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

## Annual Report on Competition Policy Developments in Norway

-- 2020 --

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

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## Norway

### Executive summary

1. Inevitably, the Covid-19 pandemic has marked the Norwegian Competition Authority's (NCA hereafter) enforcement and advocacy work throughout the year. The NCA employees have mainly worked from home during the pandemic. Remarkably, this has not affected the NCA's enforcement and advocacy work negatively. In line with other EU/EEA countries, the NCA created a task force to provide informal guidance to companies and industry associations. A task force was also established to monitor vulnerable markets to assess whether some companies were taking advantage of the situation to set unusually high prices. In addition, monitoring of aviation was expanded, implying that the major airline companies are obliged to report market information to the NCA.

2. A major strategic goal for the Competition Authority is to have a clear impact in markets. The NCA works to reach this goal through a careful combination of enforcement and advocacy; using all the tools in the toolbox in a broad array of markets. Last year, the NCA issued three decisions and two SO's in investigative cases. Notably, the NCA concluded the investigation in the housing alarm market with significant fines for market sharing. Our SO's for illegal cooperation relating to the book market and the grocery market also drew much attention. In the latter case, the NCA warned that a record high of 21 billion NOK (approximately 2.1 billion EUR) was considered.

3. For the first time, the NCA has used its new legal power to solve antitrust cases with commitments. The NCA investigated two companies in the gasoline market based on concerns that publishing indicative list prices facilitated parallel national price increases. The case was concluded when the companies committed to put a stop to their practice of publishing prices. Already in the beginning of 2021, price patterns are changing to the benefit of conscious consumers can be observed. The NCA also investigated major Norwegian brewery Ringnes, based on concerns was the brewery abused its dominance by forcing pubs and restaurants to buy beer exclusively from the company. This case was also solved with commitments. Ringnes amended its agreements with pubs and restaurants and thereby made it easier for rivals to enter the market.

4. Notably, the NCA blocked a consummated merger related to digital markets. In this case, the major digital platform for online trading in Norway acquired a newcomer; an online platform for selling and buying used cars. Even though the acquisition was below merger notification thresholds and was consummated, the NCA decided to block it.

5. The groceries market has in particular been a focal area of concern for the Authority. A groceries task force is now up and running, focusing ia. on analysing differences in wholesale prices for the retail level, advocating measures for enhanced competition and providing input to the government's white paper to the parliament on the groceries sector.

6. Relating to digitalisation and digital markets, the NCA is well placed to exploit opportunities and to deal with challenges. The NCA has implemented a digital strategy which encompasses measures to strengthen the NCA's digital competencies and capacity, use of digital tools and data to enhance efficiency, strengthened focus on digital markets in enforcement and thorough market studies in addition to active advocacy to adjust regulations to the digital reality and possibilities.

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

7. 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.

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

8. Due to Covid-19, the government made some temporary exemptions concerning competition law. Actors in the transport sector were initially given a three month exemption from the prohibition regulations of the competition law to coordinate their schedules and to maintain minimum services for citizens during the Covid-19 coronavirus crisis. Later, this exemption was prolonged to the end of 2020. However, all cooperation had to be notified to the NCA. Exemptions were only practiced in the market for domestic flights the limited period. Also, a new temporary law, extending deadlines for merger review for a limited period, were enacted.

### 1.2. Other relevant measures, including new guidelines

9. 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.

10. 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.

11. 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. In 2020, the NCA obliged companies in the markets of concrete and of accounting systems to provide such information. The NCA also renewed this obligation in several markets. An updated list can be found [on our website](#).

12. The NCA published a guideline for parties sending internal documents.

13. Other measures and guidelines related to Covid-19 are alluded to in the section on Covid-19 related enforcement measures below.

### 1.3. Government proposals for new legislation

14. 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.

15. 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. In 2020, the NCA emphasized that opening up for alternatives to taximeters will be an important factor in reaching the goal of increased competition in the taxi market.

16. 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.

17. A Grocery Supervisory Authority ('Dagligvaretilsynet') was established in January 2021 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.

18. Since 2019, the NCA has strengthened its enforcement of the Competition Act in the grocery market. The issue of price discrimination has been given high priority in both 2019 and 2020. The increased attention means especially the political acknowledgment for the role of differences in purchasing conditions for competition in the grocery market and thereby its consequences for the consumers. The importance of looking further into the role of these differences has been formalized as one of the measures proposed in the white paper to the Parliament on the condition of competition in the grocery market from 2020. This white paper was processed by the Parliament the 2nd of February 2021. The NCA has continued and will continue to examine purchase conditions, and now also gathers further information from suppliers to get a better understanding of why these differences occur. Differences in purchase prices is not necessarily a violation of the Competition Act, as the Act does not contain a general prohibition against price discrimination. Every case must be assessed individually. However, price discrimination that restricts competition and harms consumers may be in breach of the Competition Act.

19. In 2019, the NCA proposed to change regulations in the pharmacy sector. The maximum market share was 40 percent. Pharmacy chains with a higher market share were not allowed to open new pharmacies if they would exceed this limit. The Ministry of Health abolished this part of the regulations in 2020, after the NCA argued that this specific part of the regulations was harming for competition, since it did not give the actors in the

pharmacy markets incentives to gain new customers. A consequence is that competition will be strengthened in favor of pharmacy customers.

20. 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.

## 2. Enforcement of competition laws and policies

21. 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.

22. 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.

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

### 2.1.1. Summary of activities

23. Relating to the pandemic, the NCA took a pro-active role emphasizing clear signals relating to the limits of cooperation, surveillance and guidance, reflected by the work of two separate task forces and dedicated information on our website alluded to below. Notably, the NCA is investigating a trade association for possible price collusion during the pandemic. In addition, we have continued and expanded the monitoring of aviation. In order to be able to carry out dawn raids during the pandemic, we have established a guideline for dawn raids regarding infection control. In the autumn we carried out a dawn raid in the shipping market.

**Table 1. Investigative Work Activities 2014-2020**

Cases / locations	2014	2015	2016	2017	2018	2019	2020
Securing evidence section 25	6/17	1/2	1/3	3/3	2/10	2/6	1/2
Depositions (formal statements) section 24	4/34	5/45	4/17	4/20	4/34	6/39	3/6

24. 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.

25. 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. Surveys in previous years have clarified the lack of knowledge about leniency among business leaders in Norway, and the NCA has intensified its communication in media on both leniency program and the possibility for anonymous tip-offs. In 2020, a new channel was introduced for sending tip-offs encrypted.

**Table 2. Applications for leniency 2014-2020**

	2014	2015	2016	2017	2018	2019	2020
Number of applications	3	3	3	7	3	4	2

26. 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. In 2020, the NCA started the recruitment of data scientists to be able to increase the use of new technologies in cartel screening.

27. In 2020, the NCA commissioned a survey among competition lawyers to gain insight on effect of competition enforcement and feedback on efficiency in case handling.

### *Covid-19 related enforcement measures*

28. As the pandemic developed, the NCA implemented some measures to detect, deter and provide advice to business during the crisis.

29. A Task Force "Guidance" was established, which should give informal guidance from the NCA regarding cooperation initiatives during the corona crisis. The task Force had three members, one from each of the Market Monitoring Departments. Main focus was to provide information on the limits of cooperation given by the competition action in Section 10(1) and 10(3) corresponding to 101(1) and 101(3) TFEU. See: <https://konkurransetilsynet.no/the-norwegian-competition-authoritys-work-during-the-coronavirus-pandemic/?lang=en>

30. A Task Force "Price Policy Act" was also established, the background being that the Norwegian Price Policy Act can be triggered in times of crisis (maximum prices and prohibition of unreasonable prices). Disturbingly large price increases on face masks was observed, and the task force should consider to trigger the use of the Price Policy Act, ie. regulate prices of important goods and services. Based on analysis of collected data for wholesale and retail prices, the task force concluded that no measures were justified.

31. The NCA also established a Covid-19 procedure for inspections, with internal procedure regarding necessary precautions during all the steps of a dawn raid, for instance implementation of the use of facemasks, keeping a safe distance, good hand hygiene and disinfectant for hands, disposable gloves when inspecting items.

32. In addition to these measures, the NCA also published clear statements on its website, warning suppliers against exploiting the situation, joined the statement from the network of European Competition Authorities, ia. pointing out how certain competition law issues arising in the context of the pandemic can be handled.

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

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

34. In 2019, the companies Sector Alarm and Verisure were notified that the NCA considered imposing fines totalling 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. Sector Alarm decided to pay its fine already after our SO in 2019, while the NCA issued its decision on Verisure in 2020. This decision may be appealed in 2021.

35. 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.

36. 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 ia. 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 ia. a result of the NCA's continuous monitoring of this market. The involved companies Circle K and YX do not share the Competition Authority's competition concerns, but have nevertheless committed



to refrain from publishing recommended list prices for retail fuel on their websites. Both Circle K and YX chose to end this practice before the commitments were made binding by the adoption of the Authority's decision on 15 October 2020.

37. 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.

38. The NCA is currently examining material from two separate cases based on dawn raids conducted in 2018 and 2019. In the first case, the NCA's investigates the exchange of strategic information between grocery chains. Here, the NCA issued an SO with a warning to impose fines totalling 21 billion NOK on Norgesgruppen, Coop and Rema 1000 in the last part of 2020.

39. Throughout the year, the NCA also examined information seized in a major dawn raid in November 2019 related to the grocery sector in Norway. The inspection was carried out, amongst other factors, a consequence of a market study documenting significant price 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 law.

40. In September 2020, the NCA issued an SO considering imposing fines of NOK 502 million in total on the four publishers Cappelen Damm, Forlagshuset Vigmstad & Bjørke, Gyldendal and Aschehoug, and the book database company Bokbasen. The Competition Authority's preliminary assessment is that these businesses have cooperated illegally by sharing competitive sensitive information concerning, amongst other things, future book prices and the timing of book releases.

41. Related to Covid-19, the NCA investigated whether high pricing of face masks could be a result of breach of the Competition Act. In October 2020, the NCA announced that it initiated an investigation against an industry association for possible infringement of the Competition Act. In November 2020, the NCA carried out unannounced inspections in the market for sea freight. This case was closed in February 2021.

42. 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. 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.

43. 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.

44. In the NCA's view, 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.

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

45. 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 Appeals Court and ultimately to the Supreme Court. Gulating is now the designated appeals court for competition cases.

46. The NCA continues its good track record relating to cases on appeal. In a lawsuit concerning a previous fine in the book market, the Court of Appeal upheld the NCA decision against the publishing companies, agreeing that the publishing companies Cappelen Damm and Gyldendal cooperated illegally and boycotted the distributor Interpress. The publishers exchanged competitively sensitive information that led to a boycott of the distributor Interpress. The Court's majority agreed with the Authority that the cooperation constituted a restriction of competition by object in violation of Section 10 of the Competition Act.

47. Relating to mergers, in 2019, the NCA decided to prohibit the proposed merger between Prosafe SE and Floatel International Ltd due to serious competition concerns. Prosafe and Floatel appealed the NCA's decision to the Competition Appeals Board, but abandoned the proposed merger in February 2020 before a verdict on the appeal. This means that the NCA's decision to block the proposed merger is effective.

## **2.2. Mergers and acquisitions**

48. 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.

49. 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.

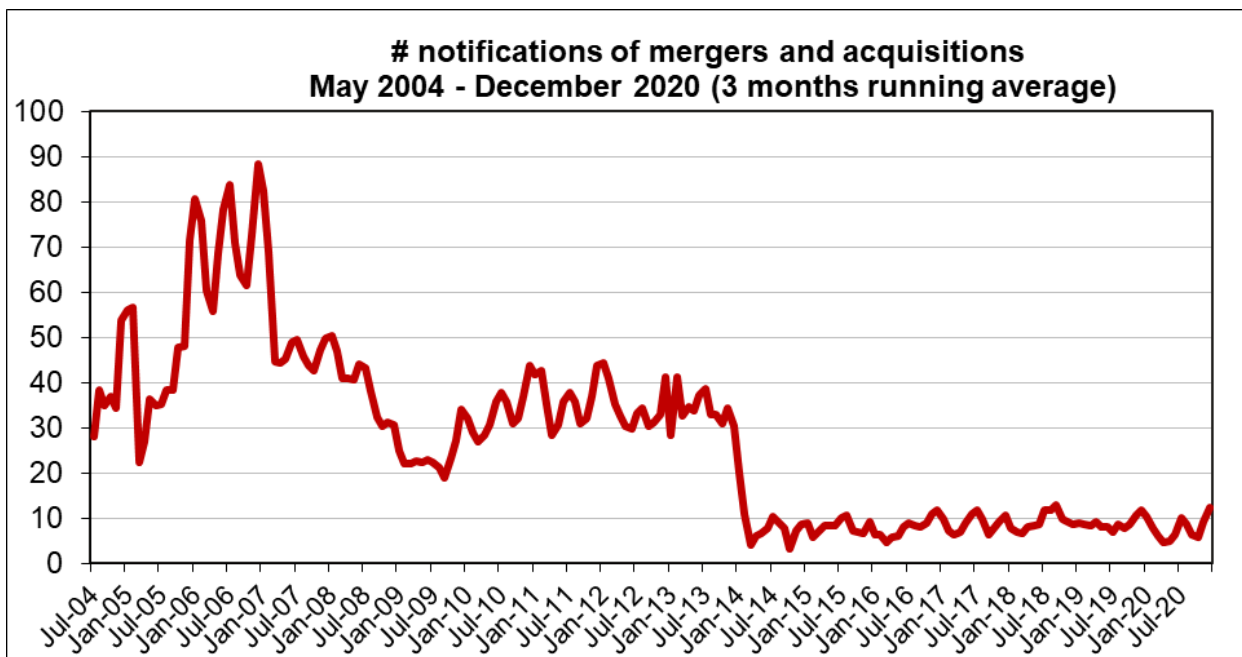
50. The NCA also has the power to impose a duty on a specific concentration which it becomes aware of – even if the related turnover is below the notification threshold levels. Imposing a duty to notify can be done if the NCA has reason to assume that competition will be affected by the transaction or 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.

51. 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.

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

52. The number of notifications of mergers and acquisitions has been quite stable since the threshold levels were increased significantly in January 2014. In 2020, the NCA received 93 notifications which is less than the annual average. However, the reduction seems temporary, since the monthly amount increased again in Q4, and Q1 in 2021 has shown an even heavier increase. Merger review is prioritized in 2021, as we expect an increasing amount of mergers and acquisitions as an effect of Covid-19 measures.

Figure 1.



53. The significant drop in notifications 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.

54. For the NCA, it is important that the merger control provides businesses with predictability and quick clarification. Notably, the NCA cleared 91 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 2020 are presented below.

### *2.2.2. Summary of significant cases*

55. In 2020, the NCA intervened against one merger, namely Schibsted's acquisition of Nettbil. The Authority is of the view that the acquisition will weaken competition in the market for online sales of used cars and will result in poorer services for consumers. Schibsted ASA and Nettbil AS operate competing digital marketplaces for private persons who wish to sell their used cars. Schibsted is the owner of the marketplace Finn and provides online classified advertising. Nettbil operates an online auction platform for used cars sold by private persons to car dealers. The Competition Authority's decision entails that Schibsted must sell its shares in Nettbil to an independent and suitable buyer, which must be approved by the Authority. The decision was appealed.

56. In 2019, 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, in the beginning of 2020.

57. In one Phase 2 case, in the market of sales of sports gear, the NCA decided to not intervene after careful examination of the effects on competition. Another merger, between Altia and Arcus, was taken to Phase 2. This case is still pending as of April 2021.

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.

59. In this regard, in 2020 the NCA fined companies in two separate cases. The NCA decided to impose a fine of 20 million NOK (approximately 2.0 million EUR) on Norgesgruppen, the major wholesale and retail business in the groceries market for an infringement of disclosure requirements related to an acquisition by Norgesgruppen. In its decision, the Authority considered that the acquisition constituted a concentration in the grocery supply chain, and that Norgesgruppen therefore should have disclosed the transaction according to disclosure obligations that applied to it. Norgesgruppen appealed the decision in February 2021.

60. Another fine of 7.5 million NOK (approximately 0,75 million EUR) was issued to Vygruppen in March 2020. Vygruppen is an important business in the transport industry. The NCA concluded that Vygruppen had provided incorrect or misleading information as part of its filing for the creation of a joint venture and acquisition of Fjord Tours.

61. In February 2021 the Competition Appeals Board decided to revoke the NCA's decision to fine Vygruppen. In its decision, the Appeals Board concludes that the NCA not to a sufficient degree investigated whether the notification contains incorrect or incomplete information. Moreover, the Board states that the consequences of providing wrong or misleading information are unclear and that it is not sufficient to point out that there is a conflict between information given in the notification and information provided in later

correspondence. The Board argued that this view applies even if the inconsistency indicates that incorrect or incomplete information has been provided at some point.

62. In March 2021, the NCA announced that the case against Vygruppen would be closed following the decision from the Competition Appeals Board. The Authority concluded that it would not prioritize to use more resources to establish a new case against Vygruppen.

63. Also in March 2021 the NCA decided to repeal its decision to impose a fine on Norgesgruppen. In the reassessment, the Authority found that it is reasonable to give more weight to the fact that there might have been a degree of ambiguity in relation to whether the acquisition was actually covered by the wording of the disclosure requirements in question, and whether Norgesgruppen could be held responsible for violating those requirements.

64. Finally, it can be mentioned that the NCA issued an SO in the fuel market for gun jumping. This case is still pending as of April 2021.

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

#### **3.1. Cooperating bodies.**

65. 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 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.

66. 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.

67. In 2021, the NCA will formalize its cooperation with the Norwegian Data Protection Authority and the Norwegian Consumer Authority on consumer protection in a digital economy.

68. In addition, the NCA has initiated a good working relationship with the newly established authority in the grocery sector, as explained in chapter 1.

#### **3.2. International cooperation**

69. 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.

70. From 2018, the NCA is a co-chair of the ICN Advocacy Working Group.

71. 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.

72. 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.

73. Another important cooperation arena is the Nordic co-operation. The cooperation with the Nordic competition authorities is institutionalised in an agreement.

### 3.3. Expressing competition concerns related to existing or proposed regulations

74. According to section 9 of the Competition Act, the NCA shall supervise competition in the various markets, i.e. 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.

75. Anti-competitive regulations exist in a number of different areas. On the NCA's website, we have established a function allowing the general public to send tip-offs to the authority regarding restrictions perceived to restrict competition. An internal task force has been established that consider these tip-offs for further consideration and follow-up by the market departments.

76. During the years, the NCA has repeatedly advocated for deregulation of the heavily regulated taxi market. In November 2020, this deregulation was formalized, after a few months delay due to Covid-19. The NCA continues its advocacy work in this area, stressing the importance of modernizing taximeter regulations following technological developments making the taximeters redundant. Consequently, we have advocated for allowing alternatives to the more traditional taximeters.

77. The pharmacy market is another area of some concern. Here, well-functioning competition in the pharmacy market is important for a vulnerable consumer group. The framework conditions must facilitate this. In 2019, the NCA proposed the Ministry of Health and Care Services to change regulations in the pharmacy sector. The NCA argued for removing the current market share limit. Competition in this market has improved, and will further improve by being able to handing out licenses to pharmacy companies not limited by a maximum of market share of 40 per cent. Successful pharmacies must be allowed to grow, thus stimulating competition. The proposed change was enacted in 2020.

78. In 2020, the NCA published a Nordic report on digital platforms jointly with the other Nordic competition authorities. Here the agencies present their views on how the EU can regulate large digital platforms. As alluded to in more detail below, That NCA also mapped the use of so-called algorithms – including whether companies use algorithms in

their pricing – among Norwegian companies, and presented the findings in a report published early 2021.

79. Moreover, the NCA has been more active than ever when it comes to publishing op-eds. In addition, the NCA has launched a series of podcast. Media analytics and a survey of competition law lawyers show that we have become more visible in 2020.

80. The NCA contributed to the white paper on the groceries market, which was handled by Parliament in 2021. In relation to this market, the NCA has ia. focused on the importance of access and control of premises for competition.

81. 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.

82. In 2020, the NCA submitted 15 hearing statements to various ministries and authorities, related to proposed changes in laws and regulations, concerning a range of topics, most importantly taxi market and taximeter, pharmacies and pharmaceuticals, aviation, electricity, pension, debt collection, exemptions of competition regulations due to covid-19. The NCA proposed changing regulation to three bodies. The NCA sent notices to two municipalities concerning the importance of facilitating new operators to establish grocery stores. The NCA also sent a formal letter according to Section 9 e in the Competition Act to the Ministry of Transport pointing out its concerns relating to the system for ticket sales, arguing that it should be accessible to more parties in the tourism and transport business.

83. 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. In the coming period, the NCA's advocacy efforts directed towards businesses, will in particular focus on small and medium sized enterprises, where our surveys have documented a clear need to enhance knowledge relating to competition law.

84. In general, the NCA 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.

85. 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 2020, these activities resulted in 32 op-eds in addition to NCA employees being invited to and giving presentations in various fora, as eg. branch association meetings. Notably, the NCA was mentioned in around 4300 news articles in Norwegian media in 2020.

## 4. Resources of the competition authorities

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

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

86. The annual budget for the NCA for 2020 was 121.858 MNOK; in 2020-USD<sup>1</sup> 12.96 million.

#### 4.1.2. Number of employees (person-years):

87. The NCA's personnel resources amounted in 2020 to 96.8 person-years, including administrative staff and PR-staff.

88. Number of employees (not person-years) as per 31 December 2020 (including staff on temporary leave):

- 42 economists
- 42 lawyers
- 4 investigators
- 21 other professionals and support staff (HR, IT and information management, PR/communications, finance, organization development)

89. In 2021, two data scientists were recruited.

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

90. 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, with the exception of the groceries task force, where the staff mainly work with analysis and advocacy related to the groceries market. In addition, the NCA has an investigation staff with approximately five person-years 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.

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

92. 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.

93. Competence building is 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.

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<sup>1</sup> [According to 2020 exchange rate](#) 9,4004 NOK = 1 USD



## 5. Summaries of our references to new reports and studies on competition policy issues

94. In 2020, as in 2019, the NCA published [a report on purchasing conditions for the grocery chains](#), but this time based on data from 2018-2019. 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.

95. The Nordic Competition Authorities released a [joint report on digital platforms and the future of European policy](#). The Nordic competition authorities wished to contribute to the discussion of the benefits and concerns related to digital platforms and especially to the development of European competition policy. In order to contribute to the ongoing policy discussion, the Nordic competition authorities published a joint memorandum entitled "Digital platforms and the potential changes to competition law at the European level"

96. [A survey conducted by the Norwegian Competition Authority](#) shows that more and more companies in Norway use monitoring and pricing algorithms. Algorithms can be used to collect market data, such as price information, as well as to automatically adjust prices. The use of algorithms can make markets more transparent, which in turn makes it easier to predict how competitors will act in the market. This can result in reduced competitive pressure in the markets concerned. The NCA published its survey report in February 2021. The Authority encourages companies to be aware that the use of algorithms may also cause harm to competition and lead to higher prices for consumers.

97. 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. In 2020, the last allocations from the fund were made.

98. All reports can be downloaded [from our website](#). In 2020, the following reports were published:

- [Product quality investment co-operation and sharing among downstreams rivals: An application to mobile telecommunications – Øystein Foros, Bjørn Hansen og Thibaud Vergé.](#)
- [Access-price structure and entrants' build-or-buy incentives in mobile markets. – Malin Arve, Øystein Foros og Hans Jarle Kind.](#)
- [Access to Leniency Evidence and the liability of an immunity recipient under EU Competition Law \(pdf\) – Ingrid Margrethe Halvorsen Barlund](#)
- [Leniency and Criminalisation of Cartels \(pdf\) – Ingrid Margrethe Halvorsen Barlund](#)
- [Norwegian Cartels \(pdf\) – Frode Steen og Eirik Østerud](#)
- [Industrial organization of legal and illegal cartels: Dynamics in collusion over time and jurisdiction \(pdf\) – Ari Hyytinen, Frode Steen and Otto Toivanen](#)

- Exclusionary contracts and investment (pdf) – *Greg Shaffer and Simen Ulsaker*
- Exclusive Contracts and Post-entry Competition (pdf) – *Bjørn Olav Johansen and Greg Shaffer*