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Annual Report on Competition Policy Developments in Norway

-- 2022 --

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Norway

Executive summary

1. In 2022, the Norwegian Competition Authority (NCA hereafter) worked to ensure that breaches of the competition law were sanctioned quickly and effectively.
2. In a major case relating to the **prohibition regulations**, five Norwegian publishers were fined a total of NOK 545 million (USD 55.6 mill.) for illegal collaboration. Relating to abuse of dominance, the NCA concluded the investigation into the food delivery platform Foodora. The case, under investigation since 2021, concerned suspected abuse of a dominant position. By closing the case with a decision on remedial measures, the NCA quickly resolved the concerns.
3. The NCA carefully considers **mergers and acquisitions** that might impede effective competition. In 2022, the authority received and assessed 160 notifications regarding concentrations. Of these, 98 per cent were completed within 25 working days. Three mergers were approved subject to conditions.
4. Relating to **court proceedings** and the outcome of appeals, the NCA's 2020 prohibition of Schibsted's acquisition of Nettbil was annulled by the Gulating Court of Appeal in 2022. Schibsted, an international media group operating online marketplaces, including for the sale of used cars, wanted to buy Nettbil, a new business that offered a new form of digital marketplace for used cars. The NCA appealed the Court of Appeal's judgment to the Supreme Court, which, in February 2023, decided against the NCA's prohibition of the acquisition. The Supreme Court found that the two firms cannot be considered competitors in the digital market for used cars.
5. In a different case, NCA decided to prohibit Norway's largest financial services group DNB ASA from acquiring the online bank Sbanken ASA in November 2021. The case was appealed to the Competition Appeal Tribunal. In March 2022, the Tribunal revoked the NCA's decision. As the NCA cannot appeal the Tribunal's decisions, the conclusion is final. Although the Tribunal and courts did not support the NCA's decisions in these two cases, the last ten years have shown considerable support for the authority's decisions.
6. In 2022, the NCA developed a **new strategy** for the period 2022-2027. As part of this strategy, the authority encircled three prioritized areas from 2022 to 2025: digital markets, groceries, and sustainability, areas in which work had already been initiated.
7. The new strategy furthermore prioritizes enforcement in **digital markets**. For the sake of efficient enforcement, the NCA scrutinized developments in how companies use data and algorithms, and the potential impact on competition. In 2022, several internal skill building initiatives were launched to make the Authority better prepared to uncover competition issues in the digital economy, especially considering new means of rapid exchange of data.
8. The **grocery market** in Norway is highly concentrated. In 2022, high prices attracted substantial political attention, which was forwarded to the NCA in the form of expectations and instructions from our Ministry (the Ministry of Trade, Industry and Fisheries). The NCA's activities in the grocery sector include enforcement, market analyses, and various forms of advocacy. The Authority continued its investigation of collusion between the three largest grocery chains, a case that started in 2020. The NCA

also continued mapping differences in retail purchase prices and their causes. In 2022, the NCA published the first in a series of annual grocery market reports, describing obstacles to competition in the market and the scope of the NCA's work in the sector (in Norwegian only).

9. As for **sustainability**, the NCA recognizes the role of competition policy in the green restructuring of the Norwegian economy. By placing sustainable development among the three target areas in the strategy plan, the Authority gives priority to enforcement of cases that play out in a sustainability context or can have an impact on a measure of sustainability. In order to counteract market concentration to the disadvantage of consumers, the NCA has imposed an extended disclosure obligation relating to mergers and acquisitions on the five largest players in the market for electric vehicle charging and charging stations. To raise awareness of the role of competition in sustainable development and provide guidance regarding sustainability agreements, the NCA organised a conference in fall 2022, which brought together business, lawyers and academics. The Minister of Trade and Industry was among the speakers at the conference.

10. Facing new challenges in the enforcement of competition law, including circumstances when markets are highly concentrated while there is no clear breach of competition law, the NCA assessed the need for **new tools**. Mid-2022 the NCA proposed in a letter to the Ministry of Trade, Industry and Fisheries to amend the competition legislation by introducing a market investigation tool, inspired by similar legal frameworks in the UK and Iceland. The Ministry subsequently sent a proposal for incorporating a market investigation tool in the Norwegian Competition Act on a public consultation. A proposal to introduce non-criminal administrative penalties for individuals infringing the competition rules as well as the possibility of imposing leadership quarantine was presented at the same time. The proposed amendments are on public hearing with a deadline of 30. June 2023 for submitting responses.

11. The NCA has visibility as one of three core values, and participates actively in public debates. In 2022, its media coverage consisted of 4520 news items in Norwegian media, and 32 op-eds in major news outlets were written by NCA staff. The Authority used social media to reach primary target groups and produced seven podcasts on topical issues. One ambition is to awareness of the competition law among small and medium-sized enterprises. To achieve this, the NCA also collaborated with major federations of Norwegian enterprises to produce webcasts focusing on key aspects of competition law. With the aim of providing legal guidance for a broader audience, the Authority presents frequent updates on its own website, including on sector-specific sub-pages, for example regarding the market for charging electric cars and the development of the market for offshore wind.

12. The NCA is also a frequent participant in public consultations. In its advocacy work, the NCA aims to ensure that competition perspectives are taken into account when new policies are adopted. In 2022, the NCA submitted comments in thirteen public consultations to various Ministries and other public authorities, regarding proposed changes in laws and regulations on a range of topics. Parts of the advocacy work is directed at local authorities. For example, last year the Authority contacted several Norwegian municipalities to raise awareness about how municipal and regional regulation plans can improve competition in their local grocery markets by enforcing the provisions in these plans in a way that does not prevent the establishment of competing grocery stores.

13. By the end of 2022, the NCA had a total of 100 employees, down from 106 in 2021. In February 2022, Tina Søreide took office as the new Director General of the NCA. Ahead of the appointment, Søreide was a professor of law and economics at the Department of Accounting, Auditing and Law, the Norwegian School of Economics (NHH).

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

14. The current 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, as well as leniency provisions. Mergers and acquisitions are prohibited from being implemented before they have been notified to and reviewed by the Authority.

15. According to the Act, the NCA'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.

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

16. In 2022, no new legal provisions of competition law or related legislation were enacted. However, several proposals for new legislation have been presented in public consultations, some of these in the first part of 2023. These proposals are presented in the next section.

1.2. Government proposals for new legislation

17. Interest rates on administrative fines. Currently, the savings on deferred payment on administrative fines when the case is under appeal until final decision can be substantial. With a significant increase in fine levels as the NCA's fining principles have been harmonized with EU principles, the savings have also increased. This adds to the incentives to appeal, as the interest-free deferral of payment reduces the real value of the nominal amount of the fine.

18. In June 2022, the Ministry presented a proposition for legal amendments to the Competition Act, implying a legal competence to demand interest for infringement fees until the decision is final.

19. In addition, some minor changes were proposed to enhance the efficiency of the appeals procedures: the Ministry proposed that the head of the Competition Appeals Tribunal be given the right to delegate the processing of minor and uncomplicated cases either to the Appeals Tribunal Secretariat, or to a single Tribunal member.

20. A regulatory ban on restrictive covenants. In 2021, the Norwegian Competition Authority surveyed the use of restrictive covenants and exclusivity clauses in the grocery market. The survey revealed that restrictive covenants that prevent entry in the groceries market are widely used by the grocery chains in Norway, limiting competition by raising barriers to entry in this market. The survey documented that exclusivity clauses, with the same effect, are also used.

21. In July 2022, the Ministry sent a proposal for a regulatory ban on the grocery chains' use of restrictive covenants on a public hearing. The proposal aimed to facilitate faster and simpler enforcement compared to the Competition Act's prohibition rules, and to lower the barriers of entry in the groceries sector. In the proposal, both existing and future restrictive covenants and exclusive lease agreements will be prohibited.

22. A ban on unreasonable price discrimination. In May 2022, the Parliament passed several petition resolutions in which the Parliament asked the Government to implement various measures related to the grocery market. Following up on this, in October 2022, the Ministry presented a public consultation with two alternative proposals targeted against

suppliers with significant market power. Both proposals are intended to ban unreasonable price discrimination. The first alternative prohibits suppliers with significant market power from price discrimination without any objective justification. The second alternative prohibits unfair price discrimination if it restricts or is suitable for restricting competition. The background for the proposals presented in the consultation is to introduce regulatory measures that can improve competition in the value chain for food. If some grocery chains systematically and over a longer period receive better conditions than others, it could harm competition.

23. In its hearing statement, the NCA expresses concerns that the introduction of the proposed regulations may lead to increased purchase prices in the short term. In the longer term, the Authority agrees with the Ministry that purchase price differences can be suitable for limiting competition. However, through its work mapping the causes of purchase price differences, the Authority has not yet identified specific conditions that indicate that price discrimination limits competition. At the same time, the NCA's survey shows that differences in purchasing prices have been reduced over time. Grocery chains with cost disadvantages will have incentives to introduce measures that help reduce purchase price differences. In addition, the Authority considers that the purchase price differences will often be relatively small when adjusted for actual price differences. In conclusion, the NCA considers that there are disadvantages associated with the two regulatory proposals launched in the consultation, and that the introduction of a market investigation tool (see below) would be better suited to address any competition problems.

24. The NCA can appeal decisions by the Norwegian Competition Tribunal. The NCA does not currently have the right to appeal decisions by the Tribunal. Only undertakings have this possibility. In April 2023, the Government proposed amendments to the Competition Act, ensuring that the NCA can appeal decisions by the Norwegian Competition Tribunal in infringement cases to the courts.

25. The background for the proposal to allow the NCA the right to appeal decisions by the Tribunal, is that it is an appeals body responsible not only for first instance appeals in merger cases, but also replaces the court of 1st instance in cases relating to administrative fines in infringement cases.

26. The right to appeal decisions by the Tribunal means that the NCA itself can decide whether important questions of principle should be clarified in the courts. This will also contribute to ensuring that the competition rules are enforced effectively.

27. Extension of the block exemptions. The Competition Act and the EEA Agreement prohibit anti-competitive cooperation. To provide legal certainty, collaboration that fulfils further defined conditions is nevertheless permitted through "block exemptions". Block exemptions are not legally necessary for exemptions from the ban, but give companies a "safe haven" in that it can be assumed that a collaboration that meets the conditions in them is legal. The block exemptions are incorporated into the EEA Agreement and implemented in Norwegian law by regulations in accordance with the EEA Competition Act. Corresponding block exemptions has been introduced in the Norwegian Competition Act.

28. In March 2023, the Ministry decided to extend the duration of the existing block exemptions for specialization agreements and agreements on research and development in the Competition Act and the EEA Competition Act until 30 June 2023.

29. Introducing the ability to impose administrative sanctions against individuals. In March 2023, the Ministry presented a commissioned report for a public consultation, proposing that the NCA should get the legal competence to impose infringement fees and quarantine for individuals who contribute to breaches of the competition rules. The background for the proposals in the report is that under the current rules, the NCA can only

decide to impose administrative fines on companies. The NCA can not sanction individuals. If the Authority considers that individuals should be penalized for violating the Competition Act, the matter must be referred to the National Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim). So far, no individual has been punished for breaching the Competition Act since the Act came into force in 2004. It is argued that this weakens the general preventive effect of the Act.

30. In the consultation, it is proposed that individuals should be sanctioned only for the most serious violations of the Act.

31. Moreover, it is proposed to introduce management suspensions (debarment / leadership quarantine) for individuals who hold leading positions in companies that violate the Competition Act, if it is considered that the violation makes the person unfit to hold a management position. The quarantine can last up to 5 years.

32. According to the consultation note, the fact that the Authority itself enforces the regulations can make the sanctions more effective, and increase the chance that people who play a central role in an offence can be punished.

33. Market investigation tool. In March 2023, the Ministry published a consultation paper with proposed amendments to the Competition Act, which would give the NCA the legal power to undertake market investigations. The draft legislation outlines the scope of the NCA's powers to conduct market investigations, and to subsequently impose behavioural or structural remedies to overcome any structural impediments to competition that are uncovered in the investigated markets. The market investigation tool can be used in all markets. The proposal is inspired by the UK, where the CMA already has the powers to conduct market investigations and impose remedies, and Iceland.

34. The tool allows the NCA to address more general competition concerns in a market, rather than focusing only on individual companies' behaviour. According to the proposal, the NCA may conduct market investigations if features of that market indicate that competition is restricted or at risk of being restricted. A draft decision to conduct a market investigation shall be subject to a public hearing before a final decision to start a market investigation is adopted by the NCA. Here, stakeholders may submit their comments to the NCA's preliminary assessment. In its decision, the NCA can decide to impose any behavioural or structural remedies considered necessary to eliminate or mitigate the restriction of competition in markets with features that significantly restrict competition or that are capable of significantly restricting competition. A decision by the NCA following a market investigation can be challenged by the parties before the Norwegian Competition Tribunal .

1.3. Other relevant measures, including new guidelines

35. **Guidelines on price discrimination.** In July 2022, the NCA presented its guide on price discrimination. The guide is general, and thus applies to all types of markets. The purpose of the guide is to provide external parties with information concerning the legal and economic aspects related to an assessment of price discrimination, and when such practices may be in breach of the Competition Act. The guide is not intended to be exhaustive or legally binding as to when an infringement can be established or not.

36. **Extended disclosure requirements.** In 2022, the NCA has imposed extended disclosure requirements for some new markets and companies. The purpose of the disclosure requirements is to make the Authority aware of acquisitions that these companies make. The aim is to prevent that acquisitions by large companies of smaller market players cause harm to competition. 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.

37. Currently, the extended disclosure requirements apply for the following markets and companies:

- Motor fuel retailing: Uno-X Mobility AS, St1 Norge AS, Certas Energy Norway AS and Circle K Norge AS
- Electricity generation: Statkraft AS, Eviny AS, Skagerak Energi AS and Agder Energi AS/Å Energy and Hafslund Eco Vannkraft AS
- Waste management and recycling: Norsk Gjenvinning Norge AS
- Grocery store chains: Norgesgruppen ASA, Coop Norge SA, Rema 1000 and Bunnpris IK Lykke AS
- Newspapers: Amedia AS, Polaris Media ASA and Schibsted ASA
- Home security systems: Verisure AS and Sector Alarm Group AS
- Laundry services: Nor Tekstil AS
- Garden centres: Plantasjen Norge ASA
- Suppliers of concrete: Nordic Concrete Group AS, Heidelberg Cement Norway AS and Unicon AS
- Accounting systems: Visma AS
- Online marketplaces: Schibsted ASA
- Charging services for electric cars: Mer Norway AS, Circle K Norge AS, Eviny Elektrifisering AS, Recharge AS and Tesla Norway AS
- Sport equipment: Sport Holding AS

38. The NCA regularly considers whether it is necessary to impose disclosure requirements on other market players.

39. An updated list of decisions can be found [on our website](#).

2. Enforcement of competition legislation/rules and policies

40. 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 cooperation that restricts competition, 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.

41. The NCA can impose civil sanctions for violations (e.g. an administrative fine for the company or companies involved). In addition, the Competition Act contains a penal section. Normally, cases referred by the NCA for public prosecution will be of a very severe nature.

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

2.1.1. Summary of activities

42. The Authority endeavours to work broadly, with various types of cases in a diverse range of markets of importance to the Norwegian consumers.

43. Tip-offs, complaints and leniency applications are important to ensure the greatest possible direct and indirect effects of enforcement. Through targeted informational measures, the NCA has experienced an increase in tip-offs related to possible competition crime.

44. Moreover, the NCA has also adopted a more proactive approach to the uncovering cartels. Several projects on uncovering cartels *ex officio* have been initiated since 2017. In addition, the NCA utilizes the possibilities that digital tools provide, using new sources and methods for data analysis for the detection of cartels. This approach provides the basis for prioritizing cases and activities in accordance with our strategic plan.

45. In 2022 the NCA secured evidence in four separate cases. A summary of activities is presented below.

Table 1. Investigative Work Activities 2014-2022

Cases / locations	2014	2015	2016	2017	2018	2019	2020	2021	2022
Securing evidence section 25	6/17	1/2	1/3	3/3	2/10	2/6	1/2	2/8	4/11
Depositions (formal statements) section 24	4/34	5/45	4/17	4/20	4/34	6/39	3/6	0	1/5

46. The NCA continued monitoring the wholesale market for electricity, the fuel market, and the grocery market.

47. Leniency has been part of the Norwegian competition law since 2004. The threshold for seeking leniency appears to be relatively low, and some of the NCA's larger cases have started as leniency applications. However, surveys in previous years have indicated a lack of knowledge about leniency among business leaders in Norway. To address this, the NCA has intensified its communication efforts through media channels regarding the leniency program and the possibility for anonymous tip-offs.

48. In 2021 a new channel for sending encrypted tip-offs was introduced. In 2022, the NCA received 32 tips which were evaluated for follow-up. These tips contributed to the NCA's ability to carry out the tasks under Section 9 e of the Competition Act. To further evaluate the follow-up of received tips, an internal tip group has been established with participants from three market departments.

Table 2. Applications for leniency 2014-2022

	2014	2015	2016	2017	2018	2019	2020	2021	2022
Number of applications	3	3	3	7	3	4	2	2	4

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

49. In 2022, the NCA conducted investigations in several markets based on concerns that companies exchanged competitively sensitive information, notably:

- Market for relocation services
- Market for financial services
- Market for contractor services
- Health-related market

50. Investigation in these cases continues in 2023.

51. **Competition-restricting cooperation in the book market.** In January 2018, the NCA carried out inspections at the premises of the five involved parties. The purpose of the inspections was to investigate a possible infringement of Section 10 of the Competition Act against anticompetitive agreements and concerted practices.

52. It is illegal for competitors to share information that may limit competition in the market. Gyldendal, Cappelen Damm, Vigmonstad & Bjørke, and Aschehoug are competitors in a highly concentrated Norwegian book market. These publishers have accounted for around 90% of the market's revenue for many years.

53. The NCA found evidence that the publishers shared and received competitively sensitive information via book database company Bokbasen and its subscription service Mentor Forlag, giving them an overview of each other's activities in the market. The exchange of information facilitated coordination of future book prices, book selection among the publishers and the timing of book releases, which may have led to reduced variety and higher prices for consumers. The collaboration provided the publishers with easy, fast, and reliable access to competitively sensitive information.

54. As a result of this illegal collaboration, the four publishers and Bokbasen were fined a total of NOK 545 mill (USD 55.6 mill.) in November 2022 for colluding in violation of competition law. They have a six-month deadline to appeal the cases to the Norwegian Competition Appeals Tribunal.

55. **Market for relocation services.** In September 2021, the NCA started an investigation among parties in the market for relocation services. The inspection was based on a suspicion that the parties had exchanged competitively sensitive information among themselves, and relevant materials were seized to confirm or refute the suspicion of illegal collaboration. The investigation is ongoing.

56. **Market for financial services.** KLP is Norway's largest pension company, and currently provides pensions to over 900,000 Norwegians. In February 2022, the NCA carried out unannounced inspections at KLP due to suspicion of violation of Section 11 of the Competition Act, which pertains to abuse of dominant position in the market. The suspicion relates to KLP's activities in the market for occupational pensions and that the company acted in a way that restricts competition. Relevant materials were seized to

confirm or refute the suspicion of a breach of the competition law. The investigation is ongoing.

57. **Health-related market.** In May 2021, an investigation was initiated, and a forensic search was carried out at involved parties. The investigation was based by a suspicion of illegal exchange of competitively sensitive information between the parties, in violation of Section 10 of the Competition Act. The investigation is ongoing.

58. **Closed investigation against industry association.** Since 2020, the NCA has been investigating the industry association on suspicion of illegal price collusion. Based on an examination of the evidence that was seized during the inspection, the NCA found that there were insufficient grounds to proceed with the case. Consequently, in August 2022, the Authority decided to close the investigation.

59. **Groceries market.** The NCA has paid particular attention to the groceries and food markets for many years. Competitive conditions in these markets have a major impact on Norwegian consumers. The markets are typically highly concentrated both at the wholesale and retail level. 2022 was a year marked by unrest, with the aftermath of the pandemic, war in Europe, and increased commodity costs resulting in significantly higher grocery prices. Effective competition is crucial to avoid unnecessary price increases. There has been a lot of media attention concerning the competition in this market throughout the year, and the NCA has taken an active part in the debate as the central expert in the field.

60. **"Price hunters" in the groceries market.** In 2022 the NCA has continued its assessment of materials seized in a dawn raid conducted in 2018. The background for the case was information about an agreement between the grocery chains, which allowed the grocery chains to access each other's stores to collect information about shelf prices for use in comparative advertising. The NCA learned that each chain had developed an organisation of "price hunters" to collect prices from competing grocery stores.

61. Following a period of increased activity of this kind, the NCA examined the grocery chains' pricing and information flows in 2016, including the practice of collecting price information from competing grocery stores. That examination led the Authority to conduct unannounced inspections at NorgesGruppen, Coop, Rema 1000 and Bunnpris in 2018 on the suspicion of exchange of strategic information between the grocery chains. After investigating the case, the NCA decided not to proceed with the case against Bunnpris.

62. However, in December 2020, the NCA issued a statement of objections with a warning to impose fines totalling NOK 21 billion (USD 2.3 billion) on NorgesGruppen, Coop and Rema 1000. This level of fines is unparalleled in Norway. The preliminary assessments indicate that the grocery store chains have cooperated in a manner that may have led to higher grocery prices for Norwegian consumers. The NCA suspects that the grocery chains have acted in violation of the prohibition against anti-competitive cooperation by granting each other access to strategic market information related to price tracking activities.

63. The parties submitted their responses in late February 2022. These responses are currently being assessed before the case is finalised in 2023.

2.1.3. Summary of development in cases that were appealed

64. 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 of Trade, Industry and Fisheries. In April 2017, the Competition Appeal Tribunal was formally established. The Tribunal 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 Tribunal may be appealed to the Appeals Court and ultimately to the Supreme Court. Gulating Appeals Court is now the designated court for competition cases. The NCA do not have the right to appeal decisions by the Tribunal. See also the proposal relating this process discussed above.

65. **Merger of Schibsted and Nettbil.** In November 2020 the NCA intervened against Schibsted's acquisition of Nettbil, an online auction platform for used cars sold by private persons to car dealerships. The NCA concluded that the merger would reduce competition and lead to reduced services for consumers. Specifically, the NCA concluded that the acquisition would remove the increasing competitive pressure that Nettbil exerted on Schibsted's marketplace, Finn, in the market for online sales of used cars. The NCA prohibited the merger, and Schibsted appealed the decision to the Competition Tribunal.

66. The Competition Tribunal confirmed the NCA's decision in May 2021, which meant that Schibsted had to sell its shares in Nettbil to an independent and suitable buyer, approved by the Authority. However, Schibsted appealed the decision to the Gulating Court of Appeal, which overturned the Competition Tribunal's decision in March 2022.

67. In February 2023, the Supreme Court rejected the State's appeal, concluding that Schibsted's and Nettbil's products did not directly compete, and that the merger would not harm competition or lead to higher prices to consumers. Thus, the merger between Schibsted and Nettbil was allowed to proceed.

2.2. Mergers and acquisitions

68. 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 (USD 102 million) 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 (USD 10.2 million).

69. 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 the NCA of all aspects of its concentration-related activities.

70. Moreover, the NCA can also impose a duty to notify on a specific concentration, even if the related turnover is below the notification threshold levels. The NCA may exercise this power if it has reason to suspect that the transaction will impact competition or if other factors indicate that the Authority should scrutinize the case more closely. This tool is particularly relevant when analysing established firms that acquire start-ups and in preventing killer acquisitions.

71. 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, ensures that the conditions are met.

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

72. In 2022, the NCA received 160 notifications compared to 156 in 2021. Notably, 70 per cent of the notifications (112) are so-called simplified notifications, relating to mergers not likely to affect competition negatively.

Figure 1. Notifications of mergers and acquisitions - January 2005 - December 2022 (3 months running average)



Note: 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.

73. The NCA places great importance on ensuring that the merger control is efficient and provides businesses with speedy resolution. By focusing on front-loading resources in each case, the NCA has been able to handle cases more efficiently, freeing up internal resources for other prioritized cases.

74. Of the 160 notifications of mergers and acquisitions received by the NCA in 2022, 158 were closed within 25 working days. These efforts have proved to be beneficial for the involved parties, as well as contributing to increased predictability and swiftness in the merger control.

75. In three cases, the NCA approved the corporate mergers subject conditions. This means that the involved companies committed to a range of remedial measures to facilitate the merger, such as selling off operations.

76. The NCA has the power to require businesses in highly concentrated markets, such as power production and the groceries market, to notify the authority of all acquisitions. By monitoring these markets closely, the NCA can stay informed of new developments and potential competition issues. The NCA periodically evaluates whether additional market participants should also be obligated to provide these notifications. For more information on this subject, see subsection 1.2 and the introduction of subsection 2.2

2.2.2. Summary of significant cases

77. Relating to mergers, four cases are of particular interest.

78. **DNB Bank ASA and Sbanken ASA.** In 2021, the NCA decided to prohibit DNB's acquisition of Sbanken, citing concerns over competition in the market for mutual funds, which has experienced significant growth as more Norwegian customers seek to invest in such funds. Over time, Sbanken has challenged the established banks and been a driver for increased competition. DNB was already the largest player in the market, and the acquisition of Sbanken would have further strengthened its position. The NCA's assessment concluded that the companies' proposed remedies were not sufficient to address the competition concerns, leading to the decision to prohibit the acquisition..

79. DNB appealed the decision to the Competition Tribunal, which in March 2022, repealed the NCA's decision. The Tribunal concluded that it was not sufficiently likely that the acquisition would significantly reduce competition in the mutual fund distribution market. As the NCA does not have the power to appeal decisions by the Tribunal, the outcome of the case is final.

80. **Bewi and Jackon.** In 2022, the NCA approved Bewi's acquisition of Jackon subject to conditions. The Authority concluded that the acquisition would significantly hinder competition in the market for EPS fish boxes in Troms and Finnmark county. Bewi and Jackon were close competitors, and both produce EPS fish boxes in several factories along the Norwegian coastline. The boxes are sold to the fish farming industry and other parties in the fishing industry. Because these markets face high transportations costs, customers wish to buy EPS boxes from factories in their local markets.

81. The Norwegian Competition Authority approved Bewi's acquisition of Jackon on the condition that they sell Jackon's fish box factories in Alta and Gratangen. The factories must be sold to an independent and suitable buyer before the acquisition can be completed.

82. **Nortura and Steinsland.** In June 2022, the NCA approved Nortura's acquisition of Steinsland subject to certain conditions. Although the acquisition was below the mandatory notification thresholds, Nortura voluntarily notified the NCA. The NCA concluded that the acquisition had the potential to harm competition in the egg value chain, as Nortura and Steinsland were the largest players in different segments of the value chain. Steinsland was the largest player in the hatchery and sale of laying hens, while Nortura was the largest player in the egg packaging segment and was also involved in other segments of the value chain as a cooperative and market regulator. The Authority concluded that the merger could lead to a risk that Steinsland's competitors would not be able to deliver on the same terms to Nortura.

83. Moreover, the NCA has concluded that the merger could significantly impede effective competition in the market for breeding and sale of laying hens, and in the market for egg distribution. Thus, Nortura proposed a number of remedial measures to mitigate the anticompetitive effects of the merger. These measures primarily involved the purchase and sale of laying hens and eggs on a non-discriminatory basis, as well as ensuring that Nortura does not abuse the information flow it receives as a cooperative and market regulator. As part of the measures, Nortura committed to delivering laying hens on non-discriminatory terms to egg producers who supply to competing egg packing facilities, including non-discriminatory terms with respect to prices, volume, and delivery conditions. Nortura also pledged to refrain from discriminating against consumer egg producers based on their chosen supplier or breed of laying hens for procurement purposes. The NCA accepted these measures and approved the merger on these conditions.

84. **Hansa and Royal Unibrew.** In May 2022, the NCA approved Royal Unibrew's acquisition of Hansa Borg on certain conditions. Although the acquisition was below the notification threshold, it was voluntarily reported to the NCA in January 2022. The NCA concluded that the acquisition would significantly impede competition in the market for

sale of alcoholic beverages to the grocery market. Hansa Borg and Royal Unibrew are two of the largest players in the market for the sale of cider and flavored alcoholic beverages in Norwegian grocery stores, with well-known brands such as the cider Grevens. The parties proposed a number of remedial measures, which would eliminate most of the increase in Royal Unibrew's market share, and thus maintain the competitive pressure in the market at approximately the same level as before the merger. The merger could only be completed after Royal Unibrew had terminated distribution and sales agreements related to ciders and flavored alcoholic beverages in Norway. Based on the proposed remedial measures, the NCA approved the merger on conditions.

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.

85. 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.

86. Moreover, the NCA has contact with other public institutions depending on priorities related to advocacy.

3.2. International cooperation

87. 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.

88. From 2021, the NCA is a co-chair of the ICN Merger Working Group, after having served as a co-chair for the Advocacy Working Group.

89. 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 ECN is all the more important for the NCA. In this regard, the NCA advocates mechanisms for effective enforcement cooperation between enforcement agencies in both the EU pillar and the Efta pillar.

90. Moreover, the NCA has regular contact with the EFTA Surveillance Authority about ongoing cases with a cross-border dimension, to ensure consistent application and

enforcement of the EEA competition regulations, ie. Articles 53 and 54 corresponding to 101 and 102 TFEU. In 2021, ESA launched the Efta Competition Network, consisting of i) lunchtime webinars on topical issues, ii) regular meetings on more technical and enforcement related issues, as well as iii) more policy-oriented meetings at the management level. The network has been active with webinars and meetings on all dimensions in 2022.

91. Another important cooperation arena is the Nordic cooperation. The cooperation with the Nordic competition authorities is institutionalised in an agreement providing for effective cooperation on cross-border enforcement. The Nordic cooperation also comprises informal contact through various networks, the biannual meeting between the DGs and the annual meeting focusing on topical enforcement related issues. In 2022, the annual Nordic meeting between the competition authorities took place in Iceland.

92. The NCA also has informal cooperation with other authorities on a bilateral basis.

3.3. Expressing competition concerns related to existing or proposed regulations

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

94. Anti-competitive regulations exist in a number of different areas, and the NCA has taken steps to address them. On the NCA's website, a function has been made available to the general public to submit tip-offs regarding any perceived restrictions on competition. An internal task force has been established to consider these tip-offs for further consideration and follow-up by the market departments. This function complements the existing possibility to submit tip-offs anonymously.

95. Raising awareness of the importance of competition as an instrument for efficient use of scarce resources, increased innovation, and to influence the companies' competitive culture is a key part of the NCA's advocacy efforts. The NCA also advocates for changes in regulations that facilitate competition through lower entry barriers, new business models and stronger incentives to compete. The NCA's advocacy efforts are particularly directed towards small and medium sized enterprises, where surveys have documented a clear need for increased awareness of and familiarity with competition law.

96. In 2022, the NCA has been very active in its advocacy work and received significant media attention. The authority continues to be active in media, explaining the importance of solid enforcement of the competition law and its direct impact on consumers. In addition to TV appearances and interviews, the NCA's employees published 32 op-eds on topical issues. Additionally, the NCA published seven podcast episodes and produced three webcasts presenting basic knowledge on competition law. These webcasts are particularly relevant for small and medium-sized enterprises.

97. Notably, media analytics and a survey indicate that the NCA has been highly visible in 2022 with more than 4520 media news items referencing the NCA.

98. As a consultative body, the NCA ensures that the competition perspectives are taken into account when new policies are adopted. The Authority prioritises consultations where its influence is most likely to result in a positive outcome for competition. This approach has proven to be an effective use of resources. In 2022, the NCA submitted thirteen hearing statements to various ministries and authorities, regarding proposed legal amendments on a broad range of topics.

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):

99. The annual budget for the NCA for 2022 was NOK 129.39 million (USD 13.2 million).

4.1.2. Number of employees (person-years):

100. The NCA's personnel resources amounted in 2022 to 83.7 person-years, including administrative staff and PR-staff.

101. Number of employees (not person-years) as per 31 December 2022 amounted to 100 (including staff on temporary leave), including:

- 40 economists
- 34 lawyers
- 4 investigators
- 1 data scientist
- 22 other professionals and support staff (HR, IT and information management, PR/communications, finance, organization development)

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

102. The NCA's case handling is primarily organized by sector. Thus, the case handlers are working in market departments responsible for specific markets. All case handlers work with different types of competition cases within the markets allocated to the market department.

103. The grocery market has long been a prioritized market for the NCA. In March 2022, "Project Grocery" was incorporated into the Market Monitoring Department of Food, Trade and Health to consolidate expertise and ensure sector-specific assistance in analysis and investigations.

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

105. The NCA also has an investigative 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.

106. All case handlers may engage in advocacy work, and the Department of Communications and PR work closely with other departments to maximize media attention related to case outcomes and advocacy work.

107. Skill building is a priority for all employees, with the NCA successfully building a staff of highly qualified and experienced case handlers. In 2022 we have worked to develop alternative career paths in the organisation, as well as leadership development program which will start in 2023.

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

108. In 2022, the NCA published a [report highlighting](#) the impact of concentration and buyer power in the Norwegian grocery sector. The report revealed that the largest grocery retailers in Norway hold significant market power, which enables them to negotiate more favourable terms with suppliers, potentially affecting consumer prices. The report also examines the use of data-driven technologies and digital platforms in the sector, which can provide retailers with new insights into consumer behaviour and support them in determining optimal pricing for their products. However, the report also warned that such technology-driven pricing strategies could have negative impacts on competition and potentially resulting in higher prices for consumers. The report emphasises the importance of preserving a vibrant and effective competition in the grocery sector, and recommended measures to promote greater competition. This includes measures to strengthen the bargaining power of smaller retailers and suppliers, as well as potentially lowering the entry barriers into the grocery market.

109. Furthermore, the report identifies potential future developments and challenges in the sector, such as the need to account for online sales and the impact of changing consumer preferences. The report argues that competition and consumer authorities should work towards developing well-functioning grocery markets that improve consumer welfare and guarantee safety for consumers, while promoting innovation and competition in the sector.

110. Overall, the report provides important insights into the current state of competition in the Norwegian grocery sector and highlights the need for continued vigilance in ensuring that competition remains strong and effective, to the benefit of consumers and the wider economy. The report can serve as a valuable resource for decision makers when designing future reforms to promote greater competition in the grocery sector.

111. Since 2014, the NCA has allocated annual research funding from the General Price Regulation Fund, up until the last allocations from this specific fund were made in 2020.

112. In January 2022, the Ministry of Trade, Industry and Fisheries established new guidelines for the allocation of grant funding for competition-oriented research. In March, grants totalling up to NOK 5 million (USD 0,51 million) were awarded to projects focusing on several of the Authority's areas of focus, including sustainability and competition law, digitization, and the grocery market. As previously, educational and research institutions, enterprises and independent individuals may apply for funding. Grants were also awarded for projects on cartel detection, sanction regimes in competition law, and the effects of corporate mergers and acquisitions.

113. In 2022, several research projects were undertaken on topics such as price negotiations and price discrimination, market concentration and profitability, and the standard of proof in competition law. Throughout the year, several research projects were completed with positive results, and multiple articles have been published or are in the process of being published in reputable journals. The Authority will continue to implement various measures for the presentation of research results, including the publications on websites, references in articles and posts, seminars etc.

114. The NCA has also taken various measures to disseminate and share research results, including publishing articles on the Authority's website and presenting research at internal and external seminars. The objective of the grant program is to encourage and support research that contributes to the development of effective competition policy and enforcement in Norway, and to enhance the competitiveness of Norwegian firms in the global market. Through this program, the Ministry of Trade, Industry, and Fisheries aims to promote innovation, stimulate economic growth, and ensure that competition in the

Norwegian market is fair and transparent. An overview of new, ongoing, and completed projects in 2022 is available on [our website](#).

115. The Authority will continue to implement various measures for the presentation of research results, including online publication, references in articles and seminars.