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Start-ups, killer acquisitions and merger control – Note by Norway

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More documents related to this discussion can be found at
http://www.oecd.org/daf/competition/start-ups-killer-acquisitions-and-merger-control.htm

Please contact Mr Chris PIKE if you have questions about this document.
[Email: Chris.PIKE@oecd.org]

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Norway

1. Introduction

1. An important task for the Norwegian Competition Authority (NCA) is to assess mergers and acquisitions and to intervene against transactions that will significantly impede effective competition. Three tools have been put in place to enable the NCA to carry out this task in an efficient manner: i) general turnover based notification rules, ii) the power to order notification of transactions not covered by the mandatory notification rules, and iii) the power to impose disclosure requirements on individual firms.

2. The first, and most important, tool requires undertakings to notify to the NCA any transactions by which they acquire control of other undertakings on a lasting basis (concentrations). Such transactions can only be implemented once they have been notified to and cleared by the NCA (standstill obligation). Concentrations are exempted from mandatory notification if the turnover of the undertakings concerned fall below specified turnover thresholds. Notification requirements do not apply to acquisition which do not lead to a transfer of control (acquisition of minority shareholdings). For the latter two types of transactions standstill obligations do not apply.

3. However, it cannot be excluded that transactions which are not subject to mandatory notification may cause harm to competition and consumers. Firstly, certain mergers and acquisitions of control in already highly concentrated markets, or which affect local markets or potential competition only, may restrict competition. This covers, in particular, transaction where the targeted undertaking has a limited turnover below the relevant turnover threshold. Secondly, some acquisitions of minority shareholdings not leading to a transfer of control may have harmful effects as well.

4. As a second tool, the NCA therefore has the power to order notification of transactions which fall below the notification thresholds or which do not lead to a change in control. A duty to notify can be imposed if the NCA has reasonable grounds to assume that competition will be affected by the transaction or if other particular considerations indicate that the NCA should examine the case in more detail. An order to notify a transaction must be issued no later than three months after a final agreement has been concluded or control has been obtained. From the moment an order is effective, a standstill obligation will apply.

5. As a third tool, for sectors and industries that already have a structure and degree of concentration that justify an enhanced focus, the NCA has the power to impose disclosure requirements on individual firms. Typically such firms will have a particularly strong market position or be operating in a market with a highly oligopolistic market structure. Disclosure requirements require the firms in question to inform the NCA of any mergers or acquisitions they are involved in and which do not exceed the relevant turnover thresholds for mandatory notification. In some instances, disclosure requirements may also cover acquisition of minority shareholdings. This tool thus ensures that the NCA will be informed of and enabled to take action against possibly harmful transactions, notably by using the second tool requiring notification of transactions within the deadline of three months.

6. Acquisitions of start-ups or "nascent" firms raise particular challenges for competition authorities. A first challenge is to capture such acquisitions which may fall below the regular merger notification thresholds. In other words, the challenge is to ensure

that competition authorities are empowered to assess possibly harmful transactions while avoiding unnecessary red tape and enforcement costs being imposed on undertakings. The second challenge relates to the actual assessment of potential "killer" acquisitions when enforcement powers have been established. This raises questions about which theories of harm to pursue, how counterfactuals should be identified and the economic efficiencies that may be of relevance.

7. This contribution puts the emphasis on the first challenge while also touching upon the second.

8. In the NCA's experience both the second and the third tool mentioned above are valuable and useful supplements to the regular merger notification thresholds. Traditionally, these tools have allowed the NCA to monitor acquisitions affecting local markets or oligopolistic market structures, and to intervene against such acquisitions when justified. However, these tools may also prove particularly useful with regard to acquisitions of start-ups or "nascent" firms as they enable the NCA to identify and assess such transactions in a timely and effective manner.

9. Following a brief overview of the legal basis for the NCA's intervention against anticompetitive concentrations and minority shareholdings, this contribution describes in some more detail the three tools at the NCA's disposal. It starts with a description of the general turnover based notification rules and some considerations behind the currently applicable turnover thresholds. It goes on to describe the two other tools and some of the instances where they have been used and ends with some concluding remarks.

2. The legal basis for intervention

10. The purpose of the Norwegian Competition Act is to promote competition and thereby contribute to the efficient utilization of society's resources to the benefit of consumers. The substantive rules of the Act are to a large extent harmonised with the EU competition rules.

11. According to Section 16 of the Competition Act, 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).[1]

12. The term "concentrations" cover transactions where:

- two or more previously independent undertakings or parts of undertakings *merge*;
- one or more persons already controlling at least one undertaking, or one or more undertakings *acquire direct or indirect control* on a lasting basis of the whole or parts of one or more other undertakings

13. The creation of a *joint venture* performing on a lasting basis all the functions of an autonomous economic entity, will also amount to a concentration within the meaning of the Competition Act.

14. Successive purchases of parts of undertakings carried out within a period of two years and which lead to a change in control are deemed to constitute one and the same concentration.

[1] This test, which is the same as in the EU Merger Regulation, was introduced in 2016 and replaced the previous significant lessening of competition test (SLC-test).

15. The NCA shall also prohibit anti-competitive acquisitions of minority shareholdings. The same SIEC-test applies in that regard. Moreover, the NCA can intervene against successive acquisitions of minority shareholdings which take place within a period of two years.

16. It is for the parties to propose remedies in order to remove the competition concerns identified by the NCA following which the NCA may conditionally approve the transaction at issue.

17. Under the Competition Act, the NCA has been equipped with three specific tools with the view to making its review of mergers and acquisitions efficient:

1. General turnover based notification rules
2. The power to order notification of transactions falling below the turnover thresholds
3. The power to impose disclosure requirements on individual firms

18. These tools will be further described below.

3. The general turnover based notification rules

19. According to Section 18 of the Competition Act, undertakings are obliged to notify to the NCA any mergers or acquisitions by which they acquire control of other undertakings (concentrations). Transactions for which the turnover of the undertakings concerned fall below specified turnover thresholds are, however, exempted from mandatory notification.[2] Hence, concentrations must be notified to the NCA if the combined annual turnover of the undertakings concerned exceeds NOK 1 billion in Norway and at least two of the undertakings concerned have an annual turnover exceeding NOK 100 million in Norway.[3]

20. Concentrations that are exempt from mandatory notification, as well as acquisition of minority shareholdings, may be notified voluntarily with a view to clarifying whether the NCA will intervene against the transaction or not.

21. A standstill obligation applies to mergers and acquisitions which are subject to mandatory notification. Implementation of such transactions are thus prohibited until they have been notified to and reviewed by the NCA.[4] Significant fines can be imposed if the standstill obligation is not respected.

22. Provided specified criteria are met, concentrations unlikely to affect competition may be notified by way of a simplified notification.

23. After the transaction has been notified, the NCA has in total 100 working days to review the transaction (25 in phase I and 75 in phase II). If remedies are proposed deadlines are extended with 10 working days in phase I and up to 45 working days in phase II. The number of working days deadlines are extended in phase II investigations depends on at what moment and how many times during the process new or amended remedies are proposed.

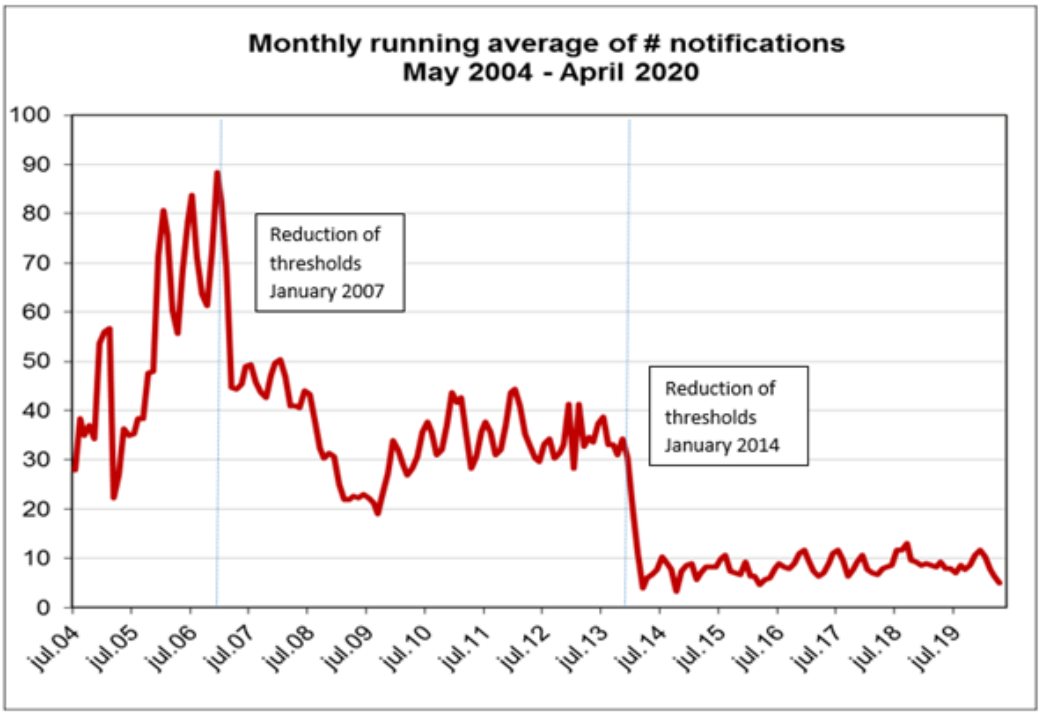
[2] Section 18 of the Norwegian Competition Act.

[3] This amounted to approximately EUR 100 million and 10 million respectively in 2019.

[4] The Norwegian Competition Act can be found in an English here (unofficial translation): https://app.uio.no/ub/ujur/oversatte-lover/data/lov-20040305-012-eng.pdf. Please note that some of the recent amendments to the Competition Act are not reflected in this text.

24. The obligation to notify mergers has been in place since May 2004. Initially, the turnover thresholds were quite low and the number of notifications correspondingly high. While the NCA received almost 90 notifications per month, experience showed that mainly transactions involving undertakings with considerable annual turnover were subject to Phase II investigations. The turnover thresholds were increased in 2007 with a view to reducing the administrative burden on businesses and to some extent the NCA. With effect from 2014, following an in-depth review, the turnover thresholds were significantly increased to the current level.[5] As shown in the graph below, the average number of notifications decreased significantly compared to previous years, both in 2007 and in 2014.

Figure 1. Running average of received notifications



25. Under the current notification thresholds the NCA receives a little less than 10 notifications on average each month, resulting in around 100 notifications of mergers and acquisitions each year.

26. Since 2004, the NCA has on average intervened in three merger cases per year. In 2016, three mergers were prohibited. Notably, 96 per cent of notified mergers were cleared within the legal time limit of 25 days for phase I investigations.

3.1. Considerations regarding notification thresholds

27. As mentioned above, the notification thresholds have been increased on two occasions since 2004. The current thresholds were introduced in 2014.

[5] More information on Norwegian merger policy can be found on our website: https://konkurransetilsynet.no/currently-reviewed/mergers-and-acquisitions/?lang=en.

28. In 2012, a committee appointed by the government presented its report on "A more effective Competition Act".[6] The current notification thresholds are based on the recommendations made by that committee. The committee based its recommendation *inter alia* on statistics showing that for most mergers in which a phase II investigation had been opened in the past notification would have been mandatory under the proposed higher threshold as well. The committee also considered that the notification thresholds should not be too different from the thresholds in the neighbouring countries Sweden and Denmark.

29. The committee took the view that the individual turnover threshold should be kept at a significantly lower level than the combined annual turnover of NOK 1 billion in order to capture cases where major companies take control over or merge with smaller competitors. The committee thus recommended that transactions where only one of the undertakings concerned had a turnover above NOK 100 million should be exempted from mandatory notification.

30. The committee also considered whether to recommend a lower secondary set of turnover thresholds to capture concentrations in oligopolistic markets, but concluded that this would make the notification framework too complex. Moreover, such a set of secondary turnover thresholds would not in any case capture acquisitions of smaller competitors in concentrated markets.

31. On the other hand, the committee emphasised that the NCA should continue to have the power intervene against concentrations falling below the turnover thresholds. In that regard, it was recommended that the NCA also be empowered to order notifications of such concentrations when appropriate. That tool was introduced in the Competition Act in 2014, and is described in the following section.

4. The power to order notification of transactions below the turnover thresholds

32. As the second tool, the NCA may under Section 18 of the Competition Act order notification of transactions which fall below the notification thresholds. The NCA can impose such a duty to notify where it has reasonable grounds to assume that competition will be affected by the transaction or if other particular considerations indicate that the NCA should examine the case in more detail. The NCA may also order notification of acquisitions of minority shareholdings. The NCA may be informed of transactions of this kind in accordance with disclosure requirement, as discussed in the next section, by other competition authorities reviewing the same transaction in their jurisdiction or through market intelligence, the media, tip-offs or complaints.

33. An order to notify a transaction must be issued no later than three months after the final agreement has been concluded or control has been obtained. Before an order is adopted a statement of objections will be issued giving the undertakings concerned the possibility to make their voice heard within a short deadline.

34. There is no standstill obligation preventing concentrations falling below the notification thresholds or acquisitions of minority shareholdings from being implemented. However, from the moment a notification order is effective, a standstill obligation will apply. In the interim period, the parties will thus be able to partially or fully implementing

[6] See NOU 2012:7 available at:

https://www.regjeringen.no/contentassets/91980e1702ef45c3beeed07b8f6f9f3a/no/pdfs/nou201220120007000dddpdfs.pdf

the transaction. From an enforcement point of view this may raise some concerns. However, it has not been considered appropriate to extend the standstill obligation to transactions which are not subject to mandatory notification.

5. The power to impose disclosure requirements on individual firms

35. In some industries the structure and degree of concentration justify an enhanced focus. Even smaller changes in market structure through mergers and acquisitions could have a negative impact on competition, in particular in markets where competition takes place at the local or regional level. If the turnover of the targeted undertakings is limited such transactions may not be covered by the general notification rules set out above. If the NCA is not informed about them in a timely manner it may not be in position to order notification of these transactions within the statutory time limit of three months.

36. As a third and additional tool, therefore, the NCA is empowered to request individual firms to inform the NCA about transactions for which notification is not mandatory. Firms may thus be required to inform the NCA when they acquire control of or merge with another undertaking operating in specified markets or industries and the notification thresholds are not met. In some instances, disclosure requirements may also cover acquisition of minority shareholdings. The requested information must be provided within three days after the final agreement has been concluded or control has been obtained. Such disclosure requirements are imposed by way of requests for information under Section 24 of the Competition Act and apply for a specified period of time, typically for 2 years. Fines can be imposed if disclosure requirements are not complied with.

37. The Authority has imposed disclosure requirements on undertakings in several concentrated markets where the degree of competition at the local or regional level is of particular importance. Currently, these are:

- Motor fuel retailing (Uno-X Energi AS, St1 Norge AS, Certas Energy Norway AS og Circle K Norge AS)
- Electricity generation (Statkraft AS, BKK AS, Skagerak Energi AS og Agder Energi AS)
- Waste management and recycling (Norsk Gjenvinning Norge AS)
- Grocery store chains (Norgesgruppen ASA, Coop Norge SA, Rema 1000 og Bunnpris IK Lykke AS)
- Locksmiths (AssaAbloy Norge AS)
- Newspaper markets (Amedia AS, Polaris Media ASA and Schibsted ASA)
- Provision of broadband services (Telenor ASA)
- Garden centres (Plantasjen Norge ASA)
- Laundry services (Nor Tekstil AS)
- Concrete production (Nordic Concrete Group AS, Heidelberg Cement Norway AS and Unicon AS)
- Accounting systems (Visma AS)

38. These disclosure requirements are imposed on a discretionary basis, based on the NCA's knowledge about the relevant markets, including the degree of concentration, the general conditions of competition, competition concerns revealed during previous

investigations, the M&A activity of certain firms in the past etc. The disclosure requirements can be prolonged when justified by current market conditions. The NCA considers on a continuous basis whether there is a need to impose disclosure requirements on other market players.

39. In the NCA's view, the obligations imposed are not overly burdensome for the companies concerned. The information that must be submitted to the NCA is kept at a minimum, while still giving the NCA a sufficient basis to assess whether the transactions should be examined in more detail and possibly notified to the NCA.

40. The obligation to inform the NCA may also to some extent have a disciplining effect as the companies at issue will anticipate that further M&A activity in the markets concerned will be carefully scrutinized by the NCA.

41. An example from the grocery sector illustrates how the NCA has used this tool in the past. The grocery sector in Norway is highly concentrated with three players operating at both the wholesale and retail level and one additional player at the retail level only. Norgesgruppen is the major operator at both levels. Acquisitions of grocery stores by these players may further increase concentration in local markets, harm competition and lead to higher prices and reduced choice for consumers.

42. The NCA has therefore imposed disclosure requirements on the grocery store chains regarding acquisitions in the grocery sector that are not otherwise notifiable under the Competition Act. Such disclosure requirements have been imposed on Norgesgruppen since 2014 and on other grocery store chains since 2016. The disclosure requirements would cover both the acquisition of grocery stores belonging to the other established chains as well as possible newcomers in the grocery sector. These disclosure requirements constitute an important part of the NCA's monitoring and review of the market structure in the grocery sector.

43. In 2019, the NCA found in a preliminary assessment that Norgesgruppen in relation to an acquisition of grocery store premises in 2018 had not complied with its disclosure requirements. The NCA decided to issue a Statement of Objections to Norgesgruppen informing it that the NCA, in light of the preliminary assessment, considered imposing a fine of NOK 20 million (approximately EUR 2,0 million in 2019) for a breach of its disclosure obligations. At the time of writing, the case was still pending.

6. Examples from recent cases

44. This section contains some examples of how the second and the third tool described above have been used in the NCA's recent practice. Some of these examples may have elements of "killer acquisitions" while others have that to a lesser extent. All examples concern the acquisition by incumbent operators of smaller competitors with a turnover below the notification threshold.

6.1. Nor Tekstil / Rent Nordvest

45. In the first case, Nor Tekstil acquired all customer agreements and production assets from Rent Nordvest. Nor Tekstil is Norway's largest laundry group and provides rental of textiles and laundry services to a wide range of customers in the public and private sector. Rent Nordvest operated locally in the Western part of Norway. Notification of the transaction was not mandatory due to Rent Nordvest's low turnover. The NCA was informed of the transaction since disclosure requirements, as discussed above, had been imposed on Nor Tekstil.

46. In the NCA's preliminary view, Nor Tekstil acquired lasting control over Rent Nordvest's operations through the acquisition and there were overlaps between the parties' activities.

47. The laundry market in Norway is characterized by a high degree of concentration, Nor Tekstil is the leading player and the only player with a national presence. Rent Nordvest was the only competitor in the geographic market concerned. Response from competitors, new entry or potential competition were not considered sufficient to ease the concerns that the transaction raised. Consequently, the NCA considered that the conditions for imposing a duty to notify were fulfilled and ordered Nor Tekstil to notify the transaction in November 2018.[7] The transaction was notified in December 2018 but was abandoned while the NCA was reviewing the transaction.

48. This case is an example of an acquisition by an incumbent player of a smaller competitor that without the second and the third tool described above might have escaped the NCA's review and possibly restricted competition in the geographic market where the targeted undertaking operated.

6.2. Sector Alarm / Nokas

49. The second case concerned several related transactions involving one of the two major players in the market for alarm services to small businesses and residential customers in Norway, Sector Alarm Group AS (Sector Alarm), and a much smaller player on this market, Nokas AS (Nokas). By the first transaction Sector Alarm was to acquire Nokas' alarm services directed towards small and medium sized businesses and residential customers. In the second transaction Sector Alarm was to acquire a 49.99 per cent shareholding in Nokas.

50. The NCA became aware of these transactions after Nokas AS had notified a third related transaction in Sweden whereby Nokas would buy 100 per cent of the shares in AVARN, a subsidiary of Sector Alarm with business activity in Sweden and Finland. Following the notification in Sweden, the Swedish Competition Authority informed the NCA on 1 August 2018 about the two transactions relating to Norway.

51. Neither of the two transactions relating to Norway were subject to notification requirements under the Competition Act. The first transaction fell below the notification thresholds due to the low turnover of the targeted business of Nokas. The second transaction did not lead to any change of control over Nokas and therefore constituted a minority acquisition only, not subject to mandatory notification.

52. The Norwegian market for alarm systems for small businesses and residential customers is concentrated, with few players, high entry barriers and a small degree of buyer power. In light of these market characteristics and the fact that the transactions appeared to strengthen the market position of Sector Alarm, the NCA decided on 24 August 2018 to order notification of both transactions.[8]

53. Sector Alarm notified the two transactions in September 2018 but appealed the notification order before the Competition Tribunal. The appeal was dismissed in December

[7] See (in Norwegian): https://konkurransetilsynet.no/decisions/vedtak-v2018-25-nor-tekstil-as-rent-nordvest-as-palegg-om-meldeplikt-konkurranseloven-%c2%a7-18-tredje-ledd/

[8] See (in Norwegian): https://konkurransetilsynet.no/decisions/v2018-22-sector-alarm-as-sector-alarm-group-as-nokas-as-palegg-om-meldeplikt-konkurranseloven-%c2%a7-18-3-og-5/

2018. In particular, the Competition Tribunal dismissed the claim that a qualified damage to competition needed to be demonstrated before notification could be ordered.

54. In a phase II investigation the NCA considered the effects of the two transactions taken as a whole, as the minority acquisition would reinforce the negative effects of Sector Alarm's acquisition of Nokas' alarm services directed towards small and medium sized businesses and residential customers.

55. Amongst others, in its assessment of non-coordinated effects, the NCA found that Nokas was a close competitor to Sector Alarm and a competitor of particular importance. As a smaller, newly established player with a growing business, Nokas was expected to compete aggressively in the future with a view to increasing its market share. The NCA therefore considered that Nokas exerted a greater competitive pressure upon its rivals than its market share alone would indicate. In light of the high degree of concentration in the relevant market, the NCA concluded that the transaction significantly would impede effective competition.

56. The NCA also found that the transactions would lead to coordinated effects. The removal of Nokas as a competitor would in the NCA's view facilitate coordination between the two leading players on the market and make such coordination more stable.

57. Following remedies proposed by the parties whereby the acquisition of Nokas' alarm services directed towards small and medium sized businesses and residential customers was abandoned and Sector Alarm's minority shareholding in Nokas would be reduced to 25 per cent, the NCA adopted a conditional clearance decision in this case.[9]

58. The second tool described above, played an essential role in this case as it enabled the NCA to require notification of both transactions affecting the Norwegian market and to review them in a timely and effective manner, preventing that a smaller competitor with a considerable competitive force be removed from the market.

6.3. Schibsted / Nettbil

59. In the third case, Schibsted ASA (Schibsted) had acquired a majority stake in a newly established company called Nettbil AS. The NCA order notification in March 2020 and pre-notification contacts took place at the time of writing.[10]

60. Schibsted ASA is an international group that owns a number of digital marketplaces, media houses and technology companies, both in Scandinavia and elsewhere. Schibsted is the owner of Finn No AS ("Finn"), which is the largest online marketplace in Norway for the sale of a number of different products, including real estate, jobs and generalist ads as well as used cars.

61. Nettbil offers an online sales and advertising service aimed at private individuals who are selling, and car dealers who are buying, used cars. Nettbil was founded in 2017. Its online platform was launched in April 2018 and experienced a significant increase in revenue from 2018 to 2019.

62. In December 2019, Schibsted announced that it would acquire a majority shareholding in Nettbil. NCA was made aware of the transaction through the news media. Notification of the transaction was not mandatory due to the limited turnover of Nettbil.

[9] See (in Norwegian): https://konkurransetilsynet.no/godkjenner-sectors-oppkjop-i-nokas-pa-vilkar/

[10] See (in Norwegian): https://konkurransetilsynet.no/decisions/vedtak-v2020-16-schibsted-asa-nettbil-as-konkurranseloven-%c2%a7-18-tredje-ledd/

63. Schibsted disputed that there were sufficient grounds for ordering notification of the transaction. It argued that Finn and Nettbil offered two different products without horizontal overlap and that there were no vertical or conglomerate competition concerns. Since the transaction had already been completed and the parties had taken measures to implement it, Schibsted took the view that it would be disproportionate to order notification in this case.

64. In the NCA view, the fact that the parties had started implementing the transaction did not prevent the NCA from ordering notification. Proportionality and predictability was ensured by the fact that the power to order notification was subject to a three months deadline as explained above.

65. In the NCA's preliminary assessment based on the available information, the NCA considered that there was a separate product market for the online marketing of used cars and that this market was national in scope. Finn was considered a significant player in this market. As the online marketplaces of both Nettbil and Finn offered services aimed at private individuals selling used cars, the NCA considered that there was a degree of horizontal overlap between the two services.

66. The NCA recognized that the services of the two players to some extent were differentiated as Finn mainly offered sales of advertising space, while Nettbil, in addition to advertising, offered additional services to the seller. Nevertheless, in the NCA's view the differentiated services could still be substitutable as quality differences could be offset by differences in prices and a sufficient number of customers could consider the products as real alternatives.

67. Thus, it was the NCA's preliminary conclusion that Finn and Nettbil offered services that appeared to constitute alternatives for private individuals and, consequently, that there was a degree of competitive pressure between Finn and Nettbil at present.

68. Moreover, the NCA observed that Nettbil had experienced a strong increase in turnover from 2018 to 2019, and that it was likely that Nettbil in absence of the transaction would become a stronger competitor to Finn in the future. The extent to which other players would exert a competitive pressure on the parties needed to be investigated further. The NCA considered that there were a number of possible barriers to entry. This included the need to invest in the development of a competitive concept and an online platform, invest in marketing and in attracting new customers and the need to build up a sufficiently large customer base to realise network effects in a two-sided market.

69. In the NCA's view, Schibsted's acquisition of Nettbil could therefore potentially harm competition in the market for online advertising of used cars and it was reasonable to assume that competition could be negatively affected by the acquisition. The NCA concluded that it needed more information and time to assess the competitive effects of the transaction and therefore decided to order notification of the transaction.

70. This case illustrates the theories of harm that were examined at this stage of the NCA's investigation and could be viewed as an acquisitions of a start-up or a "nascent" firm. The case was still under review at the time of writing, and it remains to be seen whether the NCA's forthcoming investigation would confirm that the transaction raised competition concerns.

71. This case also illustrates that the NCA will not be in a position to prevent implementation of all transactions before undertaking its review, notably where implementation takes place by way of a transfer of shares. However, after notification is ordered, further integration of the targeted undertaking with the businesses of the acquirer will be prohibited. Hence, in its decision ordering notification the NCA informed Schibsted

that no further integration with Nettbil should take place during the review period. In addition, the NCA has the power to demand that the transaction is reversed should the NCA's investigation show that the criteria for intervention are fulfilled.

6.4. Amedia / Nu

72. In the fourth case, the NCA has also recently ordered notification. In this case one of the largest media companies in Norway controlling 73 newspapers, Amedia AS (Amedia), has acquired a local media company, Nu Publishing AS (Nu). Nu operates three local internet newspapers in three municipalities in Northern Norway. In addition, Nu is the owner of Lynx Publishing AS (Lynx). Lynx is the provider of an easy-to-use publishing system tailored towards smaller, digital media companies. Notification of the transaction was not mandatory as the turnover of Nu fell below the notification threshold. However, since the NCA had imposed disclosure requirements on Amedia, the latter informed the NCA about the transaction in December 2019.

73. The NCA ordered notification of Amedia's acquisition of Nu in February 2020. In its decision the NCA noted that the parties had overlapping activities and appeared to be close competitors in the three municipalities in which Nu's newspapers were operating. It also appeared that the acquisition would strengthen Amedia market position in these markets.

74. Moreover, the NCA considered that Amedia and Lynx had overlapping activities in a possible nationwide market for the provision of digital services for news distribution and that the competitive pressure between them could be removed as a result of the transaction. In addition, the NCA raised concerns about vertical effects resulting from Amedia's control over Lynx. Some of Lynx' customers were competing with the newspapers of Amedia and Amedia might have incentives to reduce the competiveness of the services Lynx offered to these customers thereby reducing the competitive pressure on Amedia's newspapers.

75. The NCA considered that it had insufficient information to assess the extent to which competitive pressure from other players, entry possibilities, potential competition or other factors could counteract any of the possible anticompetitive effects resulting from the transaction. In the light of these considerations, the NCA decided to order notification of Amedia's acquisition of Nu. At the time of writing the transaction had yet to be notified.

76. Similar to the Schibsted / Nettbil case, this case might be viewed as an acquisitions of a start-up or a "nascent" firm, in so far as Lynx is concerned. However, it remained to be seen whether the NCA's forthcoming investigation would confirm that the transaction raised competition concerns.

7. Concluding remarks

77. The NCA has been equipped with three different tools to enable it to fulfill its tasks relating to merger control. The current turnover-based notification rules are combined with the power to order notification of transactions falling below the turnover thresholds and the power to impose disclosure requirements on individual firms. With these tools in place there does not appear to be any pertinent need for additional tools, for instance the introduction of a notification threshold based on the value of transactions, in order to address acquisitions of start-ups or nascent firms.

78. Admittedly, there might be some challenges with the current framework. Firstly, some potentially problematic acquisitions may take place without being noticed by the

NCA. Consequently, it is necessary that the NCA follows developments in problematic markets rather closely. Notably, to this end, the NCA is organized in market divisions, each with the responsibility to monitor the markets included in their portfolio. For markets where there are particular reasons for concerns, the NCA's power to impose disclosure requirements on individual firms will be used, and as such alleviate the problem.

79. Secondly, some problematic mergers and acquisitions may already be consummated before they are brought to the NCA's attention. However, in this respect a potential notification order (which may be given until three months after the final agreement has been concluded or control has been obtained), and the risk that the NCA would prohibit the transaction and order the parties to reverse it, might convince the parties to notify acquisitions voluntary before implementation with a view to obtain legal certainty.

80. To conclude, therefore, it would appear that the NCA is well equipped to capture and assess in a timely and effective manner acquisitions whereby incumbent players acquire start-ups or "nascent" firms.