

**Directorate for Financial and Enterprise Affairs  
COMPETITION COMMITTEE**

**Annual Report on Competition Policy Developments in Norway**

-- 2019 --

This report is submitted by Norway to the Competition Committee FOR INFORMATION.

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## *Table of Contents*

<b>1. Executive summary .....</b>	<b>3</b>
<b>2. Changes to competition laws and policies, proposed or adopted .....</b>	<b>4</b>
2.1. Summary of new legal provisions of competition law and related legislation .....	4
2.2. Other relevant measures, including new guidelines.....	5
2.3. Government proposals for new legislation .....	6
<b>3. Enforcement of competition laws and policies.....</b>	<b>7</b>
3.1. Action against anticompetitive practices, including agreements and abuses of dominant positions.....	8
3.1.1. Summary of activities.....	8
3.1.2. Description of significant cases, including those with international implications .....	9
3.1.3. Summary of development in cases that were appealed.....	10
3.2. Mergers and acquisitions .....	11
3.2.1. Statistics on number, size and type of mergers notified and/or controlled under competition laws .....	11
3.2.2. Summary of significant cases.....	12
<b>4. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies .....</b>	<b>13</b>
4.1. Cooperating bodies .....	13
4.2. International cooperation. ....	14
4.3. Expressing competition concerns related to existing or proposed regulations .....	14
4.4. Other outreach activities .....	17
<b>5. Resources of the competition authorities.....</b>	<b>17</b>
5.1. Resources overall (current numbers and change over previous year).....	17
5.1.1. Annual budget (in NOK and USD):.....	17
5.1.2. Number of employees (person-years): .....	18
5.2. Human resources (person-years) applied to mergers, anti-cartel, dominance-related issues and advocacy.....	18
<b>6. Summaries of or references to new reports and studies on competition policy issues .....</b>	<b>18</b>

### Tables

Table 1. Investigative Work Activities 2014-2019 .....	8
Table 2. Applications for leniency 2014-2019 .....	8

### Figures

Figure 1. Number of notifications of mergers and acquisitions .....	12
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## Norway

### 1. Executive summary

1. The goal of the Norwegian Competition Authority (NCA hereafter) is to promote competition to the benefits of consumers in a broad range of markets using all the tools at our disposal. This goal is pursued through a good balance between anti-cartel activities, clear signals to dominant firms on what they can and cannot do, an effective merger control and not the least active advocacy work to enhance knowledge and compliance and promote more competition friendly regulation.

2. The Norwegian Competition Authority has over the last decade achieved an impressive track record of decisions that has stood the test of appeal. A major event for the NCA last year was the decision by the Norwegian Competition Complaints Board in the Telenor-case. In the NCA's view, Telenor created barriers for the development of a third mobile network. Norway is one of few countries in Europe having only two nationwide networks, and the impact on the consumer of dampened competition in this market is huge. The Tribunal upheld NCA's decision, including the size of the fine, and concluded that Telenor had abused its dominant position in the Norwegian mobile market. However, Telenor has decided to bring this decision to the Court of Appeal.

3. Enforcement work in 2019 was marked by several major investigations and decisions.

4. Relating to cartels, the NCA issued an SO to Verisure AS and Sector Alarm AS, stating that it considered imposing fines totaling 1.2 billion NOK. In this case, we carried out unannounced inspections at the premises of the two companies concerned in June 2017. The size of the fines illustrate that the case is serious and concerns a large market that affects many customers in Norway.

5. The NCA conducted dawn raids in two new cases. One dawn raid was conducted in the market for waste management services. However, this case was closed after 5 months with the conclusion that no violations were found. The groceries sector has in particular been a focal point for our enforcement activities the last few years. Notably, the NCA established a new grocery task force, focusing on both enforcement and advocacy, reflecting the importance the Ministry of Trade, Industry and Fisheries allots to this market. The NCA is currently examining material from two separate cases with dawn raids conducted in 2018 and 2019, respectively. The latter followed our market study documenting significant price differences in terms of purchasing among the groceries chain. Investigations and interviews continued in ongoing cases *ia.* relating to publishing and groceries as well as a new case in the fuel market.

6. Continuing the work relating to abuse of dominance, one of the major beer producers in Norway, Ringnes, has been under scrutiny. Notably, Ringnes offered binding commitments, which could make it easier for pubs and restaurants to source beer from Ringnes' rivals. The NCA expects that the commitments, that were affirmed in 2020, may lead to a wider selection of beers in pubs and restaurants.

7. A significant part of the NCA's resources are devoted to merger control. Among the 107 merger notifications received in 2019, 96 per cent was cleared within the legal limit of phase 1, namely 25 working days. The NCA intervened in three mergers in 2019; one

was blocked and two solved with remedies. For the first time, the NCA solved a merger with remedies already in phase 1, when Tieto and Evry had to divest its case management and archiving system for business. Also for the first time, we intervened towards a minority shareholding when Sector had to reduce its shareholding post in Nokas. Finally, the NCA blocked Prosafe's acquisition of Floatel - the two closest competitors in the Norwegian market for offshore accommodation services.

8. For many years, the NCA has advocated the urgent need for regulatory changes in the taxi market. Almost a decade of advocacy efforts got a successful result in 2019, when a new regulatory framework for the taxi services was enacted, effectively removing the barriers to entry - in accordance with the NCA view.

9. Advocacy is an important part of our work, and the NCA use innovative approaches to identify regulations restricting competition and to raise awareness using cost-effective tools like publishing op-eds in the leading national business newspapers and through presentations at conferences, guest lectures at the university and at the major business schools as well as industry association meetings. In general, the concerns the NCA raise through various channels receive significant media attention. This enhances the impact of our efforts in the advocacy area. In 2019, the NCA was active advocating changes promoting competition in markets as diverse as the book market, public occupation pension, regulation on digital markets, pharmaceuticals, health services and price signaling in advertisement.

10. The NCA works strategically to increase knowledge of our work and decisions by ia. using a combination of communication tools and formats including use of social media in innovative ways, with 239 posts on Twitter, LinkedIn and Facebook in 2019. A survey in the end of 2018 measured positive effects of our PR- and advocacy efforts on policy makers, and confirmed the results of our PR-strategy, choosing different channels for different target groups. We also find a correlation between our presence on social media and the increasing amount of tip-offs. The amount of tip-offs, both concerning cartels and abuse of dominance, increased again in 2019, by 41 per cent, after an earlier increase from 2017 to 2018 by 47 per cent.

## **2. Changes to competition laws and policies, proposed or adopted**

11. The Norwegian Competition Authority's main task is to enforce the Competition Act, prevent and deter competition crime and affect market structure in a direction that promotes healthy competition. The Norwegian Competition Act entered into force on May 1, 2004. The purpose of the Act is to promote competition in those cases where it contributes to efficient utilization of society's resources to the benefits of consumers. The Act is largely harmonized with EU competition rules and includes prohibitions against cartels and abuse of dominance. Leniency is modelled after the ECN Model Leniency Program. Mergers and acquisitions are prohibited from being implemented before they have been notified to and reviewed by the Competition Authority.

### **2.1. Summary of new legal provisions of competition law and related legislation**

12. The Norwegian Competition Complaints Board was established in 2017. Related regulations were finalized in detail in 2019.

13. A major event in 2019 was that a new Nordic cooperation agreement entered into force. This agreement updates and extends the previous agreement that had been in place for almost 20 years, and it makes the fight against competition crime more effective across the Nordic borders. The preceding 15-year-old agreement was revised following the OECD recommendation concerning International Co-operation on Competition Investigations and Proceedings of 2014 as well as the Council Regulation (EC) No 1/2003 (in particular Articles 12 and 22), and provides for *ia.* cross-border exchange of confidential information as well as investigative assistance. Thus, the cooperation agreement implies a better basis for effective cooperation on enforcement across the Nordic borders. Norwegian ratification was finalized mid-2019. All the Nordic countries have by 2020 made the necessary legal changes for ratification.

14. In addition, the Nordic competition authorities have entered into a cooperation aimed at facilitating the exchange of employees for shorter periods.

## 2.2. Other relevant measures, including new guidelines

15. In some industries, the structure and degree of concentration require an enhanced focus. Here, 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.

16. To survey and control structural changes in such markets, the NCA is empowered to request individual firms to inform the NCA about transactions for which notification is not mandatory based on the general thresholds. 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 may be imposed if disclosure requirements are not complied with.

17. In 2019, the NCA decided to continue the duty to inform the Authority about mergers and acquisitions for the following markets and firms:

- 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 (Assa Abloy 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)
  - Alarm systems (Verisure AS and Sector Alarm Group AS)
18. In 2020, this list was supplemented by:
- Concrete production (Nordic Concrete Group AS, Heidelberg Cement Norway AS and Unicon AS)
  - Accounting systems (Visma AS)
19. The NCA continuously assesses whether there is a need to introduce disclosure requirements for additional market players. Also in this respect, the NCA has an increased focus on digital markets.

### **2.3. Government proposals for new legislation**

20. In 2018, the government issued a public hearing proposing changes in the legal framework for the taxi market in accordance with our suggestions, effectively deregulating the market. With some minor changes, these changes were enacted by the Parliament mid-2019 with implementation initially from July 2020. However, due to the special circumstances caused by Covid-19, the implementation date was postponed to November 2020.

21. Important for achieving the objectives of deregulating the taxi market is to lower the barriers to entry. Here, the current taximeter regulations are an important element. Today's demands on taximeters reduce market competition considerably by enhancing thresholds for new market actors. Opening up for alternatives to taximeters will be an important factor in reaching the goal of increased competition in the taxi market.

22. The government received a report from a government appointed commission early 2019, which suggested changes in the taximeter and associated regulations, effectively enabling a fully digital alternative to today's costly taximeters. The NCA was represented in this commission. The Commission suggested that regardless of the way the taxi is ordered - by phone, hailing in the street, from a taxi stand, or using an app - the customer should receive a binding price offer based on destination. The Commission also suggested that the equipment can not be used without certifying driver identity. This, combined with GPS-tracking, are important elements in customer safety. Moreover, full digital tracking and secure storage of all transactions are important in ensuring the tax authorities' requirements.

23. The NCA has advocated that market regulators use the postponement in the implementation of the legal framework for the taxi market as an opportunity to implement new taximeters regulations to be effective from the same time.

24. In December 2019, the Government proposed the enactment of a new Act on Good Trading Practices. The Act was adopted by the Norwegian Parliament in March 2020. The overall objective of the act is to provide a basis for contractual relationships between the suppliers and the grocery chains that are both clear and predictable. The Act introduces some main guiding principles requiring all parties to act in accordance with good trading practices. The standard for good trading practices is linked to the principles fairness, predictability and loyalty. The Act also imposes an obligation to provide the counterparty

with information that they have reason to believe is of importance to the other party. This obligation applies during negotiations and the execution of the contract.

25. A Grocery Supervisory Authority ('Dagligvaretilsynet') will be established to enforce the Act by eg. providing guidance, mediation and other advocacy work. The Authority has also been provided with powers to request information, to adopt decisions, and to fine parties for non-compliance. The Grocery Supervisory Authority is planned to be in operation from 2021, and will be geographically located together with the Norwegian Consumer Authority.

26. Also relevant to the legal framework for competition is the implementation in the EEA-agreement of the EU geo-blocking regulation (Regulation (EU) 2018/302 of February 28, 2018), on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market which came into force in the EU on 2018. The Regulation seeks to increase access for customers in the EU and EEA to goods and services by preventing unjustified geo-discrimination due to the customer's nationality, place of residence or establishment. The EEA Joint Committee decided to implement the Regulation in the EEA-agreement in December 2019. Following a public hearing, the Norwegian government proposed the necessary amendments to the Norwegian services act ('Tjenesteloven') in order to implement the Regulation into Norwegian law. These were approved by the Norwegian Parliament in June 2020. Regarding enforcement of the Regulation, the Ministry of Trade, Industry and Fisheries considered the Competition Authority as an alternative, but concluded that the Norwegian Consumer Authority was the most appropriate enforcement agency because of the strong consumer aspects of the Regulation, and the lack of substantial complementarities between enforcement of the competition law and the geo-blocking regulations.

### 3. Enforcement of competition laws and policies

27. According to the Competition Act, the primary responsibilities of the NCA are as follows:

- Monitor adherence by businesses and industry to the Competition Act's prohibitions against competition-restricting cooperation and abuse of a dominant market position.
- Ensure that mergers, acquisitions and other forms of concentrations do not significantly restrict competition.
- Implement measures to increase the transparency of markets.
- Enforce Articles 53 and 54 of the EEA Agreement.
- 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.

28. The main responsibility for enforcing Norwegian competition regulations, including investigating and responding to offences, is placed with the Norwegian Competition Authority (NCA). The NCA can impose civil reactions for violations (eg, an administrative fine for the company or companies involved). However, Norwegian Competition law also has its own penal section. The Norwegian National Authority for

Investigation and Prosecution of Economic and Environmental Crime has the responsibility for carrying out criminal investigations, including competition crime. Normally, cases referred by the NCA to the Public Prosecution Authority will be of a very severe nature. The NCA has not referred any case since the new Competition Act from 2004 entered into force.

### 3.1. Action against anticompetitive practices, including agreements and abuses of dominant positions

#### 3.1.1. Summary of activities

29. In 2019, the NCA secured evidence in two separate cases, one concerning the market of waste management services, and the other in the grocery market. In addition, the NCA made public it has initiated a new investigation in the fuel market. The case concerning waste management was closed when the suspicion of possible offenses was rebutted. This shows that the NCA works effectively by focusing in the early stages of case handling on whether we have received the information that can confirm or disprove our suspicions.

30. Since 2017, information at an aggregate level on dawn raids the NCA conducts has been published on the NCA's website. The information presented are market, type of infringement and status of the investigation.

**Table 1. Investigative Work Activities 2014-2019**

Cases / locations	2014	2015	2016	2017	2018	2019
Securing evidence section 25	6/17	1/2	1/3	3/3	2/10	2/6
Depositions (formal statements) section 24	4/34	5/45	4/17	4/20	4/34	6/39

31. In addition to these investigations, the NCA continued its market monitoring in the wholesale market for electricity, the fuel market, the grocery market and the domestic air transport market.

32. Leniency was introduced by the Competition Act of 2004. The threshold for seeking leniency appears to be relatively low. However, some of the NCA's larger cases have been the result of the leniency program. Notably, in 2017, the amount of leniency applications more than doubled compared to previous years. In 2018, however, this number dropped, although it increased by one in 2019. A 2017-survey clarified the lack of knowledge about leniency among business leaders in Norway. The NCA initiated an information campaign in 2018 to make leniency more known. A 2018-survey showed that knowledge was somewhat better in industry associations and this could mean the information campaign has had effect.

**Table 2. Applications for leniency 2014-2019**

	2014	2015	2016	2017	2018	2019
Number of applications	3	3	3	7	3	4

33. The NCA has adopted a more proactive approach to discover cartels. In that regard, several projects on uncovering cartels *ex officio* have been initiated since 2017. International networks, both the Nordic, ECN, ICN and OECD, as well as bilateral dialogue with other competition authorities have proved itself essential in developing screening methods and proactive manners to approach relevant market actors.

### ***3.1.2. Description of significant cases, including those with international implications***

34. For the NCA, antitrust has always been a key priority. The Authority endeavors to work broadly, with various types of cases in a diverse range of markets that are important for Norwegian consumers.

35. In 2019, the companies Sector Alarm and Verisure were notified that the NCA considered imposing fines totaling approximately NOK 1.2 billion for collusion in the market for alarm services to residential customers. The SO described market division for sales in the years 2011 until 2017. The size of the fines illustrates that the case is serious and concerns a large market that affects many customers in Norway.

36. In 2019, a dawn raid was also conducted in the market for waste management services. However, this case was closed after 5 months of investigations, with the conclusion that no violation of the prohibition regulations of the competition law was identified.

37. The NCA continued its work on several other cases that concern possible breaches of the prohibition on anticompetitive cooperation, including in the book market, the grocery market and the fuel market.

38. The fuel market is important for consumers. Here, the NCA has over many years conducted a comprehensive analysis of price formation, how competition plays out depending on ownership structures, and what determines competitive outcomes. In 2019, the NCA started an investigation of whether there has been a breach of the prohibition on illegal cooperation concerning prices. This investigation was a result of the NCA's continuous monitoring of this market. The NCA will continue to monitor this market closely.

39. Even more important is the groceries market. Competitive conditions in the grocery and food markets have a major impact on Norwegian consumers. This market is highly concentrated both at the wholesale and retail level. Consequently, the NCA has paid particular attention to this market for many years. The NCA is currently examining material from two separate cases based on dawn raids conducted in 2018 and 2019. In the 2018-case, the NCA's investigates the exchange of strategic information between grocery chains. The latter case was a consequence of a market study documenting significant differences in terms of purchasing among the groceries chain. The NCA feared that the large differences in purchase prices in some cases could lead to higher prices to consumers, and constitute a possible violation of the competition act.

40. In 2019, the NCA received an additional grant from the Ministry of Trade, Industry and Fisheries, which significantly strengthened the basis for enforcement and advocacy efforts in this area. The grant gave the NCA the opportunity to allocate 6 persons to a new project group dedicated solely to the groceries market while at the same time strengthening our overall enforcement activities. This new group will work with a particular focus on market surveillance and identification of measures that can promote competition in this

market. More resources will allow the NCA to investigate more cases than before, including increased capacity to follow up tip-offs and complaints.

41. For the NCA, tip-offs, complaints and leniency applications are important to ensure the greatest possible direct and indirect effects of enforcement. This provides the basis for prioritizing cases and activities that are as far as possible in line with our strategic plan. Through targeted information measures, the NCA has worked targeted to obtain more tip-offs on possible competition crime. Notably, last year the NCA observed a 41 per cent increase in tip-offs. This is the result of enhanced efforts to inform firms about the importance of sending us information about possible violation of the competition act. An important part of this work was to establish a portal for anonymous notification and anonymous communication with informants. This portal became operative in the spring of 2020. In addition, the NCA utilizes the possibilities that digital tools provide, using new sources and methods for data analysis for the detection of cartels.

42. A case that was initiated in 2017 and finalized in 2020, deals with possible abuse of dominance in the market for beer sales at restaurants concerning a major brewer in Norway: Ringnes. In this case, Ringnes offered binding commitments. In February 2020, third parties were invited to comment on these commitments. After the market consultation, the NCA decided that the commitments sufficiently addressed the competitions concerns identified by the Authority. Ringnes has agreed to amend its agreements with pubs and restaurants and thereby making it easier for smaller breweries and suppliers to access the market. Ringnes has committed not to conclude agreements that give the company exclusive rights to deliver beer to pubs and restaurants. Moreover, it must follow clearly from Ringnes' agreements that the pubs and restaurants concerned are free to accept deliveries of beer from other breweries and suppliers. The commitments make it possible for other breweries and suppliers to compete effectively with Ringnes on price, as Ringnes has undertaken not to grant discounts that tie pubs and restaurants to Ringnes, or to reward customers that source all their requirements from Ringnes. Furthermore, Ringnes no longer has the possibility to limit other breweries or suppliers access to a pub or restaurant. Ringnes must from now on allow competitors to install their own equipment in pubs or restaurants, which are supplied by Ringnes, or allow competitors to use Ringnes' own equipment if there is insufficient space for additional equipment. The NCA expects that the commitments may lead to a wider selection of beers in pubs and restaurants.

### *3.1.3. Summary of development in cases that were appealed*

43. Before April 2017, the NCA's decisions to issue administrative fines in cartel and abuse of dominance cases could be appealed to the court of first instance in the ordinary court system. Decisions to intervene in merger cases had to be appealed to the Ministry for Industry, Trade and Fisheries. In April 2017, the Competition Appeals Board was formally established. The Board shall consider appeals against all decisions and rulings in merger cases decisions issuing fines for abuse of dominance and collusive behaviour, as well as decisions relating to access to file and duty to provide information etc. Decisions by the Competition Appeals Board may be appealed to the Gulating Appeals Court and ultimately to the Supreme Court.

44. In 2019, the NCA received full support from the Competition Complaints Board for the 2018 decision to impose a fee of NOK 788 million on Telenor. This was an important decision. It provides on the one hand clear signals that violations of the prohibition of abuse of dominance are serious offences, and on the other confidence and

assertiveness in our work. Telenor has appealed this decision to the Court of second instance.

45. An appeal on a fine in the book market was still pending in 2019. It was handled by the Appeal Court before the summer of 2020.

## 3.2. Mergers and acquisitions

46. An important task for the NCA is to assess and prohibit concentrations that will significantly impede effective competition. To fulfil this task, the NCA has been equipped with three different tools: i) the general notification rules, ii) the extended duty to notify and iii) the power to order notifications. The first tool is the most important in merger control, according to which companies and other business enterprises have a duty to notify the NCA about any mergers, acquisitions and agreements by which they acquire control of other companies, if the turnover of the undertakings concerned exceeds the turnover thresholds. A concentration must be notified to the Authority if the combined annual turnover of the undertakings concerned exceeds NOK 1 billion in Norway. However, there is no duty to notify a concentration if only one of the undertakings concerned has an annual turnover exceeding NOK 100 million in Norway.

47. This tool is rather too crude for some markets and concentrations. It can not be excluded that mergers and acquisition in already concentrated markets, concentrations effecting local markets or potential competition may go under the radar. To counter this, the NCA has two additional tools. 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 an extended duty to notify on specific firms. This implies that the firm must notify everything it does in relation to concentrations.

48. As the third tool, the NCA also has the power to impose a duty on a specific concentration which it becomes aware of – even if the related turnover is below the notification threshold levels. Imposing a duty to notify can be done if the NCA has reason to assume that competition will be affected by the transaction or if other particular considerations indicate that the Authority should examine the case in more detail. This tool is of particular relevance in relation to analysis of established firms buying start-ups and to prevent killer acquisitions.

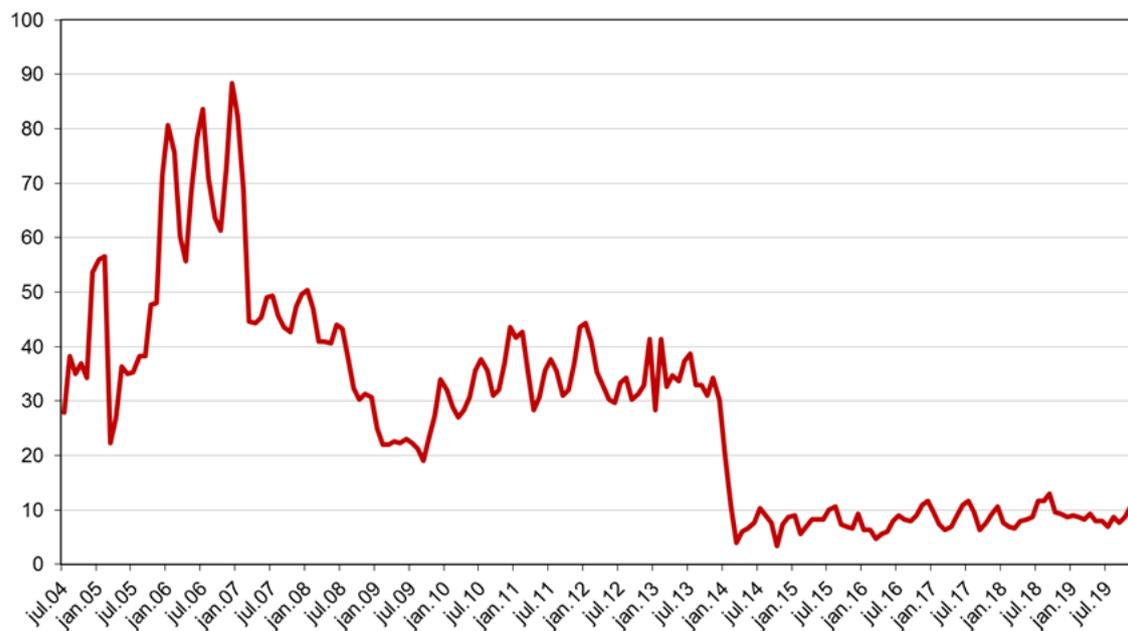
49. In addition to assessing notified mergers, the NCA monitors mergers that previously have been approved with remedies. In most of these cases a monitoring trustee, appointed by the NCA, makes sure conditions are met.

### *3.2.1. Statistics on number, size and type of mergers notified and/or controlled under competition laws*

50. The number of notifications of mergers and acquisitions has been quite stable since the threshold levels were increased significantly in January 2014. In 2019, the NCA received 107 notifications.

**Figure 1. Number of notifications of mergers and acquisitions**

May 2004 – December 2019 (3 months running average)



51. The significant falls in 2007 and 2014 were due to increasing thresholds. With the higher thresholds, there is a higher risk that some mergers and acquisitions that are potentially of concern will not be notified. To follow developments in highly concentrated markets, the NCA has the power to oblige actors in certain markets with high concentration to notify *all* acquisitions, eg. in markets like power production and the groceries market. The NCA considers continuously whether more actors should be obliged to send these notifications. For more information, see 1.2 and the introduction of 2.2.

52. For the NCA, it is important that the merger control provides businesses with predictability and quick clarification. Notably, the NCA cleared 96 per cent of notified mergers within the legal limit of 25 days for phase 1. This is a reflection of efforts to enhance efficient case handling with a focus on front-loading resources in the case – with results obviously of importance for the parties involved as well as freeing internal resources for other prioritized cases. Summaries of the most significant merger cases in 2019 are presented below.

### 3.2.2. Summary of significant cases

53. In 2019, the NCA intervened against three mergers and acquisitions, two solved with remedies and one being blocked.

54. The merger between Tieto and Evry, two providers of software and IT services, was solved in phase 1 with structural remedies. To complete the merger the parties had to divest its case management and archiving systems for business to a suitable buyer. This is the first time the Competition Authority has cleared a merger with commitments at this early stage of its review process.

55. Sector's acquisition of Nokas concerned the market for security systems, and it was solved with a combination of structural and behavioral remedies. First, Sector committed to not carry out the acquisition of Nokas Small Systems. Second, Sector committed to reduce its shareholding post in Nokas from 49.99 to 25 per cent. This is the first time the Norwegian Competition Authority intervenes in a minority shareholder acquisition.

56. The NCA blocked the merger between Prosafe and Floatel. They are the two closest competitors in the Norwegian market for offshore accommodation services. The NCA's decision was appealed to the Competition Complaints Board, but the merger was withdrawn before they made a decision.

57. In one Phase 2 case, in the forestry market, the NCA decided to not intervene after careful examination of the effects on competition.

58. The duty to notify is an important part of the merger control. In order to safeguard the interests of consumers, the NCA is completely dependent on access to reliable and statutory information from the parties in order to prevent competitive harm.

59. As alluded to above, the NCA can also order notification of a transaction below threshold levels. The concentration between Nor Tekstil AS and Rent Nordvest AS was originally not notified as a merger notification, but as a short notification based on the duty of specific market players to inform about all mergers and acquisitions (also below threshold level) in individual markets where the degree of local competition is of particular significance. The NCA ordered a merger notification based on this market monitoring. The parties withdrew the notification after we notified that intervention was likely. This case illuminates the deterrent effect of our merger control.

60. In 2019, the NCA sent an SO in two gun jumping cases, with war that the Authority considered imposing fines for breach of the duty to disclose and the duty to provide correct information in the filed notification, respectively. In the first case, the NCA issued an SO to Norgesgruppen, the major wholesale and retail business in the groceries market, warning that we considered imposing a fine of NOK 20 million (approximately EUR 1.8 million) on the company for breach of its disclosure requirements regarding its acquisition of grocery store premises in 2018. In order for the fine to have sufficient preventive effect, and thereby contribute to an effective control of structural changes in the grocery sector, the fine considered was relatively high. The other case addressed Vygruppen, an important business in the transport industry. The NCA's SO preceded a 2020-fine of NOK 7.5 million, for incomplete information in its merger notification.

## **4. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies**

### **4.1. Cooperating bodies.**

61. The NCA holds regular meetings for information and contact purposes with sector regulators such as the Financial Supervisory Authority of Norway, the Norwegian Communications Authority, the Norwegian Water Resources and Energy Directorate, the Norwegian Consumer Authority and the Norwegian Consumer Council. The contact with some of these bodies is formalised by cooperation agreements which ia. provide a better framework to exchange information. Meetings are both on regular and ad hoc basis, depending on whether there are cases where both competition policy and sector based regulations are essential.

62. The NCA has contact with other public institutions depending on priorities in advocacy, e.g. meetings with the Agency for Public Management and eGovernment to discuss possibilities to enhance competition in public procurement. In September 2020, the responsibility for public procurement is transferred to the Norwegian Agency for Public and Financial Management. The Agency for Public Management and eGovernment has been reorganized and became the Norwegian Digitalisation Agency. This authority will continue to be an important body of cooperation for the NCA.

#### **4.2. International cooperation.**

63. For the NCA, international cooperation has a high priority, with the Nordic network, the ECN, ICN and the OECD as the most important networks. The NCA aims to be an active contributor to these networks, and submits written contributions for OECD Competition Committee as well as presents cases in ECN Working Groups.

64. From 2018, the NCA is a co-chair of the ICN Advocacy Working Group. As co-chair, the NCA was involved in the planning and execution of a workshop in Ukraine together with the Antimonopoly Committee of Ukraine in February/March 2019.

65. Another important arena for international cooperation is the European Competition Network - ECN. The European Economic Area (EEA) agreement makes Norway part of the European single market. The EEA links the EU member states and three European Free Trade Association (EFTA) states (Iceland, Liechtenstein and Norway) into an internal market governed by the same basic rules. Thus, the agreement entails the free movement of goods, services, capital and persons. The agreement also entails common competition rules, public procurement rules and state aid rules, in order to ensure equal and fair conditions of competition between companies throughout the EEA. However, the internal market also means that many cases of competitive crime include companies that operate across borders and that the adverse effects affect consumers in many countries. This means that active participation in the European competition network ECN is all the more important for the NCA.

66. Moreover, the NCA has regular contact with the EFTA Surveillance Authority on ongoing cases with a cross-border dimension. The NCA also has informal cooperation with other authorities on a bilateral basis.

67. Another important cooperation arena is the Nordic co-operation. The cooperation with the Nordic competition authorities is institutionalised in an agreement. A new agreement was ratified in 2019 for Norway. This agreement updates and extends the previous agreement that had been in place for almost 20 years, and makes the fight against competition crime more effective across the Nordic borders. Thus, the updated cooperation agreement implies a better basis for effective cooperation on enforcement across the Nordic borders. In addition, the Nordic competition authorities have entered into a cooperation aimed at facilitating the exchange of employees for shorter periods. Please see section 1.1 above for more information.

#### **4.3. Expressing competition concerns related to existing or proposed regulations**

68. Related to advocacy, we work to extend the competition frontier. According to section 9 of the Competition Act, the NCA shall supervise competition in the various markets, ia. by implementing measures to promote market transparency, and by calling

attention to any restrictive effects on competition caused by public measures. In its advocacy role, the NCA especially focuses on regulations harming competition.

69. By acting as a hearing body, the NCA ensures that the competition perspective is given due consideration when new policies are being adopted. The Authority prioritises cases where its influence is most likely to result in a positive outcome for competition. This has shown to be an effective use of resources.

70. In 2019, the NCA submitted eight hearing statements to various ministries and authorities, related to proposed changes in laws and regulations, concerning the following topics:

- Public tenders for municipalities buying life insurance for its employees
- Capital Requirements Regulation, as part of the EER-agreement since 2019, and its implementation in Norway
- VAT on ebooks and other electronic publications
- The exemption of the Competition Act for pricing of new books
- Implementation of a Groceries Supply Code of Practice
- Professional secrecy of lawyers in connection to a proposal from the Ministry of Finance on tax consultants
- Telecommunication infrastructure
- New Administration Act

71. An important part of our advocacy work is to raise awareness of the importance of competition as instrument for efficient use of scarce resources, more innovation, to influence the companies' competitive culture, and not least to work for changes in regulations that, among other things, facilitate more competition through lower entry barriers, new business models and stronger incentives to compete.

72. Anti-competitive regulations exist in a number of different areas. An important area where we have worked for regulation promoting competition is the taxi market. We have argued for a framework with lower entry barriers that reflect the technological development, thus leading to more flexible supply and consumers getting better and cheaper taxi services. In particular, it is important that the regulations allow for new players and business models. In 2019, the Parliament adopted a law change effectively resulting in a deregulation of this industry, in line with our proposals.

73. Another example is the book market, where the Book Agreement between the publishers' association and the book retailers' association contain fixed book prices (RPM) as an important element. This sector is given exemption from the competition law by regulation. We have advocated over a longer period that this actually undermines cultural policy objectives by leading to higher prices for new Norwegian literature. This means again that fewer books are read when the book is 'fresh'. We have argued that cultural policy objectives are better reached by direct means, not by undermining competition, but so far without success. Our work to illuminate how competition and cultural policy objectives can go hand in hand will continue in a long perspective.

74. Yet another market where the NCA has been active using the advocacy tool, is public sector occupational pensions. Here we work to ensure that new players can challenge the established player who is currently alone in this market.

75. The pharmacy market is another area of some concern. Well-functioning competition in this market is of particular importance for vulnerable consumer groups. The framework conditions must facilitate this. In this regard, we have proposed, according to Section 9e of the Competition Act, to remove a rule that opens the possibility of not granting a pharmacy license to companies with a market share of more than 40 per cent. The NCA has argued that successful pharmacies must be allowed to grow, thus stimulating competition.

76. Two areas of particular concern are the groceries market as well as digital markets.

77. The Norwegian groceries market is characterized by a high degree of concentration with only three main retail chains, high entry barriers and no new entry in any of the other retail segments (soft discount, supermarkets etc.) after Lidl left the market in 2007, after only three years in Norway. In July 2018, the Ministry of Trade, Industry and Fisheries gave an assignment to the NCA to contribute to the Government's work in following up the Parliament decision to identify measures to increase competition in the grocery sector. In the supplementary allocation letter there were four subjects that the Norwegian Competition Authority was asked to give its professional contribution on:

- analysis of the conditions for competition in the grocery market
- ban on unfair trading practices in the food supply chain
- analysis of prohibition of price discrimination by dominating suppliers
- conditions related to distribution

78. Furthermore, in June 2019, it was announced that the Government also will increase the NCA's capacity and efforts to enforce the Norwegian Competition Act in the grocery sector. In that regard, an additional amount of NOK 6.5 million was allocated to the Authority for the fiscal year 2019. The extra funding has been dedicated to:

- increase the capacity of the Authority with 6-7 full-time employees, and establish a stable core of employees who will focus on the grocery sector
- prioritize increased visibility and closer contact with market players
- increase the follow-up of tip-offs and complaints
- investigate more cases concerning possible breaches of the Competition Act

79. To realize the ambitions associated by this extra funding, the NCA has established a grocery task force. The work of this task force comes in addition to the existing work on the grocery sector in one of the market units. The Norwegian Competition Authority has also been asked to contribute to the preparation of the planned White Paper on the grocery market, which was presented during the 2020 spring session of the Parliament.

80. The Ministry of Trade, Industry and Fishery has also formally instructed the NCA to pay particular attention to digital markets as from 2020.

81. Digitalization represents both opportunities and challenges with respect to enforcement. On the one hand, digital markets have great potential to contribute to increased competition and efficient use of resources for the benefits of consumers and the business community. Digitalization also implies new and better tools that can be effectively used in enforcement - as long as we have the skills and necessary knowledge to use them and understand the market well. On the other hand, network effects and new dominant

players in services and platforms, in addition to regulations reflecting past realities, might have a countering effect.

82. In terms of challenges, market power is a recurring problem in digital markets. One of the reasons why digital players have market power is high entry barriers. Network effects and assets like big data are among the factors that affect entry barriers. In some contexts, the framework does not facilitate the potential for enhanced competition that the digital economy and new business models entail. There are also strong counter-forces to change. Established players have strong incentives to fight against a development that threatens their position and profitability.

83. In 2019, the NCA has continued its work to advocate a modern framework that adequately safeguards societal interests, while at the same time facilitating new players in the digital economy that can challenge the incumbents. The taxi market is a notable example.

84. However, it is a reality that these challenges cannot be handled by one agency alone. It requires effective enforcement cooperation across borders. Participation in international networks also makes it possible to gain new knowledge about how and when we can intervene, for example against the use of algorithms and other types of possible anticompetitive instruments in the digital world. One element in this, is that the NCA works together with the other Nordic competition authorities to prepare a report on the enforcement challenges related to digital platforms. This report is expected to be published in the fall of 2020.

#### 4.4. Other outreach activities

85. In general, we observe that our views receive a great deal of media attention. The authority continues to be active in media explaining the importance of solid enforcement of the competition law, and the direct effects of enforcement for consumers. The Director General and NCA employees are active in the media, eg. by regular publishing op-eds in the leading national business newspapers and by giving speeches on current issues of concern to the Authority. In 2019, these activities resulted in 16 op-eds and around 45 presentations in various fora, as eg. branch association meetings.

86. In 2019, the NCA received the results of an ordered survey, based on interviews with in total 235 respondents in trade/employer organizations and public administration, carried out in December 2018. The purpose of the analysis was to get input relating to the NCA's advocacy efforts and visibility. Reputation of the Authority, knowledge on competition rules as well as effects of our decisions and advocacy work were measured. Among the respondents, 69 per cent found that the Authority is an important driving force for competition.

## 5. Resources of the competition authorities

### 5.1. Resources overall (current numbers and change over previous year)

#### 5.1.1. Annual budget (in NOK and USD):

87. The annual budget for the NCA for 2019 was 123 MNOK.

### *5.1.2. Number of employees (person-years):*

88. The NCA's personnel resources amounts to 90.2 person-years (against 86.3 in 2018), including administrative staff and PR-staff. In total, 16 new employees were hired in 2019.

## **5.2. Human resources (person-years) applied to mergers, anti-cartel, dominance-related issues and advocacy**

89. The NCA's case handling is primarily 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 the department. In addition, the NCA has an investigation staff with approximately five person-years (an increase compared to 2018) dedicated to investigations in cartel and abuse of dominance cases, as well as international network activities. The staff also includes specialist knowledge in forensic IT. The investigation staff supports the market sections in cartel cases and other investigative measures.

90. Specialized legal and economic support and quality assurance is provided by the legal director's team and the chief economist's team, respectively.

91. In principle, all case handlers may be engaged in advocacy work. Notably, there is a close cooperation between the department of communications and the other departments to maximize media attention related to outcome of cases and advocacy work more generally.

92. The NCA uses an internal activity-monitoring tool. Administrative tasks and training/competence excluded, resources registered on core activities were roughly distributed in 2019 as follows:

- Merger control: approximately 20 %
- Enforcement against anticompetitive practices - Anti-cartel: 30 - 35 %
- Enforcement against anticompetitive practices - Dominance-related issues: 10-15%
- Other (ia. advocacy, market monitoring, international activities, guidance): 30-40%

93. Competence building has been an important priority, both for new and experienced employees, and on all levels. The NCA has succeeded in building a staff of highly qualified and experienced case handlers. Among the NCA employees, 13 have a Ph.D. In 2019, we have worked to develop overall and individual plans for competence and career development, executed a program for further development of strategic management, and assembled efficient and multidisciplinary teams. Turnover is with 9 per cent at an acceptable level, considering the highly attractive work force.

## **6. Summaries of or references to new reports and studies on competition policy issues**

94. In order to measure long-term effects of competition policy, the NCA commissioned Menon Economics to do a study on the development in market concentration and profit margins in Norway for the period 1992 to 2018. The increase in market shares and profits of big companies in the United States have generated an international debate, with experts claiming this to be evidence of fading competition and the rise of market power to dominant firms at the expense of consumers. The analysis compares Norway with

empirical studies related to both Europe and USA. Based on annual accounting data of all Norwegian companies in 183 industries (excluding export industries), a slight reduction in concentration levels is found. Profit margins have been stable over the period. The findings from Norway are in marked contrast to the United States, and comparable to the rest of Europe. While many factors, such as technology and globalization, can explain changes in market concentration and profitability in industries, competition policy has also been pointed at as a key factor.

95. In the last part of 2019, the NCA published a report on purchasing conditions for the grocery chains. The results of the inquiry demonstrate that several suppliers offer the grocery chains Rema 1000, Coop and Norgesgruppen different purchasing conditions. The Competition Authority's inquiry report also shows large variations between suppliers. In most cases, the largest retail chain is offered the best conditions. In some cases, some suppliers operate with price differences of more than 15 percent on products they sell to the grocery chains. Price differences are not in themselves illegal, but if the price differences have resulted in higher prices for consumers, the Competition Act may have been violated. Several factors, amongst others the results from the Authority's inquiry, led the Authority to carry out dawn raids at two suppliers and one grocery chain. The inquiry will be extended with data for 2018 and 2019.

96. With input from the Competition Authority, the Ministry of Trade, Industry and Fisheries, commissioned an expert report about entry barriers in the Norwegian grocery sector. The report, by Oslo Economics, concluded that purchasing conditions were the most important reason for entry barriers in the Norwegian grocery sector.

97. In an article published in 'Samfunnsøkonomen' (edition 1/19), the NCA discuss the direct and indirect effects of competition policy for society in general, and consumers especially. It argues that although the indirect effect of competition is harder to quantify, it is probably much more important than the direct effect of decisions made by the agencies. Although hard to measure, they conclude that even with a conservative measure the existence of competition rules can lead to savings for consumers in Norway that amounts to at least a billion NOK annually.

98. In 2014, the government gave the NCA the responsibility to allocate funds for research in competition law and economics in the order of approximately 6 million NOK per year (approximately 0.65 MEUR). Funds have been allocated annually. The purpose of the grants is to strengthen competition policy research and facilitate knowledge sharing between competition authorities and academia. Educational and research institutions, enterprises and independent individuals can apply for funding. The NCA requires that results of the research projects become known to a greater public, for instance by conferences.

99. After the application round in 2019, five new projects or activities, in competition economics and competition law received funding, i.e. the organization of the 2021 conference of the European Association for Research in Industrial Economics. The research projects improve the knowledge basis for competition enforcement. For instance, two ex post analyses of mergers in the telecommunication sector were finalized in 2019. Papers based on research projects that are finished are published on the NCA's website: <https://konkurransetilsynet.no/forskning/forskningsmidler/>.