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PUBLIC INTEREST CONSIDERATIONS IN MERGER CONTROL

-- Note by Norway --

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More documents related to this discussion can be found at www.oecd.org/daf/competition/public-interest-considerations-in-merger-control.htm

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NORWAY

1. Introduction

1. Whereas the Norwegian Competition Authority's (NCA henceforth) decisions to issue administrative fines in cartel and abuse of dominance cases must be tried in the courts, decisions to intervene in merger cases must be appealed to the Ministry for Industry, Trade and Fisheries. The Ministry must reconsider the merger on the *same legal basis* as the NCA.

2. However, according to Section 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.

3. 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. 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. The proposals were adopted by the Norwegian Parliament (Stortinget) in 2016, and will be implemented 1st of January 2017. The competition complaints board will be effective from the same time.

4. There are other specificities of the Competition Act 2004 that also take care of public interest considerations in a wider context, like for instance the possibility the NCA has to make an exemption from the standstill obligation upon application from the parties under Section 19, e.g. if there are concerns that jobs may be lost, or that the NCA has a possibility to impose a duty to notify mergers or acquisitions on specific firms or markets, for instance due to concerns for competition in local markets. In order to focus the discussion, these features of the law will not be alluded to further in this contribution.

5. In this contribution from Norway, the background and the features of the 2004 law will be described before focusing in more detail on the background for the latest revision of the law in this respect. Some other features of the law with respect to dealing with public interests by the NCA in specific cases will also be briefly explained. Since the discussion to some extent relies on an understanding of the organization of the Norwegian competition authorities, this will be explained briefly before alluding to the specifics of the current law, especially in the merger area.

2. The Norwegian Competition Authorities

6. 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).

7. The NCA's tasks follows from Section 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. The Ministry provides the framework for the NCA's activities. Moreover, it is also the appellate body of the Authority's merger decisions.

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

9. Regardless, the NCA can according to Section 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". 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 Section 35 of the Public Administration Act does not govern the Ministry's decisions to reverse decisions under the Competition Act.

10. 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 Section 16. The King-in-Council may also intervene in cases where the NCA has decided not to intervene, 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".

11. 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 Section 10 - Agreements between undertakings that restrict competition – or Abuse of dominant position under Section 11, and issue orders and reverse decisions of the NCA made under Section 12, i.e. order to bring an infringement to an end.

12. 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 (Section 10 and 11, respectively) must be tried by the courts, decisions to intervene in merger cases (Section 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.

[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.

3. Development of the Norwegian competition law in brief

13. The Norwegian competition legal regime was subject to a significant revision in 2004. The Act on competition between undertakings and control of concentrations (Competition Act 2004)[2] replaced the Act relating to competition in commercial activity (Competition Act 1993).[3]

14. The Competition Act 1993 was based on a combination of rules on prohibitions and interventions. Cooperation on, and influencing prices, mark-ups and discounts, as well as tender- and market sharing, for the sale of goods and services were forbidden.[4] It was possible to grant exemptions from these prohibitions, and other forms of competition restricting behaviour were permitted unless and until the Competition Authority intervened against the behaviour.[5] The Competition Act 1993 did not, accordingly, include a general prohibition against abuse of a dominant position, but the NCA could intervene against the behaviour of dominant actors by issuing individual decisions or regulations.[6]

15. With the revision of the law in 2004, 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. The prohibition against competition restricting agreements in the EU Treaty article 81 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 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.

16. The Competition Act 2004 also contains, in contrast with the Competition Act 1993, rules on leniency in the calculation of administrative fines. The inclusion of the leniency rules in the competition law is a very important innovation with major consequences for the Norwegian Competition Authority's ability to detect cartels.

17. 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 differ from the Merger Regulation in several respects.[7]

18. According to the Competition Act 2004 § 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*." The provision establishes two main elements for the assessment of competition. First, the concentration must create or strengthen a significant restriction of competition. Second, the competition restriction must be contrary to the purpose of the Act. The purpose of the Act is stated in Section 1 as to "*further competition and thereby contribute to the efficient utilization of society's resources*".

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2 Act on competition between undertakings and control of concentrations of 5th March 2004 No. 12 (Competition Act 2004). An unofficial english translation can be found here: http://www.konkurransetilsynet.no/globalassets/filer/english/fact-sheet/konkurranseloven_english.pdf.

3 Act relating to competition in commercial activity of 11th June 1993 No. 65 (Competition Act 1993).

4 See Competition Act 1993 §§ 3-1 – 3-4.

5 See Competition Act 1993 §§ 3-9 and 3-10.

6 See Competition Act 1993 § 3-10.

7 See *inter alia* NOU 2003:12 part 5.4.2 (in Norwegian).

19. The condition in the first paragraph implies that the harmful effects of the concentration must be weighed against any positive socio-economic welfare effects, i.e. a total welfare standard. The reference to the Act's purpose means that the purpose becomes guiding for which advantages are relevant in this assessment.

20. It is important to note that under the Competition Act 2004 Section 16, the NCA has no possibility to refrain from intervening once the conditions for intervention are fulfilled. The NCA is obliged to intervene against a concentration if it will create or strengthen a significant restriction of competition in contradiction with the purpose of the law.

21. One purpose of the *power and the 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, see further discussion on this point below.[8]

22. If the Competition Authority issues a decision to intervene, the decision can be appealed to the Ministry. 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.[9]

3.1 Public interest considerations in mergers

23. 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 Section 21 first paragraph 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:

> ***"Section 21 – Examination of cases involving questions of principle or interests of major significance to society.***
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> *In cases involving questions of principle or interests of major significance to society, the King in Council may approve a concentration or an acquisition of shares that the Competition Authority has intervened against under Section 16 and Section 16 a. Such approval may be conditional.*
>
> *In cases involving questions of principle or interests of major significance to society, the King in Council may make decisions under Sections 16, 16 a 18, and 19 provided that the conditions of the first paragraph of Section 16 or the first paragraph of Section 16 a are fulfilled. The deadlines set forth in Sections 18, 20 and 20 a do not pertain to decisions made under this paragraph. Nevertheless, the King in Council may not intervene against concentrations or acquisitions of holdings more than 12 months after a final agreement is concluded or control is acquired."*

24. The background for the first paragraph of Section 21 was to ensure the possibility for political reversal in individual cases.[10]

25. 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

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

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

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

authorities,[11] 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.

26. 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.

27. Even though the proposal for an independent competition complaints board 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 Section 8 in the act.

28. Correspondingly, the provision in the Competition Act 2004 Section 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 Section 21 second paragraph such intervention cannot be made later than 12 months after the final agreement or acquisition of control.

29. 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 Section 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.[12]

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

3.2 Public interest in cartel or abuse of dominance cases

30. Even though not relevant to merger decisions, it can 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.

31. According to section 13, the King in Council may approve conduct that contravenes the prohibition set forth in Section 10 (Agreements between undertakings that restrict competition) or Section 11 (Abuse of dominant position) and issue orders and reverse decisions of the NCA made under Section 12 (Order to bring an infringement to an end) in cases involving questions of principle or interests of major significance to society.

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

12 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.

3.3 Cases overturned on public interest considerations

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

33. 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.[13] 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.

34. 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.

35. 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 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.

36. The second case is the so called Prior-Norgården case in which the government took account of agricultural policy considerations. The Ministry *inter alia* pointed to the need to maintain Norwegian production of eggs and the income of egg producers.

37. 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).[14] Prior appealed the NCA's decision to the Ministry of Government Administration and Reform. In considering the appeal, the ministry considered *inter alia* the question of whether the changes in the statement of purpose in the Competition Act 2004 implied that a consumer welfare standard was introduced.[15] In weighing between the takeover's anticompetitive effects and the positive socio-economic efficiency gains, the Norwegian Competition Authority had given a relatively large weight to the efficiency gains due to the acquisition that would benefit consumers. In this regard, the Ministry expressed the view that the addition of the second paragraph in the statement of purpose of the Competition Act 2004 (i.e: "*When applying this Act, special consideration shall be given to the interests of consumers*") should not result in the threshold for intervening against concentrations being lower than under the Competition Act 1993. It follows in the Ministry's decision that, "*The Ministry's conclusion is therefore that the*

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13 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).

14 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).

15 See the ministry's decision at: http://www.regjeringen.no/upload/kilde/fad/prm/2006/0003/ddd/pdfv/272397-vedtak_klagesak_prior_forste_vedtak.pdf. (in Norwegian)

balancing between positive and negative socio-economic effects of a concentration should be done in the same way according to the law currently in force as according to the earlier."[16]

38. Such considerations did not alter the outcome, however. The Ministry concluded *not to overturn* the NCA's decision. It expressed particular concerns related to competition in the market for sorting, packaging and sale of eggs to consumers, the market for production of egg products as well as the market for purchase and collection of eggs from the primary producers. 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 uphold Norwegian production of eggs, and 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 an outcome, it was important to secure Prior a continued strong position in the domestic market, and as such, a stronger position than what would follow from the competition policy goals alone.

39. In conclusion, the Government decided to use the powers in Section 21 to overturn the decision by the NCA and the Ministry made according to the merger regulations in Section 16 of the Competition Act, since in this particular case "agricultural goals weighted more heavy the concerns related to competition".[17]

4. The 2016 amendments

40. 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.[18]

41. 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 decisions according to the prohibition regulations, and by the Ministry in 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.

42. 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.

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

44. The main reasons behind this decision[19] 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

16 See page 20 in the ministry's decision, see previous footnote.

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

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

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

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.

45. 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.

46. 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 which enforces the law. It will also result in unclear and unfortunate legal precedents.

47. An extension of the arguments above is that public interest considerations are better served through specific regulations than intervening in individual decisions as such interventions can be influenced by strong lobby interests, i.e. the intended balancing of public interests versus competition considerations may be skewed. One example of a general intervention based on political goals in the cultural area is the *exemption by regulation* the Norwegian book publishers and book dealers have had for more than a decade to use RPM. With the introduction of the Competition Act 2004, the NCA assessed that an agreement to use RPM, i.e. fixed book prices, between publishers and retailers would constitute a breach by object of Section 10 in the Competition Act. However, to support policy goals related to the publishing and reading of books, the book industry is exempt from the prohibition regulations in Section 10 (Agreements by undertakings that restrict competition) of the Act by regulation.

48. Another example is agricultural policy: Here, important policy tools are tariffs on a wide range of products,[20] the determination of prices on a range of commodities set in yearly negotiations between the Ministry of Agriculture and Food and the farmers' organizations as well as an exemption from the Competition Act for agriculture. 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.

49. Notwithstanding, the possibility for the Ministry to instruct the NCA to deal with a case will still be a possibility, according to Section 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.

50. At the same time, 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.

[20] E.g. milk, cheese, meat, grain, fruit and vegetables.

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

52. The proposals were adopted by the Parliament (Stortinget) in 2016. The removal of the possibility to reverse decisions based in Section 18 (cartels and abuse) and Section 21 (mergers) based on public interest considerations will be effective 1st of January 2017. At the same time, the competition complaints board will be effective.[21]

5. Concluding comments

53. This contribution from Norway has focused on the possibilities to take public interest considerations in merger review in the Norwegian legal and organizational context.

54. The important point is that the possibility to reverse NCA's decisions to intervene in mergers on public interest considerations will be removed with amendments to the Competition Act enacted this year.

55. To reiterate, one of the features of the Competition Act 2004, was that if the NCA issues a decision to intervene in a merger, the decision can be appealed to the Ministry. 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.

56. 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. In individual cases there may be conflict between competition policy and other central policy areas. The purpose of this provision was to ensure political guidance in individual cases.[22] Thus, the provision gave the King-in-Council competence to overturn the NCA's and the ministry's decision on intervention from other considerations than competition considerations.

57. However, as a measure to enhance the NCA's independence, amendments to the Competition Act has been introduced, establishing 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 (Section 16), as well as those related to prohibit cartels and abuse of dominance (Section 10 and 11). These amendments will be effective from 1st January 2017. The competition complaints board will be effective from the same time.

58. 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.

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21 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 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.

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