



Recent Developments in Norwegian Competition Law

New merger review regime applicable as of 1 January 2014 with higher filing thresholds – scrutiny of concentrations also below thresholds to be expected

The filing thresholds for mergers/acquisitions were significantly raised as from 1 January 2014. Following the amendment to the Competition Act, a notification is only required if i) the combined aggregate turnover of the undertakings concerned in Norway is more than NOK 1bn (approximately EUR 125m), and ii) at least two undertakings concerned each have a turnover in Norway exceeding NOK 100m (approximately EUR 12.5m).

However, it should be noted that the Norwegian Competition Authority (NCA) may, on a case-by-case basis, order the parties to a transaction below filing thresholds to notify the transaction. In such case, the parties will be subject to a standstill obligation pending the NCA's review of the merger. Indeed, the NCA has encouraged market participants to bring forward complaints on mergers below thresholds that may restrict competition in the relevant market and has also stated the NCA will actively monitor the market closely and use the power to require notifications below the thresholds.

The NCA has imposed a substantial fine on a Norwegian grocery retailer for breach of the standstill obligation in a merger case which raised questions regarding the interpretation of the notion of "concentration"

The NCA recently imposed a fine of NOK 25 million (approx. EUR 3 million) on one of the major retailers in the Norwegian grocery market, NorgesGruppen, for breaching the standstill obligation pending merger clearance. What is of particular interest in this case, aside from the significant increase in the level of fines compared to previous cases, is the NCA's interpretation of the notion of "concentration". In the view of the NCA, the transfer of a tenancy agreement from ICA to NorgesGruppen, through a complex transaction structure,

was considered a concentration, due to *i.a.* the duration of the contract and the importance of physical location as a parameter in competition in the retail grocery market. The NCA considered the transaction an unlawful circumvention of the filing obligation.

Norgesgruppen may challenge the decision in Court within 6 months.

<http://www.konkurransetilsynet.no/en/news/archive/Fine-imposed-on-Norgesgruppen/>

Norwegian District Court reduced fine imposed in cartel case by NOK 100 million

Last year the NCA imposed all time high fines for a cartel in the asphalt sector. One of the two companies involved had the fine annulled due to leniency, whereas the other party, NCC, was imposed a NOK 140 million fine. NCC appealed the decision of the NCA. The District Court upheld the NCA's finding that NCC had violated the Competition Act, but reduced the level of the fine significantly, from NOK 140 million (approx. EUR 16 million) to NOK 40 million (approx. EUR 4,8 million) based on principles of proportionality and equality of treatment, since former fines of the NCA had been significantly lower, as had also fines for similar economic crimes. The NCA has stated that it is surprised the Court has not paid more attention to EU competition law practice in determining the level of the fine. The NCA may appeal the decision to a Court of Appeal. NCA's press release:

<http://www.konkurransetilsynet.no/en/news/archive/Judgment-in-asphalt-case-NOK-40-million-in-fines/>

The judgment (in Norwegian):

<http://lovdata.no/pro/download/?type=printDocument&id=TRSIIV/avgjorelse/toslo-2013-76559&partID=null&partType=COMPLETE&addIndex=false&addSummary=true&addDocumentText=true&addNotes=false&random=6.512628328236021>

The NCA has issued a statement of objections notifying it intend to prohibit a joint distribution and purchasing agreement between two of the main competitors in the Norwegian grocery market

Two of the in total four main retailers in the Norwegian grocery market, NorgesGruppen and ICA, have entered into a joint distribution and purchasing agreement. The SO of the NCA has not been made public, but from the press release and public statements in the media, it seems the NCA is concerned the agreement between the parties, who will have a combined market share of over 50%, would enable NorgesGruppen to reduce competition between the parties and furthermore that the agreement would increase the risk of coordination between the parties. The NCA has also pointed to the fact that the parties have very high market shares in several local markets. The NCA also imposed an interim prohibition on implementing the agreement, a power the NCA used for the first time in this case.

<http://www.konkurransetilsynet.no/en/news/archive/Warns-that-the-agreement-between-ica-and-Norgesgruppen-may-be-blocked/>

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