain products or bonuses on total sales). As a result of potential foreclosure effects, the NCA imposed the obligation upon the four largest retailers (which accounted for more than 99% of the national market) to notify their agreements with approximately 20 suppliers. These suppliers were presumed to be dominant in their respective markets. As such the NCA has been in position to monitor the practical application of such supply agreements.

##### *4.6.3 Food, power and impotence – on the relative strengths in the food chain (2011)*

42. In February 2010 The Norwegian Government established an Inquiry Commission ("the Commission") to study the power relations in the food supply chain. A central issue in the Commission's work was "*the significance the grocery chains' consolidation, increasing vertical integration and buyer power has had in relation to the exercise of power, use of resources and interests of the consumers.*"<sup>20</sup>

43. The Commission has conducted an extensive analysis of the market conditions in the supply chain for food. As described in chapter 0 above, markets are concentrated at both the retail- and supply-level in Norway. According to the Commission, the consolidation trend has been particularly strong on the retail side, shifting the power from suppliers to retailers. In addition to horizontal consolidation, the retailers have become more vertically integrated.<sup>21</sup>

44. In conjunction with the high concentration at retail level, the Commission expresses concerns for tacit collusion.<sup>22</sup> The Commission is also concerned about the changes in the balance of power between suppliers and retailers and pinpoints the increased market share of private labels as a source of increased

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<sup>20</sup> The powerful and the powerless in the food supply chain, english translation of the report: "Mat, makt og avmakt", chapter 6.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid, chapter 6.1.

buyer power. The Commission also raises the question of whether the increased use of private labels could be detrimental to welfare in the long run.<sup>23</sup>

45. The Commission is of the opinion that "if the trend in Norway continues at the same pace and in the same direction, where the umbrella chains can more or less unilaterally dictate the terms in agreements, such a development would be detrimental to healthy competition and balanced power relations in the food supply chain."<sup>24</sup> According to the Commission, "[b]alanced power relations in the food supply chain will ultimately both serve the individual consumer and support the development of a robust Norwegian food supply chain. The inquiry commission does not believe it would be possible to remedy the demonstrated distortions and imbalance by issuing instructions and recommendations to actors in the food supply chain. (...). Therefore, the inquiry commission is of the opinion that concrete, compulsory measures need to be introduced to correct the demonstrated distortions".<sup>25</sup>

46. The Commission recommended numerous measures to address the practices mentioned above. Among these were an act relating to negotiations and fair trading practices in the grocery sector, and the creation of a grocery web portal to help consumers compare prices and quality of products.

#### 4.6.4 *Fair trading practices in the food chain (2013)*

47. In October 2012 the Norwegian Government established a second inquiry commission in the food sector ("The second Commission"). This commission's mandate was to evaluate how the interests of fair trading practices and consumer welfare could be safeguarded in the legislation in Norway. The commission delivered its report in April 2013. The empirical foundation was studies performed by the initial inquiry commission.

48. This commission put more emphasis on consumer welfare than the former, and found that fair trading practices to a large extent are covered by existing legislation. However, existing legislation is fragmented. Consequently, the commission proposed a new act on fair trading practices in the food supply chain which intends to facilitate efficient negotiations between suppliers and retailers. Efficient negotiations are defined as negotiations that contribute to the maximization of social welfare.

### **5. Public hearings and the NCAs advocacy**

49. The NCA considers the barriers to entry in the Norwegian grocery market to be substantial. The NCA's investigations have revealed that concentration in local markets may be higher than what follows naturally from demographic and geographic structure in Norway.

50. Several food markets in Norway are sheltered from foreign competition by high tariffs. The use of tariffs to protect Norwegian producers is important to achieve agricultural policy goals. However, a system with tariffs may also increase barriers to entry in the grocery market, e.g. because foreign retail chains could be prevented from importing their own private label products.

51. In addition, the design and the implementation of the Planning and Building Act may have an impact. Changes in how this law is practiced by municipal and county authorities may encourage increased competition in local markets. In 2008 the NCA advised a municipality to take local competition into

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<sup>23</sup> Ibid, chapter 6.5.1.

<sup>24</sup> Ibid, chapter 6.4.2.

<sup>25</sup> Ibid.

account in the amendment of a development plan. In 2009 the NCA pointed out to a county governor that consumers' welfare should be part of the evaluation of the application of a new supermarket entrant.

52. Public hearings have been called for the two abovementioned reports mentioned in chapter 0 and 0. The consultative bodies had quite different opinions about what measures was needed to secure fair and effective trading practices in the food supply chain. This is especially the case when it comes to the first inquiry commission's report. In its response to the hearings, the NCA expressed that an act or regulation aimed at possible unfair trading practices must address behavior detrimental to consumer welfare. Hence, the NCA shares the view of the second commission that regulations intended to facilitate efficient negotiations are preferable. The NCA has however emphasized that the enforcement of the proposed Act could be challenging, including challenges related to dual enforcement.

53. Concerning the initial Commission's approach, the NCA in its response claimed that changes in the balance of power mainly have improved the competitive situation in the food chain. Fewer and stronger retailing groups have served as a counterweight to the supplier's seller power, lowering the prices for retailers. Hence, buyer power at the retail level can be positive for consumers.

54. In 2011 the NCA examined the grocery chains' profit margins at the wholesale and retail level and performed a qualitative assessment of the competition between the grocery chains. These analyses indicated that competition on the retail level worked relatively well. However, the NCA is worried that the entry barriers are high, not representing a threat to the incumbents in the market in the long run.

55. The NCA shares the initial Commission's concern that the market conditions in the Norwegian grocery market might facilitate tacit collusion. Potentially, tacit collusion could also be a problem in concentrated markets on other levels of the value chain. Caution must be exercised with respect to measures that increase transparency in these concentrated markets. For instance, in such markets, it is the NCA's opinion that a web portal that allows consumers to compare grocery prices can easily have effects contrary to those intended.

56. The NCA has given advice in connection with the establishment of a "food portal" aimed at providing consumers with information about prices and quality of products in the grocery market. The NCA supports a portal that does not make it easier to engage in tacit collusion, e.g. by using delayed price information, comparing grocery chains rather than individual products and comparing randomly defined baskets of goods. The NCA will however strongly advise against a portal that will provide a complete and frequently updated set of price data from the different grocery chains, because such a portal may increase the risk of tacit collusion in the market.

57. The Norwegian government is now considering whether and how this should be followed up.

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