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INDEPENDENCE OF COMPETITION AUTHORITIES - FROM DESIGNS TO PRACTICES

Contribution from Norway

-- Session III --

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INDEPENDENCE OF COMPETITION AUTHORITIES – FROM DESIGNS TO PRACTICES

-- Norway --

1. Introduction

1. In Norway, the "competition authorities" formally consists of the King-in-Council (i.e. the government)[1], the Ministry for Industry, Trade and Fisheries as well as the Norwegian Competition Authority (NCA henceforth). The Ministry provides the framework for the NCA's activities. Moreover, it has also been the appellate body of the Authority's appealable administrative decisions[2] - in this context most notably the merger decisions.

2. As a measure to enhance the NCA's independence, the Ministry of Industry, Trade and Fisheries recently proposed to establish an independent competition complaints board. At the same time, the possibility to reverse the NCA's decisions based on public interest considerations was abolished. The proposals were adopted by the Norwegian Parliament (Stortinget) in 2016, and will be implemented in the spring 2017. The competition complaints board will be effective from the same time.

In this contribution from Norway, the background and the features of the 2004 law will be briefly described before presenting the NCA's main tasks. Thereafter, focus is on the provisions of the law securing independence in individual cases, before alluding to the specifics of the current law, especially in the merger area, and the 2016 amendments enhancing independence from political influence even further.
Even though the NCA's independence in individual cases is secured explicitly by law, aspects of a competition agency's independence can not be assessed purely in the legal context. The last part of the contributions focus on institutional, organizational and professional aspects related to independence from political influence in the context the NCA operates.

2. Development and main provisions of the Norwegian competition law

3. The Norwegian competition legal regime was subject to a significant revision in 2004. With the revision, the Norwegian competition law regime was to a large degree harmonized with the competition law conduct rules in the European Union treaty and the EEA Agreement. The revision implied a switch from a regime of a combination of prohibitions and authorisations to a purely prohibition regime.

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1 Here, a brief explanatory note is in place: The Cabinet of Norway is a formal body composed of the government ministers and functions as the collective decision-making organ constituting the executive branch of the Kingdom. It is referred to as the Council of State (Norwegian: "Statsrådet"). When the Council of State convenes to formally make decisions on matters of State, the King will normally be present. One feature of this system is that the King, when having sanctioned a decision, is referred to as King-in-Council (Norwegian: "Kongen i statsråd"), meaning the King as well as his council. Decisions by the King-in-Council will in the following be referred to as decisions by the government.

2 Decisions as to administrative fines may not be appealed. Decisions as to administrative fines are basis for distrain, ie. the undertakings concerned must bring action against the State in the courts to contest the decision.

4. The prohibition against competition restricting agreements in the EU Treaty Article 81 (now: Article 101 TFEU) and EEA Agreement Article 53 were incorporated in the Competition Act 2004 § 10, and the prohibition against abuse of a dominant position in the EU Treaty Article 82 (now: Article 102 TFEU) and EEA Agreement Article 54 were incorporated in the Competition Act 2004 § 11. With the Competition Act 2004, a general prohibition against abuse of a dominant position was thus introduced and it was no longer necessary for the Norwegian Competition Authority to intervene against conduct in order for it to be prohibited.

5. Even though the Norwegian rules on concentrations have many similarities with the rules in Council Regulation (EC) No. 139/2004 on the control of concentrations (the Merger Regulation), the Norwegian rules differed from the Merger Regulation in some important respects regarding the issues addressed in this contribution.

6. According to the Competition Act 2004 Article 16 first paragraph, the Norwegian Competition Authority shall intervene against a concentration between undertakings if the Authority finds that it, "*will create or strengthen a significant restriction of competition, contrary to the purpose of the Act*." [3]

7. One purpose of this *power and obligation* to intervene is to indicate the division between the technical assessment that should be undertaken by the NCA and the Ministry, and the weighing of the political goals that may be undertaken by the King-in-Council.[4]

8. If the Competition Authority issues a decision to intervene, the decision can be appealed to the Ministry. This is in contrast to NCA decisions to issue administrative fines in cartel and abuse of dominance cases, which must be tried in the courts. The Ministry must reconsider the merger on the *same legal basis* as the NCA.

9. Thus, in Norway, decisions to intervene against concentrations are appealed *administratively* before they eventually can be appealed to the ordinary courts. To date, no decision to intervene against a concentration has been brought before the ordinary courts in Norway. The Competition Authority's decision *not to intervene* can not be appealed to the Ministry.[5]

10. However, according to Article 21 in the Competition Act, the Norwegian government (or more formally: the King-in-Council) may approve a concentration that the Norwegian Competition Authority has intervened against in cases *involving questions of principle or interests of major significance to society*. The government also have the legal power to block a merger the NCA has decided *not to* intervene against based on the same grounds. These features were introduced when the current Competition Act was enacted in 2004.

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3 With the most recent amendments to the Competition Act, further harmonization with EU competition law will be implemented as the SLC-test for intervention in mergers will be replaced. According to the new amendments, the NCA shall prohibit concentrations that will significantly impede effective competition, in particular as a result of the strengthening of a dominant positon (the SIEC-test; Significant Impediment to Effective Competition). The new standard harmonizes the Norwegian merger control review standard with the EU/EEA merger control rules, and will be interpreted in line with EU precedents. One consequence of the new and EU-harmonized standard is a shift in the role of the evaluation of efficiencies. Following the amendment, the NCA no longer can take into account all relevant social economic gains, but focus on the pro-competitive effects which are likely to benefit consumers.

4 See Proposition to Stortinget Ot.prp. no. 6 (2003-2004) page 229 (in Norwegian).

5 See Proposition to Stortinget Ot.prp. no. 6 (2003-2004) page 232 (in Norwegian).

3. The NCA's main tasks

11. The NCA's tasks follows from Article 9 of the Competition Act. The main task is to supervise competition in the various markets, among other things by enforcing the prohibition and merger regulations in the Act.

12. More specifically, the primary responsibilities of the NCA, according to the Competition Act are as follows:

- Monitor adherence by businesses and industry to the Competition Act's prohibitions against competition-restricting cooperation (Article 10) and abuse of a dominant market position (Article 11).
- Ensure that mergers, acquisitions and other forms of concentrations do not significantly restrict competition (Article 16).
- Enforce Articles 53 and 54 of the EEA Agreement.[6]
- Call attention to any restrictive effects on competition of public measures and, where appropriate, submit proposals aimed at furthering competition and facilitating market access by new competitors (Article 9e).

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

14. The NCA is headed by a Director General, which, formally will take decisions eg. to impose administrative fines or to block a merger. However, the Director General's decision in such cases will be taken in a decision council with the participation of the relevant Director of the market division, the Legal Director, the Chief economist and the case team.

4. Independence in individual cases

15. It is important to note that the NCA's independence in dealing with individual cases is secured by law: According to the same Article of the Competition Act, the "*Competition Authority may not be instructed [by the ministry or government] as to decisions in individual cases*".

16. Regardless, the NCA can according to Article 8 of the Competition Act, be ordered by the Ministry to deal with a case. Moreover, the Ministry can reverse decisions by the NCA if they are "invalid", ie. errors in case handling or in the assessment of the facts of the case. Reversal can be done even if the NCA's decision has not been appealed. Furthermore, the regulations regarding reversals of administrative decision in the absence of an appeal in Article 35 of the Public Administration Act does not govern the Ministry's decisions to reverse decisions under the Competition Act.

17. As will be alluded to in more detail below; in cases involving questions of principle or interests of major significance to society, the King-in-Council can approve a concentration or an acquisition of shares that the Competition Authority has intervened against under the merger regulations under Article 16. The King-in-Council may also intervene in cases where the NCA has decided not to intervene,

[6] Norway is a part of the European Economic Area (EEA) through its membership in EFTA. The rules and regulations in the EEA, which mirror those of the EC Treaty, have been implemented into Norwegian legislation through special Acts and regulations. Thus, one of the responsibilities of the NCA herafter) is to enforce Articles 53 and 54 of the EEA Agreement (corresponding to Article 101 and 102 TFEU).

provided the conditions are fulfilled, i.e. the concentration "will create or strengthen a significant restriction of competition contrary to the purpose of the Act".

18. It can also be mentioned that this feature of the law is also implemented related to cartel and abuse of dominance decisions. Thus, in cases involving *questions of principle or interests of major significance to society*, the King-in-Council may approve conduct that contravenes the prohibition set forth in Article 10 - Agreements between undertakings that restrict competition – or Abuse of dominant position under Article 11, and issue orders and reverse decisions of the NCA made under Article 12, i.e. order to bring an infringement to an end.

19. Yet another important feature regarding respective responsibilities, is that whereas the NCA's decisions to impose administrative fines in cartel and abuse of dominance cases (Article 10 and 11, respectively) must be tried by the courts, decisions to intervene in merger cases (Article 16) can be appealed to the Ministry, which must reassess the merger on the *same legal* basis as the NCA when it considers the case.

4.1 Public interest considerations in mergers

20. In addition to the ordinary appeals opportunity, the Competition Act 2004 allows for appeals on political grounds. This follows from the provision in the Competition Act 2004 Article 21 first paragraph which states that, in questions of principle or interests of major significance to society, the King-in-Council (Government) may approve a concentration which the Norwegian Competition Authority has intervened against.

21. The background for feature of the law was to ensure the possibility for political reversal *by the government* in individual cases.[7]

22. Looking back, it is interesting to note, however, that the competition law committee appointed by the government in 2000 to *inter alia* assess the organisation of the competition authorities,[8] proposed that appeals should be referred to an independent complaints board instead of the Ministry. In addition, the Ministry's possibility to instruct and reverse the NCA's decisions in individual cases should be limited.

23. Nevertheless, to ensure that in individual cases where there may be conflict between competition policy and other central policy areas, the committee suggested that provisions that gives the King-in-Council competence to overturn the Norwegian Competition Authority's as well as the Ministry's decision on intervention based on other considerations than competition had to be implemented.

24. Even though the proposal for an independent competition complaints board at that time not won political support, the possibility for reversal on public interest considerations was implemented in the Competition Act 2004. This was necessary for the Parliament to accept the limitations on the possibility to instruct the NCA in individual cases following from Article 8 in the act.

25. Correspondingly, the provision in the Competition Act 2004 Article 21 second paragraph gives the King-in-Council competence to intervene in cases in which the Competition Authority has decided *not* to take a decision. The general deadline for intervention does not apply to such intervention, but according to the Competition Act 2004 Article 21 second paragraph such intervention cannot be made later than 12 months after the final agreement or acquisition of control.

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7 See Proposition to Stortinget Ot.prp. no. 6 (2003-2004) page 234 (in Norwegian).

8 See Official Norwegian Report: NOU 2003: 12 (in Norwegian).

26. Neither intervention in cases where the NCA has chosen not to intervene, nor intervention in cases the NCA has under consideration seems likely to be alternatives used in practice. There are some situations in which the provision can have a rationale, however. This could e.g., be in a case where the NCA has not intervened and a third party with legitimate interests but without a right to complain brings the case before the government. Another situation may be where a foreign buyer acquires a Norwegian firm, and where considerations regarding national ownership or headquarter location are of importance. Regardless, in such cases the Ministry will have to show that the conditions for intervention under Article 16 of the Competition Act are fulfilled, thus prove that the NCA's assessment and decision not to intervene was wrong, in addition to justify the importance of the public interest considerations.[9]

27. The competence under the second paragraph of Article 21 has not been used to date.

4.2 Public interest in cartel or abuse of dominance cases

28. Even though it is not relevant to merger decisions as such, it can also be noted that another feature of the Competition Act 2004 is that also the NCA's decisions according to the prohibition regulations can be reversed by the King-in-Council on public interest considerations.

29. According to section 13, the King in Council may approve conduct that contravenes the prohibition set forth in Article 10 (Agreements between undertakings that restrict competition) or Article 11 (Abuse of dominant position) and issue orders and reverse decisions of the NCA made under Article 12 (Order to bring an infringement to an end) in cases involving questions of principle or interests of major significance to society. This possibility, however, has never been used.

4.3 Cases overturned on public interest considerations

30. The competence to overturn a Norwegian Competition Authority merger decision based on public interest considerations under the first paragraph of Article 21 has only been used in two cases to date.

31. The first instance occurred in 2005 when the government overturned the NCA’s decision related to remedies imposed after Statkraft Holding’s (Statkraft) takeover of Trondheim energiverk in 2002.[10] The NCA decision stated that Statkraft had to sell off production capacity corresponding to 1-1.5 TWH as a condition for the approval of the takeover. The decision was appealed to the Ministry, which in a decision on February 7, 2003, concluded not to reverse the NCA's decision.

32. In 2003, Statkraft asked the competition authorities to consider if the measures undertaken was satisfactory. Among these were an agreement to let a production capacity corresponding to 1.8 TWH for a period of 15 years. The NCA considered that an agreement to let production capacity under these terms was an unsatisfactory fulfilment of the terms for acceptance of the takeover. The Ministry came, in its assessment, to the same conclusion, thus, informed Statkraft that it considered that the remedies imposed not were fulfilled.

33. However, even though the Ministry found no reason to question the assessment the NCA had done based on the competition aspects of the case, it nevertheless was clear that in this case there were

9 These points are mentioned by Sæverås, E. (2009) in a chapter on the control with mergers in Evensen, H. and Sæverås, E (2009) "The Norwegian Competition Law and the EEA Competition Law", Gyldendal Akademisk.

10 See the ministry’s decision at http://www.regjeringen.no/upload/kilde/mod/prm/2005/0052/ddd/pdfv/281757-kgl.res_statkraft_tev.pdf. See also the Norwegian Competition Authority’s decision V2002-62 of 5th July 2002 (in Norwegian).

industrial policy aspects that had to be weighed against the competition policy concerns. In this particular case, finding good industrial solutions, exchange of know-how and innovation, were important public interest considerations. In conclusion, the Ministry proposed that its decision from February 2003 was reversed. This was done by Royal resolution dated November 23, 2005.

34. The second case is the Prior-Norgården case in which the government took account of agricultural policy considerations. The Ministry *inter alia* pointed to the need to maintain the income of egg producers.

35. In the decision of 29th September 2005 the NCA intervened against the takeover by Prior Norge BA (Prior) of all shares in Norgården AS (Norgården).[11] Prior appealed the NCA's decision to the Ministry of Government Administration and Reform. The Ministry concluded *not to overturn* the NCA's decision. However, the Ministry also expressed that despite the negative effects on competition, the acquisition would nevertheless have positive effects to political goals for the agricultural sector. In this regards, it was an important goal to ascertain that the revenue for the producers of eggs was according to the agreements between the government and the farmers - not the least in the light of the outcome of the WTO negotiations, with increased imports as a scenario.

36. In conclusion, the Government decided to use the powers in Article 21 to overturn the decision by the NCA and the Ministry made according to the merger regulations in Article 16 of the Competition Act, since in this particular case "agricultural goals weighted more heavy the concerns related to competition".[12]

4.4 The 2016 amendments

37. As a measure to enhance the NCA's independence, the Norwegian Ministry for Industry, Trade and Fisheries recently proposed amendments to the competition law establishing the legal basis for an independent competition complaints board. The proposal was based on the political platform for the current government, as well as a committee appointed by the government with a mandate to assess concrete solutions for how such a board could be implemented.[13]

38. The board will be the first instance to deal with complaints that thus far has been dealt with by the court of first instance relating to NCA fining decisions, for instance according to the prohibition regulations, and those appeals that thus far has been dealt with by the Ministry, for instance NCA decisions according to the merger regulations. Thus, the board is intended to provide a specialized, independent and consistent assessment of all complaints before these can be brought before the 2nd instance in the court system.

39. The board will be established as an independent public administrative entity, according to the requirements for an independent and impartial tribunal in the provisions of the European Convention on Human Rights. Important criteria in the selection of model has been the correctness of decisions according to the facts and the application of the law, the right to a fair and public hearing within and that the first instance assessment is efficient without undue costs for the parties involved.

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11 Both companies had operations that included collection of hens' eggs, packing and sales of eggs to consumers and transformation of eggs into various egg products. See the Norwegian Competition Authority's decision V2005/12: http://www.konkurransetilsynet.no/iKnowBase/Content/422347/V2005-12_prior.pdf (in Norwegian).

12 See Royal resolution November 23, 2005 (in Norwegian).

13 See Official Norwegian Report: NOU 2014: 11 (in Norwegian).

40. At the same time, the possibility to reverse the NCA's decisions according to the merger (Article 16) as well as the prohibition regulations (Article 10 and 11) based on public interest considerations will also be abolished.

41. The main reason behind this decision[14] was that a reversal on public interest considerations may imply non-substantiated differential treatment, i.e. often will be to the benefit of firms succeeding with their lobbying vis-a-vis the government, whereas firms without strong political alliances has much less possibility to achieve the same. Often, firms bringing forth a complaint of an NCA decision to the Ministry will try to influence the outcome politically at the same time. Moreover, it was argued that public interest considerations are better served through general regulations rather than political intervention in individual cases as such interventions can be influenced by strong lobby interests, i.e. the intended balancing of public interests versus competition considerations may be skewed.

42. Yet another argument is that the regulations in the law giving a possibility to reverse NCA decisions on public interest considerations is in breach with the fundamental principles of the Competition Act: By designing the law in a way where the assessment of whether or not specific acts are legal or not, or a merger should be allowed or not, entirely is based on considerations related to effects on competition, the legislator (ie. the Parliament) has given authority to assess each single case or act to the NCA or the courts enforcing the Competition Act. This implies that each individual case is assessed on the same legal fundament and the same legal premises.

43. Reversals by the King-in-Council, imply exceptions at a political level *in individual cases*. One effect of this is to reduce the authority of the NCA as the enforcer the law. It will also result in unclear and unfortunate legal precedents.

44. By removing the possibility to reverse NCA decisions on public interest considerations, both the NCA's independence *and* its authority is enhanced.

45. Notwithstanding, the possibility for the Ministry to instruct the NCA to deal with a case will still be a possibility, according to Article 8 of the Competition Act. However, it is important to note that as before this possibility will not give any possibility to influence the outcome of a case politically, and will not affect the NCA's political independence. This feature of the law can be considered in light of the occurrence of cases or issues that are debated in a political setting or by the media, which have potential competition implications, and where it may be convenient for the government or the responsible Ministry to ask the NCA to assess the case or the issue in light of the borders of competition law.

46. It can also be noted that also the possibility to reverse decisions by the NCA or the competition complaints board by the King-in-Council (ie. the Government) on grounds of illegality according to Article 35 in the Public Administrations Act will be abolished. Such claims must be tried before the courts.

47. The proposals were adopted by the Parliament (Stortinget) in mid-2016. The removal of the possibility to reverse decisions based in Article 18 (cartels and abuse) and Article 21 (mergers) based on public interest considerations will be effective spring 2017. At the same time, the competition complaints board will be effective. [15]

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[14] See Official Norwegian Report: NOU 2014: 11 and Proposal to the Parliament: Innst. 192 L (2015-2016) (both in Norwegian).

[15] Although not relevant in the context if this contribution, it can nevertheless be mentioned that the amendments contains other important elements, ie. new rules that provide for a cartel settlement procedure modelled on EU rules. In return for settling, the companies get a 10 per cent fine reduction and the decision

5. Relation to Ministry, budget and organization

48. Even though the NCA's independence in individual cases is secured explicitly by law, aspects of a competition agency's independence from political influence can not be assessed purely in the institutional and legal context. There are organizational, financial and professional facets, which may also be relevant when assessing its independence in practice. Some important aspects of the financial and institutional context of the NCA will be alluded to below, first.

49. In its annual „Letter of assignment", the Ministry sets out specific goals, priorities and performance requirements for the NCA for the year. In the letter, the Ministry may e.g. ask the NCA to pay specific attention to competition issues in a particular sector. For instance, in the assignment letter for 2016, the Ministry asked the NCA to pay particular attention to competition in the groceries sector.

50. In the letter, the NCA's financial resources for the year is also presented, as determined in the state budget for the coming fiscal year.

51. The following year, the NCA reports to the Ministry on its activities, resource use, results as well as key achievements on the goals specified in the assignment letter.

52. It can be added that the Ministry also can give specific assignments to the Authority in its capacity as Directorate. For instance, in 2016 the Ministry commissioned the Authority with the task to prepare a report where it assessed competition issues related to buyer power in the Norwegian petroleum sector. More specifically, the NCA should provide the Ministry of Trade, Industry and Fisheries with i) a general description of the conditions of competition in the petroleum industry, including the supplier industry, and ii) an assessment of whether and how competition policy instruments, in particular the enforcement of competition law, may be used to counteract any adverse effects resulting from the use of buyer power.

53. It is important to note that the outcome and the recommendations of the NCA analysis can not be influenced by the Ministry.

54. **Appointment of the Director General.** Normally, a first screening of potential candidates for the position of Director Genera will be done by a head-hunting agency. The position will be advertised in the major media, and the head-hunting agency's and the Ministry's internet website. Potential candidates can also be approached directly, based on suggestions from various sources. After the application deadline, the most qualified candidates will be interviewed, assessed and a recommendation will be given to the Ministry based on relevant criteria. A second round of interviews will be conducted where the Ministry is in charge. When the most qualified candidate is identified, the new Director General of the NCA will be appointed by the King-in-Council for a period of six years. The Director General can be reappointed for another six year period.

55. In principle, the Director General can be discharged from his or hers services during the period of appointment. This, however, can only occur in cases of extreme misconduct, and, if so, it will be a decision by the King-in-Council, ie. the Government.

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will be less detailed. Such settlements are an attractive option in many cartel cases, but few cartel cases have been brought in Norway in recent years.

56. **Budget and organization.** The annual budget for the NCA for 2015 was 94.14 million Norwegian kroner (approx. 11.7 million USD[16]). For 2016, the budget is 95.17 million Norwegian kroner (approx. 11.8 million USD).

57. Of the NCA's 101 employees per 1 January 2016, 37 were economists and 35 were lawyers. In total, 75 out of 100 worked on competition enforcement.[17]

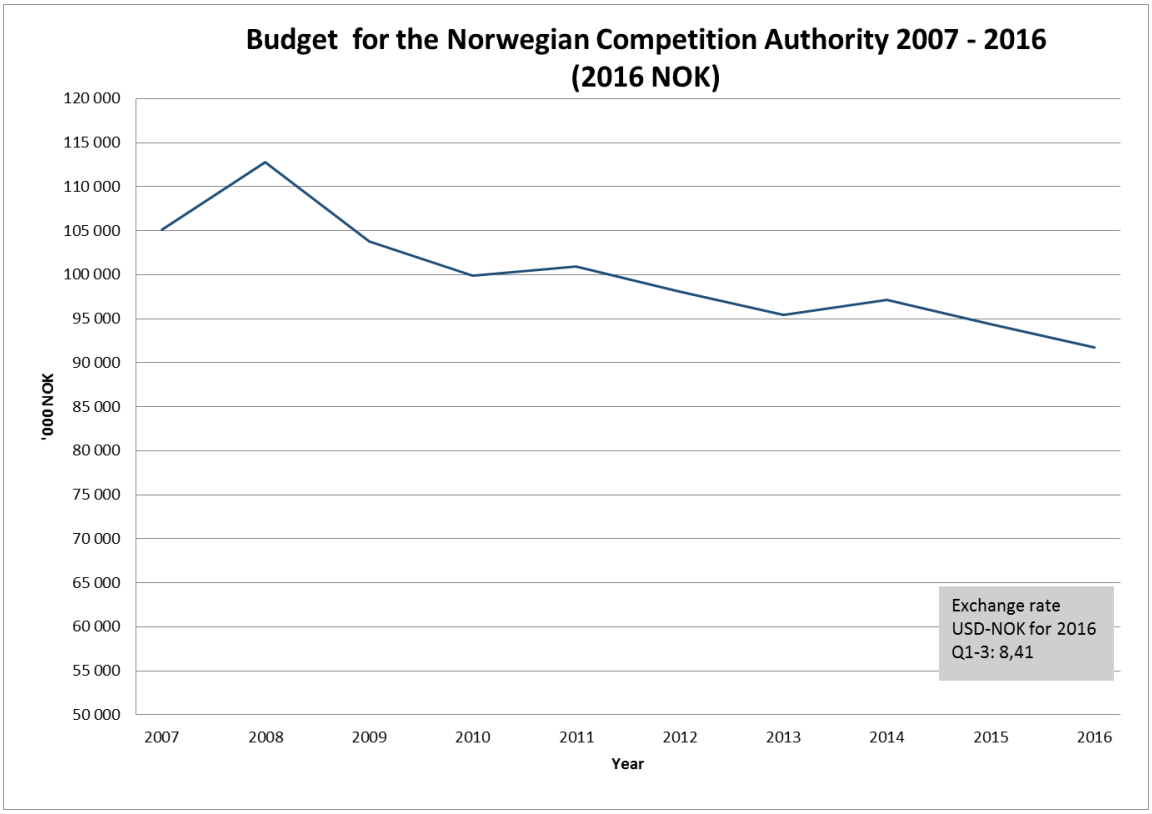


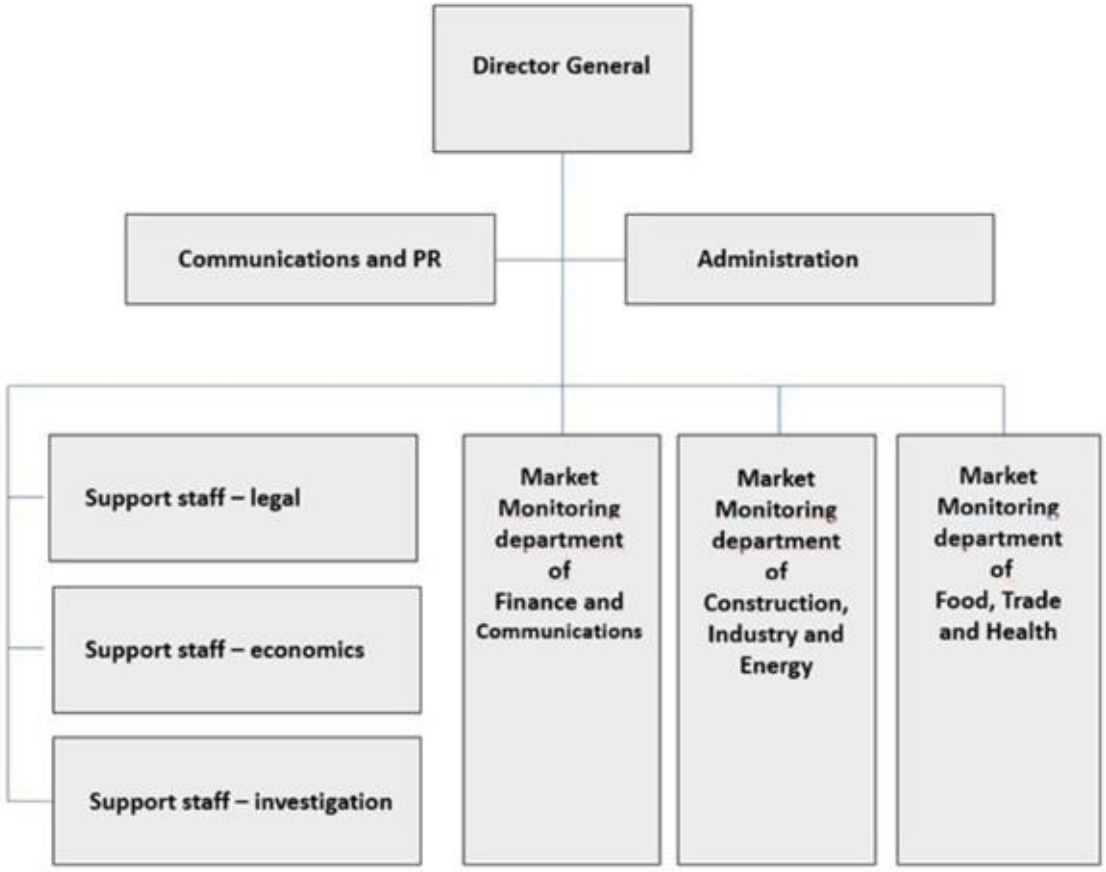
Figure 1. NCA budget 2007-2016, real (2016) values in thousand NOK (weighted price index)

58. **Organizational structure.** The NCA is organized by sector. Thus, the case handlers are organized in market departments with responsibilities towards specific markets. All case handlers work with all types of competition cases within the markets allocated to them. In addition, the NCA has an investigations staff with approximately five staff members dedicated to cartel and abuse of dominance investigations. The investigations staff supports the market sections in cartel cases.

59. Specialized legal and economic support and quality assurance is provided by the legal director's team and the chief economist's team. In principle, all case handlers can be engaged in advocacy work. There is a close cooperation between the department of communications and PR and the other departments to ensure target groups are reached with important messages and outcome in cases.

16 Exchange rate from Norway's central bank for 2015: 8.0739 NOK = 1 USD

17 These numbers include staff on leave of absence.



60. **Prioritization.** Independence is also related to the degree of freedom to prioritize to which cases organizational resources should be allocated. The Director General and the management of the NCA have, apart from mergers where the criteria for intervention is fulfilled, a relatively high degree of freedom to decide which cases to prioritize.

61. If a complaint, for instance in an abuse of dominance cases not is prioritized, the NCA do not have to present the specific reasons for why it is not prioritized to the complainant, neither can the complainant appeal the NCA decision.

6. Professional independence

62. Since the agency's most important asset is its employees, the degree of agency independence is also to a large degree affected by the impartiality of its employees when reaching administrative decisions. Thus, *professional independence* and high ethical standards in the provision of services and the exercise of authority are a prerequisite for agency independence, and for the parties and the general public to trust that the law is enforced in an independent manner – not only from the interest of businesses but also political interests.

63. The principle of professional independence means that public officials should use their professional knowledge and professional judgement to discharge their duties. The requirements regarding professional independence applies to the entire public service with a view to preparing and deciding cases, consultancy and the presentation of information. A number of statutory and non-statutory rules are of relevance in this context.

64. First of all, the Public Administration Act contains a number of administrative procedures which are of relevance to independence. Among other things, the requirement that a case is to be illuminated as well as possible prior to administrative decisions being taken.

65. Moreover, the Public Administration Act (§6, first and second subsections) has competency rules intended to engender trust in the public service. In the event circumstances arise that can serve to weaken the impartiality of decision makers, the person in question must step aside.

66. The first subsection establishes that a public official is disqualified from preparing a decision or from making any decision in an administrative case, inter alia, when he or she personally or his or her family is a party to the case, or when he or she is a representative of a party to the case.

67. It is especially important to be aware of the considerations that must be taken into account under the second subsection, which states that a public official is disqualified when circumstances exist that could impair trust in his impartiality. Emphasis should be attached *inter alia* to whether the decision in the case may entail any special advantage, loss or inconvenience for him or her personally or for anyone with whom he or she has a close personal affiliation. The individual is personally responsible for disqualifying him- or herself, and for stepping aside when a case so requires.

68. The rules to assure impartiality in decision came into use, for instance, in a recent statement of objection (summer 2016) by the NCA relating to four publishers in Norway, suspected of collectively refusing to deliver books to grocery or convenience stores. As the Director General had personal relations to the owners of one of the publishers, a set Director General was appointed to assure impartiality in the decision to issue a Statement of objection.

69. Yet another important aspect of independence is due process and transparency. There are provisions in the Public Administration Act about notification to the party or parties to which a case refers. This party shall have an opportunity to make a statement before any decision is taken. The party also has the right to appeal an administrative decision. Moreover, the Public Administration Act contains rules about parties' right of access to documents, the duty to provide guidance, and confidentiality, and the Freedom of Information Act has rules regarding transparency and public access to government papers.

70. Moreover, the principle of professional independence also entails a right and an obligation to raise justified exceptions or objections to the political and administrative views of superiors and to established practice, where so required.

71. Obviously, professional independence can also be questioned if the judgement of decision-makers or case handlers may have been affected by gifts and other perquisites. Thus, in the Ethical Guidelines for the Public Service[18] it is explicitly stated that "public officials shall not, on their own behalf or on behalf of others, accept or facilitate the acceptance of gifts, travel, hotel accommodations, hospitality, discounts, loans or other contributions or perquisites that are appropriate to, or intended by the donor, to influence their work." Moreover, public officials must not use their position to gain an undue advantage for themselves or anyone else. This also applies in cases where these advantages would not affect their service-capacity actions.

72. Article 20 of the Civil Service Act and Article 2 of the new Civil and Public Servants' Act are also relevant in this regard. These provisions establish that a public official cannot accept a gift,

[18] See https://www.regjeringen.no/globalassets/upload/kilde/fad/bro/2005/0001/ddd/pdfv/281750-etiske_retningslinjer_engelsk_revidert.pdf.

commission, service or the like that is appropriate to, or intended by the donor to influence his or her service-capacity actions.

73. To enhance professional independence, the NCA has taken a number of measures. It has establish agency specific guidelines reflecting various issues and circumstances that may in particular be of relevance to an NCA case handler and the various tasks of the NCA, for instance highlighting rules and ethical conduct relating to insider information. These agency specific ethical guidelines were updated in 2016. All new employees receive information material on ethical guidelines, and the guidelines are easily available on the NCA's intranet website. Moreover, in 2015 had a seminar with training on ethical dilemmas, intended raise ethical awareness through reflections on specific and relevant dilemmas, and to create awareness of guidelines. The NCA also have ambitions to create a culture for openness and trust on ethical issues, ie. to nurture a culture of compliance and awareness regarding the ethical guidelines.

7. Concluding comments

74. This contribution from Norway has focused on agency independence in a legal, institutional and organizational as well as professional context.

75. In Norway, the NCA's independence in individual cases is secured by law. Even though the Authority can be ordered to deal with a case, it can not be instructed as to decisions in individual cases.

76. However, if the NCA issues a decision to intervene in a merger, the decision can be appealed to the Ministry. A notable feature of the Competition Act 2004 related to the independence of the NCA, was that in addition to the ordinary appeals opportunity, the Competition Act 2004 also allowed for reversal of the NCA's decisions based on public interest considerations. Thus, in questions of principle or interests of major significance to society, the King-in-Council (Government) may approve a concentration that the Norwegian Competition Authority has intervened against. This is in contrast with the decisions to impose administrative fines according to the prohibition regulations, which must initially be tried before the Court of First Instance.

77. An important point in this contribution is the recent amendments to the Competition Act which has recently been introduced to enhance the NCA's independence. The measures establish the legal basis for an independent competition complaints board. At the same time, the possibility to reverse the NCA's decisions based on public interest considerations will be removed. This applies to reversal of decisions to intervene against a concentration according to the merger regulations (Article 16), as well as those related to prohibit cartels and abuse of dominance (Article 10 and 11). These amendments will be effective from the spring 2017. The competition complaints board will be effective from the same time.

78. In addition to enhancing the NCA's independence and authority, the amendments also underlines an important principle: Public interest considerations are better served by general regulations than intervention in specific competition cases where the outcome is subject to the influence of the strongest lobbying interests.

79. Since the notion of independence of competition enforcement and enforcers from political interferences not only can be assessed at the level of institutional or legal framework, this presentation has also focused on some statutory and non-statutory measures to assure professional independence in the case handling and the NCA decisions. First of all, the Public Administration Act contains a number of administrative procedures which are of relevance to independence. Here it is, inter alia, established that a public official is disqualified from preparing a decision or from making any decision in an administrative case when circumstances exist that could impair trust in his or hers impartiality.