



2001



annual report



Konkurransetilsynet
Norwegian Competition Authority



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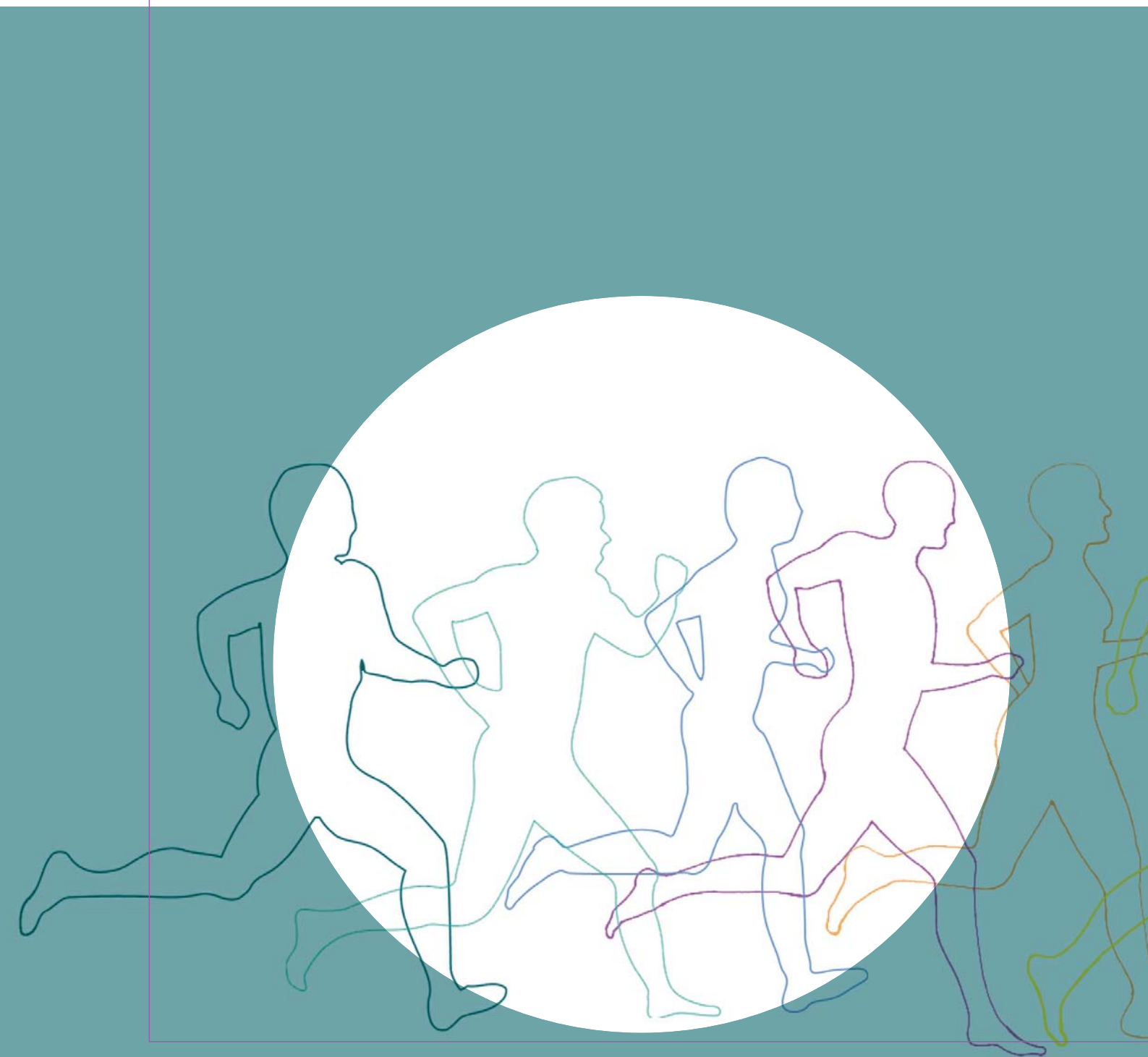
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The Norwegian Competition Authority

The explicit objective of the Norwegian Competition Act is the efficient utilisation of society's resources. Effective competition is a means to this end.

The principal task of Norwegian Competition Authority is to enforce the Competition Act. The instance of appeal is the Ministry of Labour and Government Administration.

Being based on an intervention principle rather than on a prohibition principle, Norwegian Law does not in general require proof that an act of conduct constitutes abuse of dominant position, in order for the Norwegian Competition Authority (NCA) to be able to intervene against the practice. According to Section 3-10 of the Norwegian Competition Act, it is sufficient for the NCA to show that an action is liable to restrict competition, contrary to the purpose of efficient resource utilisation, in order for the NCA to intervene.

The Norwegian Competition Authority is also empowered to evaluate public schemes and regulations and point out anti-competitive practices on an individual basis.



A landmark year for Norwegian competition policy

2001 was a landmark year for Norwegian competition policy. The year started with an initiative to reorganise the Norwegian Competition Authority to make it more efficient. The Authority's new structure, which included two market monitoring departments and one corporate investigation department, became operational on 1st April. Towards the end of the year, the new government published a competition policy action plan which presents some exciting new challenges for the Authority.

Part of the reorganisation of the Norwegian Competition Authority involved reducing the organisation's regional apparatus. When wage and price regulation was frequently used as an instrument of economic policy, this apparatus fulfilled a quite important function. However, the use of this instrument has gradually become less relevant. With respect to the challenges faced by competition authorities in the years ahead, keeping a large regional apparatus in place would not have been cost-effective. Our regional apparatus was gradually phased out during 2001, and by the end of the year only a few surplus staff were without new positions.

In addition to the reorganisation, the Authority handled large, difficult cases that were the subject of considerable media attention.

The Bondevik Government, which entered into office in the autumn of 2001, seeks to strengthen Norwegian competition policy. A five-point action plan is being implemented. The action plan aims to ensure an efficient resource utilisation, enhance competition in

trade and industry, and strengthen the position of consumers. Competition policy and the implementation of the action plan form part of the modernisation programme for the public sector. The five main elements of the action plan are:

- to place greater emphasis on competition policy and strengthen the Norwegian Competition Authority
- to review public regulations and institutions that may restrict competition
- to ensure that government/public procurement initiatives enhance competition and access to the market
- to ensure that privatisation of public companies not contribute to restricting competition or to the formation of monopolies
- to ensure that the public sector is organised and run in a manner that promotes competition

Globalisation and the integration of European markets mean that the importance of long-term structural policy will increase as far as companies' competitiveness, growth and prosperity are concerned. Examples of important structural policy measures include education, research and the development of efficient markets through effective competition policy. The Authority welcomes the challenge of these high ambitions and the increased focus on competition policy, not least because we believe that a more active, systematic and coherent competition policy should be coordinated with other structural policy measures. This is particularly true when it comes to questions regarding state ownership, taxes, duties, and regulatory reform.

The Norwegian Competition Authority's primary task is to enforce the Competition Act. The aim of this act is to contribute to the efficient utilisation of society's resources by providing the conditions for effective competition. The act empowers the Authority to

take action against the abuse of market power or against other anti-competitive practices. Moreover it gives the Authority a clear and independent mandate to point out anti-competitive public schemes and regulations.

In a competitive market, suppliers will have to compete for customers. This stimulates diversity and innovation. Customers will prefer suppliers with favourable prices and superior quality products and services. Under effective competition, those companies will survive which deliver high quality products at low prices. If taxes and duties are designed to rectify negative external effects, and otherwise do not distort the incentives faced by decision makers, price signals will ensure that resources are not unnecessarily wasted. In sum, this will provide consumers with the most efficient market solution.

Several markets are characterised by natural monopolies or special circumstances that require regulation. Important services within education and health care have traditionally been provided by the public sector. In Norway, local authorities have an important role to play as service providers. The boundaries between public and private service provision are subject to change. Through competitive tenders, market mechanisms are to an increasing degree being exploited by the public sector. As a consequence of emerging technologies and consumer demands, new services are being offered alongside and in competition with traditional public services.

It is important that the Authority focus on the competition between public and private enterprise and on the unfortunate effects of inefficient public regulations. It is crucial that the Authority create conditions that allow public and private enterprises to compete on equal terms. Even though individual cases may seem insignificant, the overall benefits of improved efficiency within the public sector will be substantial.

Our work in 2001 was marked by several large merger cases. Illegal collaboration between companies was

uncovered and reported to Økokrim (The Central Unit for the Investigation and Prosecution of Financial and Environmental Crime). We also intervened to counter other types of anti-competitive practice. As far as the public sector is concerned, the Norwegian Competition Authority pointed out a series of anti-competitive practices. The annual report provides a more detailed overview of the most important cases handled by the Authority in 2001. It also presents assessments of the competitive conditions in five individual markets. Their purpose is to shed light on competition policy dilemmas and to provide some insights into possible future developments.

Knut Eggum Johansen

Oslo, April 2002.





The Organisation

The Norwegian Competition Authority emphasises the organisation of projects and teamwork across sectional and departmental boundaries.

Executive Staff

Co-ordination of legal and economic evaluation projects.

Co-ordination of international activities.

External and internal information and communication work.

Advising the Director General in individual cases.

Increasing the knowhow of the Authority.

Administrative Department

Personnel administration.

Financial administration.

Documentation.

IT services.

Administrative services.

Market Monitoring Departments

Supervision of markets, evaluation and implementation of measures aimed at combating competitive restrictions:

Intervention against anti-competitive practices.

Supervising mergers and share acquisitions.

Exemptions from prohibitions.

Market Monitoring Department I

Section M1: Groceries and Primary Industry.

Section M2: Finance, Consumer Goods and Services.

Section M3: Energy and Intermediate Goods.

Market Monitoring Department II

Section M4: Transport, Construction and Property.

Section M5: Media, Health Services and Telecommunications.

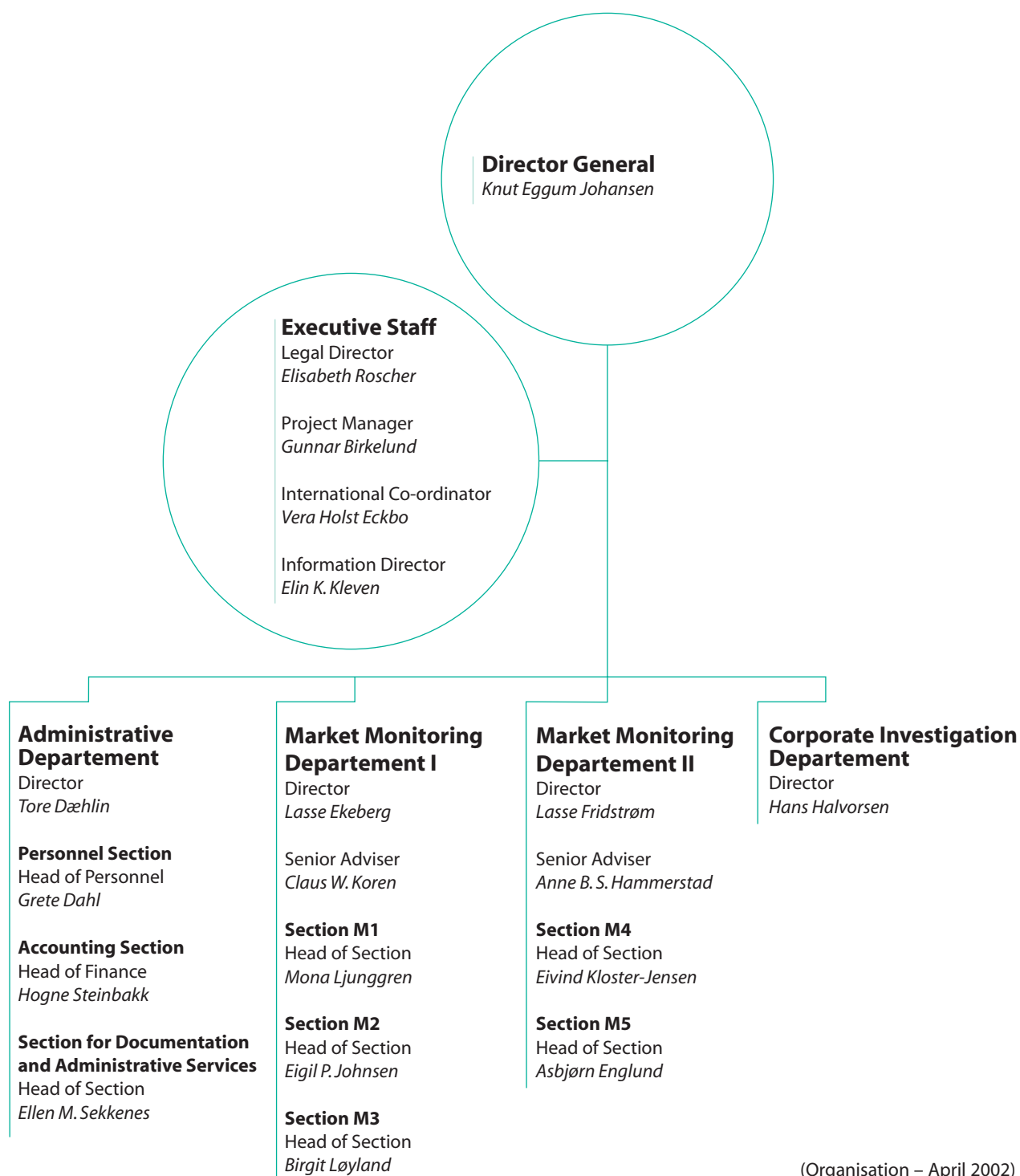
Corporate Investigation Department

Principal responsibility for investigative activities.

Planning and execution of investigations, including dawn raids and depositions.

The department will be divided into two sections in 2002.





(Organisation – April 2002)



Reorganisation and new structure

Up until 2001, the Norwegian Competition Authority was organised into a central unit based in Oslo and a regional apparatus with a total of eight offices in Oslo, Hamar, Kristiansand, Stavanger, Bergen, Trondheim, Bodø, and Tromsø. This year, however, the Norwegian parliament (Stortinget) accepted the Government's proposed reorganisation of the Authority. The main elements of this process have been the closing of the regional offices, the reorganisation of the central unit, and the transfer of tasks to the Office of the Consumer Ombudsman.

The reasons for closing down the regional offices included, among others, tighter budgetary constraints and the need for concentration of resources in order to meet the challenges faced by competition authorities. Following the reorganisation, the Norwegian Competition Authority will have a workforce of about 100 man-years per annum.

The regional offices formally closed their doors on 1st April and were organised into a "reorganisation unit" which was active until mid-December. The Norwegian Competition Authority's new organisational structure was established on 1st June.

Personnel situation

As of 31st December 2001, the Norwegian Competition Authority had a staff of 113. Of these, seven were on paid leave and nine on unpaid leave. 49 per cent of the staff were women and 51 per cent men.

25 new members of staff were hired during 2001. 16 people left, not including those who worked at the regional offices. Adjusted to take account of the conse-

quences of the reorganisation process, the Norwegian Competition Authority had a staff turnover of 16 per cent, compared to 18 per cent the previous year. Turnover was highest among the younger case handler.

Women in management

Of the Norwegian Competition Authority's 18 managers at the end of 2001, eight were women. The percentage of female managers was thus 44.4. This means that the Authority achieved the target for female managers set by the Ministry of Labour and Government Administration (38 per cent), as well as the level (40 per cent) stipulated in the main collective agreement. During the last few years the Authority has concentrated on recruiting female managers. At the end of 1998, the percentage was a mere 8 per cent.

Training

The Norwegian Competition Authority invested NOK 2.2 million in training initiatives in 2001 (1 = approx NOK 8). This is almost twice as much as in 1999, though far less than in 2000, when we spent approximately NOK 3.0 million.

The Norwegian Competition Authority endeavours to develop the skills of its staff and to enable them to meet new problems head on and tackle new challenges. Markets are developing quickly and players are becoming more professional. Thus, in 2001 staff from the Authority participated in courses and seminars both at home and abroad. The initiatives covered upgrade courses, branch-specific instruction, the use of IT tools, management skills, etc. One staff member studied abroad and another was seconded to the EFTA Surveillance Authority. In the autumn of 2001, a series of lectures, totalling 20 hours in duration, were



held about competition law and economics specifically targeted at new employees. The Authority regularly arranges an internal “Competition Forum”, some with external speakers. The Corporate Investigation Department held its own seminar which, among other things, focused on interview techniques and securing electronically stored evidence. A seminar was also held for the whole organisation, focusing on the development of the new organisation.

Competent and effective management is an important prerequisite for a forceful organisation. As part of the establishment of the new organisation we have worked on the development of management systems and teams, and on the planning of an internal development programme for all managers, which will be implemented in 2002 and 2003. Several leaders have taken part in external management development programmes.

Electronic case handling

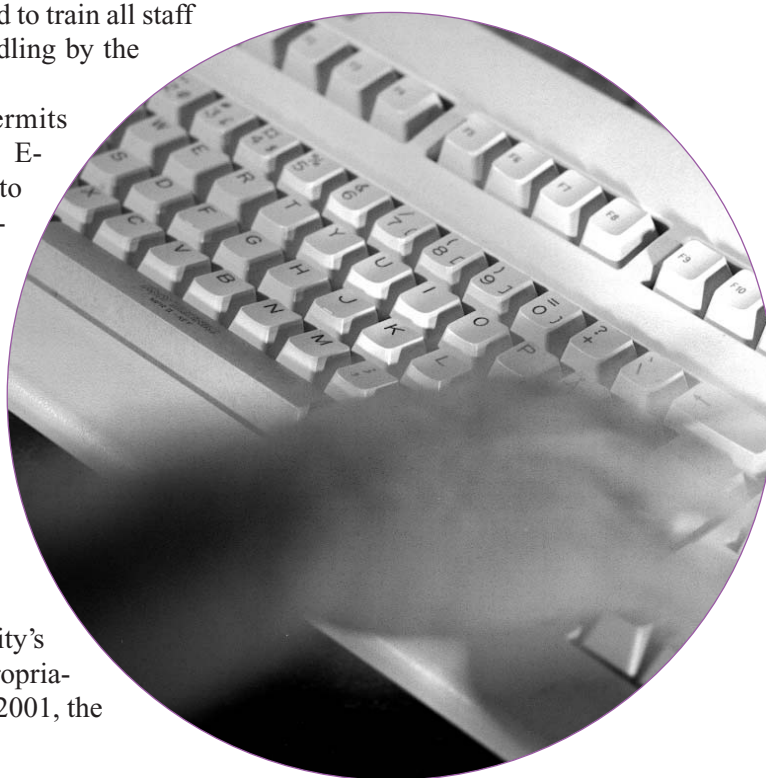
During 2001, we carried out a project to introduce a new, electronic case handling system in the Norwegian Competition Authority. The system is operational, and the Authority is committed to train all staff to use the system for their case handling by the end of summer 2002.

The new electronic system permits “round the clock administration”. E-mail inquiries can be integrated into the archive and case handling, providing a better service for our users. The project is also intended to make our current office routines more efficient and contribute to improved information management, allowing us to transfer resources from routine administrative tasks to case handling and analysis.

Budgetary constraints

The Norwegian Competition Authority’s activities are entirely funded by appropriations in the government’s budget. In 2001, the

Authority had a budget of NOK 66.7 million, excluding additional appropriations for the reorganisation costs. For 2002, the Parliament has allocated approximately NOK 64.2 million for operating expenses.





Information and communication

Information and public relations are important instruments in the Authority's endeavour to enhance competition and economic efficiency. Some of the Authority's most important target groups are trade and industry, consumers, and corporate lawyers.

The aim of the Competition Act is to ensure the efficient use of public resources by providing the conditions for effective competition. For the Act to have any effect, it is imperative that the business community is familiar with it, and with the Norwegian Competition Authority's mandate and practices. The corporate sector is therefore one of the Authority's key target groups.

The Norwegian Competition Authority is also committed to extend information to consumers. Informed and demanding consumers promote competition.

The Authority's most important channels of information are the mass media, the Internet, and its own newsletter, "Competition News".

Mass media

Newspapers, trade journals, radio, and television are all showing greater interest in the work of the Norwegian Competition Authority. A vigorous media strategy has produced results, including extensive media coverage in several cases. The number of mentions in the press increased by 75.8 per cent from 2000 to 2001. Three press conferences were held.

Press releases are now sent via e-mail to specifically targeted media groups and are also published on the Norwegian Competition Authority's website together with other news items. 57 such new items were published online during 2001. Most of these were also issued as press releases.

Internet/Intranet

Decisions, news releases, price surveys, legal amendments, new regulations and other relevant information are continuously being published on the Internet.

The internal flow of information in the Norwegian Competition Authority was improved in the summer of 2001 when the Authority's Intranet came online.

In November, work was started on a project aimed at developing a new, more modern website for the Authority. The project group will also develop the Intranet further. According to the timetable, the project should be completed in summer 2002.

Competition News

The "Competition News" (Konkurransenytt) newsletter was first published in December 2000. As planned, 10 issues of the newsletter came out in 2001. It contains information about relevant cases handled by the Authority, as well as a number of international cases that are of significance and interest to Norway. The newsletter has a print run of 2,500 and is sent free of charge to all persons interested.

"Articles from the Norwegian Competition Authority"

During the course of the year, five new issues appeared in the series "Articles from the Norwegian Competition Authority".

No. 1/2001: "Sanctions – are they worth the price?"

In the summer of 2001, the Authority appointed a committee which compiled the report "Sanctions – are they worth the price?", about sanctions pursuant to the Competition Act. The committee looked at how the current Competition Act could be enforced in a more efficient manner and also proposed reforms that



could strengthen the Act's deterrent effects. The report discusses cartels and economic efficiency, optimal sanctions, benefit calculations profits, civil legal sanctions, leniency, and institutional matters. The committee consisted of Research Associate Erling Hjelmeng, Attorney Nora Lund Lefdal, Professor Kjell Erik Lommerud, Associate Professor Tone Ognedal, and Professor Christian Riis, who chaired the committee.

No. 2/2001: "General conditions and competitiveness in the agricultural sector"

This report provides an overview of the economic constraints affecting the agricultural industry. Starting with the goals of agricultural policy, this overview gives the Authority a strong base to evaluate appropriate measures to promote increased economic efficiency and lower prices. As a result, the report helps the Authority to plan future work on questions pertaining to competition associated with agriculture and the processing of agricultural products.

No. 3/2001: "The effects on price and competition of VAT reform"

Pursuant to the Competition Act, section 2-2 d), the Norwegian Competition Authority is required to call attention to any anti-competitive effects of public initiatives. Often, the Authority will raise issues at hearings. The Norwegian Competition Authority made two statements, on 6th March 2000 and 3rd May 2001, during a hearing about the new value added tax (VAT) system, which essentially means that services in general are no longer exempt from VAT, while comestibles are subject to a reduced output tax rate.

No. 4/2001: "Comparative price survey, October 2001. Individual supermarkets chains in Oslo."

The results of the third price survey, conducted by National Institute for Consumer Research (SIFO) in cooperation with the Norwegian Competition Authority, were collated in a single report and presented in October 2001. The purpose of the report was to uncover differences in price between the supermarket chains. The Authority wanted to contribute to making competition

more effective, both by directly influencing the chains and by stimulating consumers' general level of price awareness, by making it easier to gain an overall overview of the grocery market. The survey showed that there were considerable differences between supermarkets in the general level of prices. The differences in price for some products were very large. Lower VAT seems to have been reflected in prices, though it is difficult to say whether this trend will last over the long-term.

No. 5/2001: "Price dispersion – petrol and vehicle diesel"

The Norwegian Competition Authority conducted a nationwide survey of petrol and vehicle diesel prices and also surveyed the issues that affect freight subsidy schemes. This report was commissioned by the Ministry of Labour and Government Administration. The survey was based on prices recorded once a month between 15th November 2000 and 15th July 2001. Prices were obtained from Statoil Detaljhandel, Norske Shell, Hydro Texaco, Conoco Jet and Rema Bensin. The Authority also tried to obtain a general overview of geographical price variations. The 'freight equalisation scheme' was evaluated and the Authority studied the effects of the reductions in petrol and vehicle diesel duties on 1st January 2001 and 1st July 2001. We found that, among other things, there were often greater price differences within counties than between counties. This suggests, for example, that it is possible to buy cheaper fuel within Finnmark than in certain petrol stations in Oslo. The 'freight equalisation scheme' is not a particularly accurate means of price equalisation.

Other printed matter

New, updated pamphlets about the Competition Act were produced in both Norwegian and English.

Corporate profile

A new corporate profile has been developed for the Norwegian Competition Authority. The work was completed in 2001. The Authority now has a new, uniform corporate profile on letters and information materials.



International co-operation

In 2001, international competition cases were followed up via the EEA Agreement, and through the OECD, WTO, Nordic network, and bilateral co-operation. Emphasis was placed on the prioritisation of international cases during the reorganisation of the Norwegian Competition Authority.

Work on EEA cases receives a high priority at the Norwegian Competition Authority. The Authority believe that it is important to use the rights it has under the EEA Agreement to promote its views regarding important cases and legislation being dealt with in the EEA. In 2001, the Authority participated in 43 meetings in Brussels. The meetings dealt with 20 individual cases and 23 legislation cases.

Norway has its own competition counsellor at the Norwegian delegation to the EU in Brussels, and the Norwegian Competition Authority co-operates closely with EFTA's surveillance authority (ESA), the EFTA's secretariat and the other EFTA/EEA countries.

Amendments in the EU

As far as regulation cases are concerned, Norway is only able to participate in the preparatory work when such work takes place at a Commission level. The EEA Agreement does not provide access to participate in discussions that take place in the Council or the Parliament.

In 2001, the modernisation of the procedural rules in the EU, the so-called Modernisation Reforms, which, among other things, involve decentralised enforcement of the EEA Agreement's Articles 53 and 54, was dealt with by the Council. The Norwegian Competition Authority thus spent less time on this case this

year than it has in previous years. However, the Authority does expect to play an active role in the process in 2002 when it comes to incorporating the new procedural rules into the EEA Agreement and Norwegian law. In anticipation of the new regulations, the Authority is working on upgrading its expertise so that it is better prepared to enforce the EEA prohibitions.

ECA

In 2001, European Competition Authorities (ECA) established a new network that linked competition directors in the EEA. Director generals in the ECA meet twice a year. Working groups are set up to discuss matters of mutual interest. This year, one working group was set up to discuss leniency and one to consider multinational mergers.

OECD

All of The OECD's 30 member countries participate in the Competition Committee. The committee is an important forum for exchanging experiences of enforcing competition rules and developing common competition policy standards.

The Competition Committee's main working areas are the reform of regulations, measures to combat illegal international cartels, collaboration concerning the assessment of multinational mergers, and the relationship between trade and competition.

The reform of regulations is a term used to describe amendments that are designed to make competition and markets to function better. National competition authorities play an important role in this work. In 2001, the Competition Committee conducted national surveys of the regulation reform work in the UK, Canada, Poland and Turkey. Round table conferences



were also held on topics such as regulation and competition in the telecommunications sector, access pricing with the main focus on the telecommunications sector, and road transport. As far as international cartels are concerned, work is continuing on, among other things, the 1997 OECD recommendation on combating cartels.

A global competition forum (Global Forum on Competition) was established. This is one of the eight forums set up by the OECD to increase contact with non-member countries within selected policy areas.

Nordic network

The Nordic network involves co-operation between the competition authorities of Denmark, Finland, Iceland, Norway, and Sweden. The Faeroe Islands and Greenland have established their own competition authorities and also participate in the network.

Denmark, Iceland and Norway signed an agreement on 16th March 2001 that provides competition authorities opportunities to collaborate on specific cases. As a result of this agreement, competition authorities can exchange confidential information about cases of mutual interest. The agreement was signed due to the need for increased co-operation, especially with regard to combating international cartels and improved co-operation on merger cases.

Within the framework of the Nordic network, there are, at any given time, working groups considering matters of common interest. The most important working group established in 2001 was the one that was set up to discuss competition in air transport.

WTO

In November 2001, a minister level conference of the WTO was held in which it was decided to try to initiate negotiations concerning a competition agreement at the next minister level meeting in 2003. In the meantime, among other things, proposals will be prepared regarding a mandate the minister level meeting can consider.

International Competition Network (ICN)

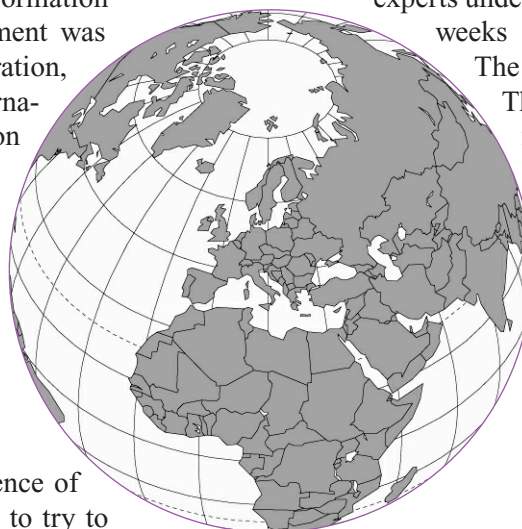
The ICN is being established following an initiative from the USA and the EU. The idea is to provide national and multilateral competition authorities with a specialised but informal network for developing regular contacts and dealing with practical competition related questions. The Norwegian Competition Authority is part of this network.

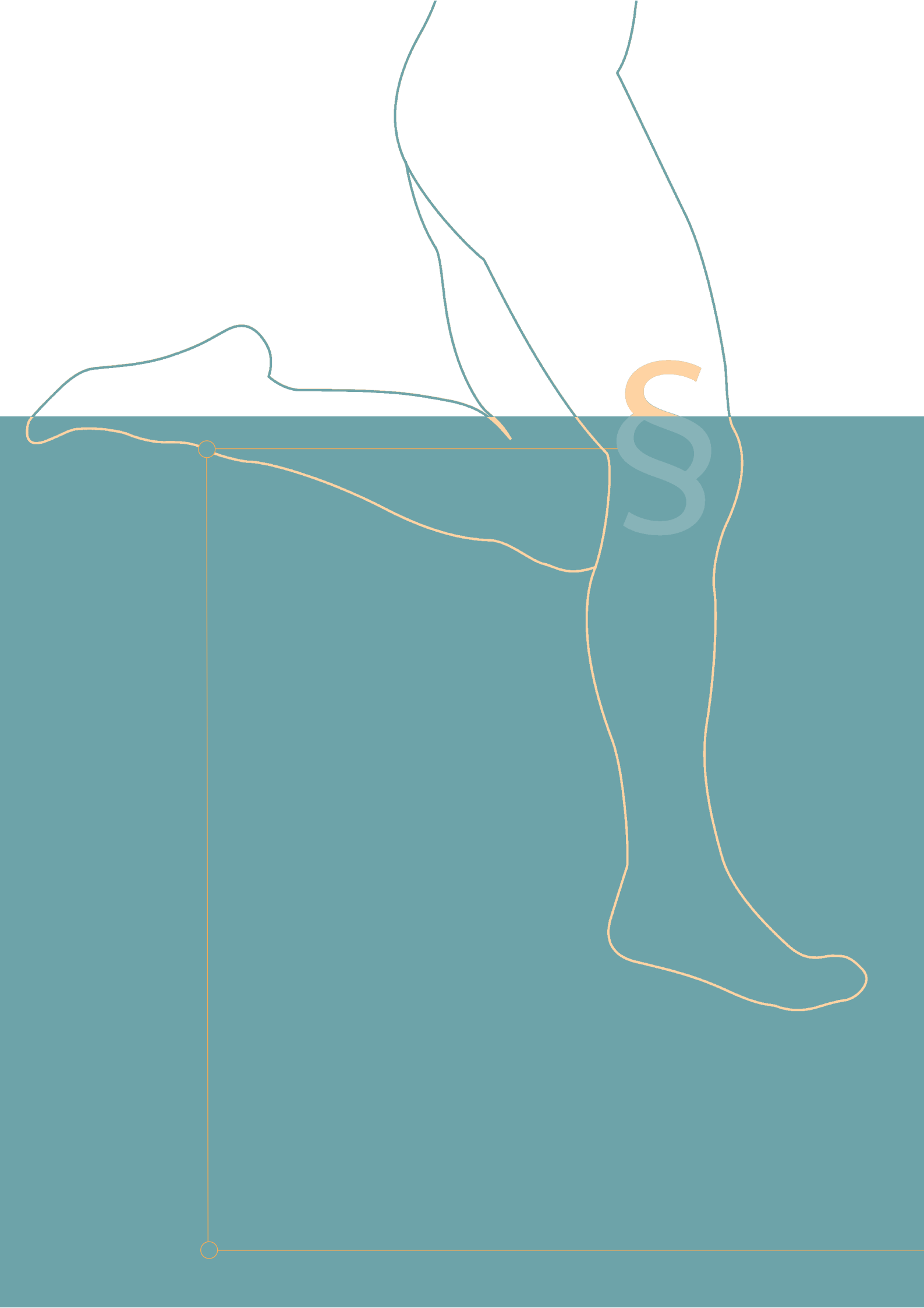
The primary aim is to increase the level of international co-operation and contribute to the harmonisation of regulations. The forum was set up by and for competition authorities and participation is voluntary. However, the majority of the world's competition authorities are expected to participate in it. The ICN is expected to supplement and co-operate with other international bodies such as the OECD, UNCTAD and WTO.

Technical assistance

As a result of an agreement with the South African Competition Authority concerning technical assistance, the Norwegian Competition Authority had two experts undergoing training for six weeks during spring 2001.

The costs were funded by The Norwegian Agency for Development Co-operation (NORAD).





activities

The Competition Authority shall according to section 2-2 of the Competition Act survey competition in the various markets.

The tasks are extensive. The Competition Authority shall enforce the provisions of the act. In order to promote the objective of the act the Authority may grant exemptions from the prohibitions. On the other hand, the Authority may decide to intervene in anti-competitive business behaviour and acquisition of enterprises.

According to the Competition Act the Competition Authority shall also take actions to promote market transparency. Furthermore, the Authority shall survey the activities of other public agencies. It shall point out anti-competitive effects of public measures and advise on actions in order to promote competition and ease market entry for new competitors.

The activities of the Competition Authority in 2001 are based on this foundation. The following pages present a summary of the activities and pertinent case examples.





Supervision and enforcement of prohibition provisions

Detecting violations of the prohibitions of the Competition Act is a field of priority for the Competition Authority, and the Authority has allocated more resources than before to work intensively with big and complicated cartel cases of potentially large detrimental effects for the society.

Illegal cartels constitute a serious threat to efficient markets. Cartels are a form of collaboration between companies on prices, market sharing, or tenders that favour the collaborating parties to the detriment of other companies and consumers. For example, illegal cartel collaboration often results in increased costs for consumers and companies that comply with public rules and regulations.

Uncovering breaches of the Competition Act's prohibition provisions is a priority for the Norwegian Competition Authority. As a result, the Authority has allocated more resources than previously to intensify the work on demanding, complicated cartel cases where the potential for effects that are detrimental to society is great.

One of the reasons for reorganising the Norwegian Competition Authority was to establish a strong investigation unit with leading expertise which could deal with increasingly more complicated legal, financial and investigation related issues. This is being followed up in the new organisation.

The larger investigation cases were organised as projects, with participation from units in the Norwegian Competition Authority other than just the Corporate Investigation Department. Verifying that companies in trade and industry comply with the act's prohibition provisions primarily involves the investigation of individual companies.

Assisting prosecution authorities also received a high priority during 2001. The Norwegian Competition Authority works closely with Økokrim's (The Central Unit for the Investigation and Prosecution of Financial and Environmental Crime) administration. Regular meetings were held to brief each other about cases of mutual interest. A series of meetings was also held during 2001 to discuss individual cases, and the Authority received technical assistance with the investigation of electronically stored material.

During 2001, we paid particular attention to improving methods of detecting and investigating cases involving the supposed illegal regulation of competition. We particularly concentrated on securing and investigating electronically stored information. We acquired advanced IT based tools, which are being used in ongoing cases. Økokrim assisted us with practical advice. Furthermore, a programme of upgrade courses was commenced for members of staff who work on investigations. The Norwegian Competition Authority took the initiative on the collaborative development of methods within both the Nordic network and the EEA.

Several of the investigations required a great deal of work, both when it came to the investigation itself and the legal follow-up.

Securing evidence

During 2001, the Norwegian Competition Authority had to secure evidence in three cases. The Authority's applications to secure evidence were granted in all three cases by the court of examination and summary jurisdiction. In all, 26 decisions were made regarding the securing of evidence from individual companies and 24 decisions made regarding the securing of evidence from private homes. With few exceptions, all



the decisions regarding individual companies were implemented, while only a minority of the decisions relating to private homes were. This is in line with our practice in previous years.

During 2001, evidence was secured at several of the country's leading asphalt entrepreneurs, several of the country's leading construction entrepreneurs and four of the country's leading forwarding agents.

Reported cases and coercive fines

A total of 50 cases involving contravention of the prohibition provisions were dealt with in 2001. Formal complaints were made in three of these (electrical wholesalers, hotels in Stavanger and Husfliden Tromsø, a company dealing with home crafts articles), while one coercive fine was imposed (Husfliden Tromsø). 39 cases were concluded with the enjoining of the provisions.

Cases concerning prohibition on price collaboration and supplier regulation						
	1996	1997	1998	1999	2000	2001
Handled	189	121	214	114	101	50
Dropped	112	38	97	92	47	7
Enjoined	71	81	114	20	50	39
Coercive fines	0	1	0	1	0	1
Relinquishment of gains	0	0	0	0	0	0
Formal complaint made	1	1	3	1	4	3

The electrical wholesalers (evidence securing case from 1999) were reported to Økokrim in April 2001. These wholesalers sell electrical installation materials that are used in everything from private homes to larger industrial projects. Most of the sales are made to electricians. The sales of such electrical products in Norway amount to several billion NOK per annum.

The reported pricing cartel had collaborated nationwide and had been doing so for most of the 1990s. The Norwegian Competition Authority believes that this has involved all or most of the cable and installa-

tion products the wholesalers sell. The wholesalers had collaborated on wholesale prices and, in certain cases, on discounts and net prices to their customers as well.

The casework involved a great deal of comprehensive, groundbreaking work being done to calculate the gains made, among other things, from the collaboration with a view to adopting a resolution concerning the relinquishment of the gains made. This didn't happen, but the valuations will be significant in the future handling of this case. A report estimated that the gains made ran into several hundred million NOK. The report has been sent to Økokrim to serve as the basis for a possible confiscation case.

The Competition Act, Section 2-2

– The duties of the competition authorities:

"The competition authorities shall supervise competition in the various markets. Among other things they shall:

a) Check that the prohibitions and requirements of the Act are adhered to (...)"

The Competition Act, Section 6-1

– The duty to provide information and investigate:

"All are required to give the competition authorities the information demanded by these authorities in order to perform their tasks in accordance with the act, (...)"

The Competition Act, Section 6-2

– Securing of evidence:

"When there are reasonable grounds for assuming that this Act or decisions pursuant to this act have been infringed, the Norwegian Competition Authority may demand access to real property, fittings and other movables in order to look for evidence. The competition authorities may confiscate such evidence for closer investigation if necessary. An application for permission to secure evidence must be submitted by the Norwegian Competition Authority to the court of examination and summary jurisdiction. (...) The Norwegian Competition Authority may require assistance by the police to implement the decision concerning securing of evidence. (...)"



II

A number of hotels in Stavanger and the surrounding district have exchanged information about room prices and beds filled figures on a daily basis for a long period of time. The exchange of such information is in the opinion of the Norwegian Competition Authority contrary to section 3-1, subsection one, of the Competition Act and the matter was reported to Økokrim in August 2001.

In 1995/96, Elsa M. Systue (Systuen) started producing Troms bunads (Norwegian national costumes). Up to then Husfliden Tromsø (Husfliden) had been the only commercial supplier. Systuen ordered materials directly from the textile manufacturer, Røros Tweed, which refused to supply the firm, referring to an exclusive obligation to supply Husfliden.

In 1997, Systuen made a complaint to the Norwegian Competition Authority about Røros Tweed's refusal to supply the firm. In order to establish a market for the Troms bunad, the Authority directed Røros Tweed to supply Systuen. Røros Tweed's appeal against the decision did not succeed. However the manufacturer still did not supply Systuen. The Authority decided to impose a coercive fine on Røros Tweed but the Ministry of Labour and Government Administration upheld Røros Tweed's appeal against the coercive fine.

In November 2000, following a new assessment of the competition situation, the Norwegian Competition Authority directed Husfliden to supply Systuen. The deliveries were to take place without any profit or loss being made by Husfliden. Husfliden complained about this obligation to supply Systuen, but the Ministry of Labour and Government Administration did not uphold the complaint. The Authority then imposed a coercive fine on Husfliden. This was appealed against and the complaint was sent to the ministry for further consideration (the fine was upheld by the Ministry in January 2002).

In addition to the legal administrative measures, the Norwegian Competition Authority reported Husfliden to the police for contravening the delivery instruction. At the end of 2001, the case had not been concluded. In the meantime, Systuen applied for a provisional court order to force Husfliden to supply them. They

won in Nord-Troms court of enforcement, but this has been appealed to the high court.

Follow-up of earlier formal complaints

As far as the following up of earlier cases in which a formal complaint has been made to the prosecution authorities is concerned, we can mention the following:

In 1995, the Norwegian Competition Authority reported eight of the eleven goldsmiths in Kristiansand for illegal silverware appraisal collaboration and for agreeing to adhere to recommended prices for jewellery where the supplier had set the recommended prices. Six of the goldsmith dealers have accepted a fine of NOK 5,000. Two of the goldsmiths have not accepted fines.

Three of the cases the Norwegian Competition Authority reported in 2000 (Aannø Industrier/Bohus, Kärcher, person who has provided incorrect information) were still being considered by the prosecution authorities at the end of the year. The first of these cases was however concluded during the first quarter of 2002. The furniture manufacturer Aannø Elegante AS (formerly Aannø Industrier) and the furniture chain Bohus AS accepted fines of NOK 750,000 each for contravening the Competition Act. Aannø Elegante had influenced the setting of prices by dealers and Bohus had co-operated in this.

Other supervision cases

The Norwegian Competition Authority assisted the European Commission and EFTA's surveillance authority (ESA) with the preparations for and execution of securing evidence at Tomra in Asker. The company is a world leader in the handling of recycled packaging. Both the Commission and ESA have expressed their appreciation of the professional manner in which the Authority conducted itself.



Intervention in anti-competitive practices

Interventions in anti-competitive practises are particularly relevant in industry-wide collaboration and undesired behaviour of dominant enterprises. Undesired behaviour may be discount arrangements, pricing or refusals to deal that reduce competition in contravention of the objective of the act.

Intervention cases pursuant to the Competition Act, section 3-10				
	1998	1999	2000	2001
Intervention cases dealt with	52	69	74	66
Intervention decisions	4	4	7	4

In 2001, the Norwegian Competition Authority handled 22 cases concerning possible anti-competitive practices. The Authority decided to intervene in four cases. Such intervention is intended to counteract widespread collaboration in a sector and anti-competitive practices by dominant companies. Anti-competitive practices include things such as discount schemes, price fixing or refusing business in such a manner that it limits competition in contravention of the purpose of the Act.

The Norwegian Competition Authority found no basis for intervention in 15 of the intervention cases. A total of 47 cases were dropped at an early stage of the investigations.

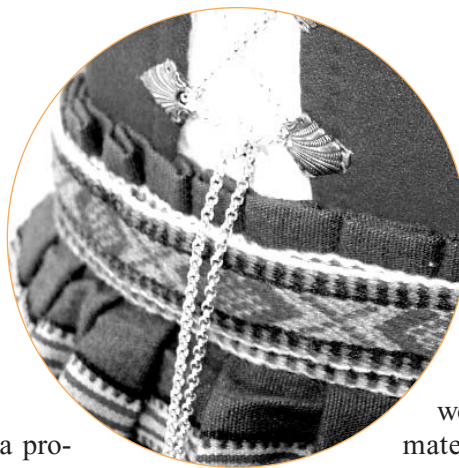
In addition to individual decisions, the Norwegian Competition Authority issued two instructions involving maximum price regulation for taxicabs. In both cases, the maximum prices were adjusted upwards. The upward adjustments were made due to developments in costs and carriage prices in areas of the country where taxicab companies compete on prices instead of having maximum prices.

Electronic invoices

The Norwegian Competition Authority prohibited banks and the Bankenes Betalingsentral (BBS) (the banks' central clearinghouse) from operating with exclusivity agreements in connection with electronic invoices. By forbidding such agreements the Authority removed a significant barrier to competition which opened the way for invoice issuers to choose between several different e-invoice solutions. BBS will thus no longer have a monopoly that allows only it to offer all the country's Internet banking users e-invoices.

The prohibited exclusivity agreements meant an Internet bank could not present demands for payment that were passed on by anybody else other than BBS. Invoice issuers (companies, organisations, local and national government) with customers who used a bank that had signed such an agreement could therefore not choose anybody else other than BBS as their invoice intermediary. The Authority concluded that exclusive agreements between BBS and the banks limited invoice issuers' choices and blocked competing invoice intermediaries out of the market.

By forbidding these agreements the Norwegian Competition Authority provided the conditions for competition in the forwarding e-invoices from invoice issuers to Internet bank users market. This market is expected to develop quickly and competition is expected to provide a broader range of choice, better quality and lower service prices. More invoice issuers can thus choose to issue electronic invoices rather than paper based invoices, which will provide economic benefits. The decision was made in November and has not been appealed (V2001-108, see www.konkurransetilsynet.no).



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Approval scheme for wet rooms

The Norwegian Competition Authority issued a prohibition against the 'Expert panel for wet rooms approval scheme' for materials and equipment. In the Authority's opinion this scheme hindered new businesses being set up and hampered innovation and cost effectiveness in the market. Besides this, the scheme was additional to NBI Technical Approval, which ensures that products comply with public regulations. The Authority believes that it is unfortunate that such approval schemes are operated under the direction of trade interests. The case was taken on following a complaint by the construction materials producer, Isola AS (V2001-88).

Pesticides

In one of the cases the intervention itself took place right after New Year 2002, but the preparatory work was concluded before the end of 2001. The Norwegian Competition Authority instructed CropScience Nordic AS to supply its full range of pesticides to Agrovekst AS on the same terms it supplies them to other distributors in the market. Agrovekst is one of three players in the distribution market for pesticides. The market leader, Felleskjøpet, has a market share of approximately 70 per cent. Norgesfôr AS has a slightly larger market share than Agrovekst of the remaining market. The supplier's parent company, Aventis SA, is a global market leader in 'life sciences', which encompasses the business areas of pesticides and medicines. Aventis is the company with the most certified pesticides on the Norwegian market.

The Norwegian Competition Authority found that the competition in distribution would be limited if Agrovekst fell out of the market. The strict Norwegian regulations for certifying the manufacture, import, sale and use of pesticides hinders the establishment of new businesses and further increases the anti-competitive effects (V2002-4).

Norwegian national costume material

In the fourth case, the Norwegian Competition Authority intervened and regulated the price of Nor-

wegian national costume material (bunad material)

from Husfliden Tromsø to Elsa

M. Systue (V2001-65, price adjustment with respect to V2000-127). This case is also discussed in the 'Reported cases and coercive fines' section earlier in this report.

Appeals against decisions

The Norwegian Competition Authority received three appeals regarding decisions it made pursuant to section 3-10 of the Competition Act (Intervention against anti-competitive behaviour). One of the appeals related to a decision made in 2000 regarding Husfliden Tromsø's obligation to supply Elsa M. Systue. A decision made in 2001 regarding the price regulation of material for Troms bunads was also appealed. The Ministry of Labour and Government Administration upheld the decision regarding the obligation to supply but stipulated, among other things, new delivery prices. The Ministry's stipulation of prices meant that the appeal regarding the decision made in 2001 needed no further consideration.

The third appeal concerned a decision made in 2000 which prohibited an ammunition agreement between Det Frivillige Skyttervesen and Nammo Raufoss AS. The Ministry of Labour and Government Administration upheld the Norwegian Competition Authority's decision with one minor amendment.

In 2001, the Norwegian Competition Authority spent an average of 4.9 man weeks on each case dealt with in accordance with section 3-10 of the Competition Act.

The Competition Act, Section 3-10

– Intervention against anti-competitive behaviour:

"The Norwegian Competition Authority may intervene by individual decision or regulations against terms of business, agreements and actions where the Authority finds that these have the purpose or effect of restricting, or are liable to restrict, competition contrary to the purpose of section 1-1 of the act. (...)"



Supervising mergers and acquisitions

The acquisition of shares or merger of companies does not involve a notification obligation pursuant to the Competition Act, however the Norwegian Competition Authority monitors the markets closely to consider whether such acquisitions significantly weaken competition in contravention of the purpose of the act.

Most company acquisitions do not cause competition concern. The Norwegian Competition Authority only takes on a few such cases for closer analysis and consideration. In 2001, 27 cases involving mergers or the acquisition of shares in companies were handled by the Authority.

Simo's acquisition of Brio Barnvagnar

The Norwegian Competition Authority stipulated conditions for the acceptance of a merger between Simo Invest and Brio Barnvagnar. The Authority believed that Simo's acquisition would increase the appreciably limited competition in the pram market. It therefore stipulated conditions to limit the economic consequences for society that would result from the acquisition. Among other things, dealers would have to have the freedom to select their suppliers and suppliers would be able to select distributors and dealers for their products/brands. Loyalty promoting initiatives in particular would have to be removed. An obligation to notify the Authority was imposed on the new company, ENG, which would be triggered upon the acquisition of shares or signing of agreements that provide ENG with a determining influence over competitors or dealers (V2001-26).

Norsk Kjøtt's acquisition of Gudmundsen Eiendom

The Norwegian Competition Authority also stipulated the conditions on which the meat trade company Norsk Kjøttvirke (Norsk Kjøtt) could acquire Gudmundsen Eiendom. The Authority found that the company acquisition would increase the significantly limited competition in the market, in contravention of the purpose of the Competition Act's which is to encourage the most efficient use of society's resources. Conditions were stipulated that would limit Norsk Kjøtt's opportunities to use its market power to influence slaughterers and feed producers which would ensure the trade organisations Kjøttbransjens Landsforbund, Fjørfebransjens Landsforening and Prior Norge influence in the destruction of slaughterhouse waste market, and which would hinder the discrimination of players on the basis of who owns them (V2001-27).

The Norwegian Competition Authority's decision was appealed. The appeal referred to the conditions that applied to offers for ownership shares in the destruction trade. Norsk Kjøtt wanted it defined more precisely so that the decision would mean that ownership shares should be offered on market terms and not at any price. The Authority took note of the appeal. Other points were also amended so the organisations are freer when it comes to selecting the type of company they want to be and how destruction facilities can be centralised (V2001-51).

No intervention

The Norwegian Competition Authority found no basis for intervention pursuant to section 3-11 of the Competition Act in 16 cases. These included Aker Maritime's acquisition of shares in Kværner. However, there was one case above all that was the subject of



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abnormally intense media interest: SAS' (Scandinavian Airlines System) acquisition of shares in Braathens ASA.

SAS' acquisition of Braathens ASA

On the 22nd May 2001, the Norwegian Competition Authority was notified by Scandinavian Airlines System (SAS) and Braathens ASA that SAS had signed an agreement with three of Braathens' owners, Bramora AS, Braganza AS and the Dutch airline KLM, concerning the purchase of their ownership of 68.8 per cent of the shares in Braathens. The parties pleaded the so-called "failing firm defence", which means that the competition situation would not be better off if the company went bankrupt because Braathens' market share would be taken over by SAS regardless of whether the takeover was permitted or not.

Failing firm' refers to a company which is acquired, but already on its way out of the market because of financial problems. If the acquired company is in a position where continued operation is not possible, the acquisition of the company will not necessarily lead to or increase the restriction on competition with respect to the market situation, which would come about anyway.

Three conditions must be fulfilled in order to use this argument: you must show that it is likely that the acquired company is a "failing firm" (nearly bankrupt), there must be no other purchasers who would be more favourable competition wise, and you must prove that it is likely that bankruptcy is not a better alternative competition wise.

Following comprehensive investigations, the Norwegian Competition Authority concluded that there were no alternative purchasers of Braathens. It was the Authority's view that bankruptcy did not constitute a better alternative competition wise, since in the event of a bankruptcy Braathens' market share would not be distributed among players in the market other than SAS.

For these reasons the Norwegian Competition Authority concluded that the "failing firm" argument was a valid one and that there was no causal effect between the acquisition and the limiting of competition. The competition situation would be the same

with or without the takeover. Therefore the conditions for intervention pursuant to Section 3-11 of the Competition Act were not fulfilled (A2001-21).

Aker Maritime's acquisition of shares in Kvaerner

I July 2000, Aker Maritime ASA (AMA) acquired 26.6 per cent of the shares in Kvaerner ASA. The European Commission was notified of the acquisition in accordance with EEA's merger rules. In December the same year, AMA decided after prior communication with the Commission to reduce its holding to 17.8 per cent. The Commission stated that an ownership share of this size would not give AMA control over Kvaerner and that the acquisition therefore fell outside the Commission's Authority pursuant to the Merger Regulation. The Norwegian Competition Authority was therefore able to consider the acquisition in accordance with Section 3-11 of the Competition Act.

According to the Norwegian Competition Authority's assessment, AMA's acquisition of 17.8 per cent of the shares in the company only gave it limited influence over Kvaerner. The ownership share did not represent an incentive for the parties to modify their behaviour in the market to any particular degree. These two things meant that the share acquisition would not permit any potential for limiting competition to be realised. The Authority therefore did not find it necessary to consider the market conditions further to evaluate the potential competition limiting effects (A2001-13).

The Competition Act, Section 3-11

– Intervention against acquisition of enterprises:

"The Norwegian Competition Authority may intervene against the acquisition of enterprises where the Authority finds that the acquisition in question will create, or strengthen, a significant restriction of competition contrary to the purpose of section 1-1. By acquisition is also meant mergers, the acquisition of stocks or shares and the partial acquisition of enterprises. (...)"



Exemptions from the act's provisions

In its handling of exemption cases, the Norwegian Competition Authority continued the work it has done in previous years by, among other things, taking a relatively strict line on sector encompassing collaboration that is subject to the prohibition provisions.

In 2001, the Norwegian Competition Authority once again reviewed exemptions that have been granted without time limits pursuant to the Price Act of 1953 (this act was succeeded by the Competition Act on 1st January 1994). In those cases where there is no need for an exemption, the exemption is annulled. In other cases a new exemption is granted pursuant to the Competition Act.

The Norwegian Competition Authority receives enquiries asking to what extent potential collaborations would be in contravention of the prohibition provisions in the Competition Act. In some cases, an assessment of this can be both problematic and time consuming. In those cases where there would be no contravention of the prohibition provisions, the person making the enquiry is notified and the case is closed. If the collaboration would contravene one or more of the prohibitions, the enquiry is treated as an exemption case.

Exemption cases

	1996	1997	1998	1999	2000	2001
Dealt with	150	129	131	85	147	113
Granted	130	101	70	53	99	91
Rejected	12	7	1	6	5	6
Annulled	8	21	60	26	43	16

A total of 113 exemption cases were handled during 2001. This is less than in 2000 when the Norwegian

Competition Authority handled a relatively large number of exemptions granted in accordance with the Price Act at the same as the Authority received a relatively large number of applications from the taxicab trade.

Exemptions for entire collaborations or parts of them that applications were made for were granted in 91 cases. Conditions were stipulated in some of the cases to limit the non-beneficial effects of the collaboration. Six exemption cases were refused totally. Four of these applications concerned the taxicab trade, the others the plumbing, heating and ventilation sector and white goods.

Transportation paid for by the public purse

Taxi Sørlandet AS (V2001-12), Oppland Skyss og Informasjon AS (V2001-54) and Nordland Taxi AS (V2001-109) all wanted exemptions so that they could co-operate in price negotiations with regional authorities regarding transportation paid for by the public purse.

Taxi Sørlandet applied for an extension of its exemption beyond 1st July 2001 so that it could make a joint offer on prices, conduct joint negotiations about, and agree on common prices for the transportation of schoolchildren and patients, and for performing other jobs agreed with Vest-Agder Regional Authority. The company also wanted to participate in tenders for similar transport agreements on behalf of the licence holders who are shareholders in the company. The Norwegian Competition Authority refused the application. The same was true for Nordland Taxi's application for an exemption so that it could enter into price negotiations on behalf of the taxicab trade in the county with Nordland Regional Authority.

Oppland Skyss og Informasjon, which is a marketing and administration company for the taxicab trade in



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Oppland county, applied for an exemption until the end of 2002 so that it could enter into negotiations with Oppland county authorities concerning common prices, tender co-operation and the allocation of transport jobs paid for by the public purse. After an appeal to the Ministry of Labour and Government Administration was not upheld, the Oppland county authorities applied for a temporary exemption on behalf of the company, so that it would have sufficient time to organise and put out to tender the transportation of schoolchildren. The National Insurance Service's office in Oppland county had to do the same with respect to the transportation of patients.

In general, the Norwegian Competition Authority is sceptical about collaboration between taxicab owners in a licence district on joint price negotiations regarding transportation paid for by the public purse. If competition is eliminated from this type of job, prices might be higher, production lower and the quality of service poorer than what might have been the case in a situation in which there was more effective competition. However, such co-operation can in some situations result in efficiency gains due to the better co-ordination of jobs and reduced administration costs, for the regional Authority, regional national insurance office and taxicab owners who are part of the collaboration.

During a transition phase, before the job of putting something out to tender has been completed, it would be an advantage for the authorities involved to only have to relate to one opposite party instead of having to negotiate with the individual taxi companies and licensees. The Norwegian Competition Authority therefore granted Oppland Skyss og Informasjon a temporary exemption in December, until 1st August 2002 (V2001-120).

Environmental charge

The VA og VVS Produsentene applied to the Norwegian Competition Authority for exemption from the Competition Act, so that its members could co-ordinate the environmental charge due from sales of water heaters. The reason for the application was given as the fact that a fixed charge that passes through all links in

the selling chain is simple to administer and thus provides efficiency gains. Besides this, all the manufacturers had signed individual agreements with one and the same recycling company and this would make the co-ordination even more rational and cost-effective.

The Norwegian Competition Authority based its assessment on the fact that such co-ordination would contravene the act's prohibition provisions regarding price co-ordination. Such an agreement would reduce the competition between actual and potential recycling schemes, which could lead to the inefficient use of resources. The VA og VVS Produsentene has so many members that such collaboration would be almost sector encompassing and for this reason the application for an exemption was refused (V2001-69).

Prohibition against fixed prices list

The Norwegian Competition Authority prohibited comprehensive sector price co-operation regarding guarantees and defect repairs with respect to white goods. The Elektroserviceforeningen's application for continued exemption from the Competition Act in order to prepare such a price list was refused. The fixed prices list had been prepared by the Norske Elektroleverandørers Landsforening and the Elektroserviceforeningen for more than 30 years. It has determined what suppliers have to pay for repairers.

Comprehensive sector collaboration can generally cement the structure of a sector and thus make it difficult to improve competition in the market. In the Norwegian Competition Authority's opinion, the utilisation of a fixed prices list limits competition between suppliers and between repairers. The anti-competitive effects of this collaboration were reconsidered and now deemed to exceed the efficiency gains that could be achieved by co-ordinating price negotiations, which had previously formed the basis for the exemption.

Hereafter, the Norwegian Competition Authority wants individual suppliers to sign bilateral contracts with selected repairers to increase competition. The prices charged for services will thus reflect the individual repairer's efficiency and proficiency to a greater degree than has been the case up to now. The



Authority's decision (V2001-97) was appealed to the Ministry of Labour and Government Administration.

16 exemptions were annulled during 2001. Eleven of these were granted in accordance with the Price Act. In all, 44 exemptions apply to collaborations by chains/groups.

The two following tables show which prohibition provisions exemptions have been granted for and the authorisations utilised between 1997-2001. Some of the decisions have involved exemptions from several of the prohibition provisions or utilised several authorisations at the same time.

Prohibition provisions in the Competition Act

	1997	1998	1999	2000	2001
Section 3-1, subsection one (price collaboration)	71	55	47	87	78
Section 3-1, subsection two (vertical price fixing)	13	11	8	9	13
Section 3-2 (tender collaboration)	7	3	6	28	17
Section 3-3 (market sharing)	45	16	16	29	17

Authorisation in the Competition Act

	1997	1998	1999	2000	2001
Section 3-9, point a (competition increased)	46	29	21	32	37
Section 3-9, point b (efficiency gains)	17	18	8	31	26
Section 3-9, point c (little significance)	32	19	22	39	28
Section 3-9, point d (special consideration)	10	6	6	1	4

Four of the exemption decisions made in 2001 by the Norwegian Competition Authority were appealed: Taxi Sørlandet, Taxi Oppland, branch collaboration regarding white goods and ethical rules for architects. The last of these exemption applications was granted in part. By the end of the year, the Ministry of Labour and Government Administration had considered two of the appeals. Both appeals were dismissed.

The Maskinentrepreneurernes Forbund has asked the Ministry of Labour and Government Administration to abolish the exemption regulations for members of rural service enterprises and machinery circles. The Norwegian Competition Authority considered the case and believes that the regulations should be maintained. The Authority's finding was sent to the Ministry in the summer of 2001.



The Competition Act, Section 3-9

– Exemptions from the prohibitions of the act:

“The Competition Authority may, through individual decisions or regulations, grant exemption from the prohibitions in Sections 3-1 to 3-4 provided that: a) restraints on competition mean that competition in the market concerned will be increased, b) increased efficiency must be expected to more than compensate for the loss due to restriction of competition, c) restraints on competition have little significance for competition, or d) there are special grounds for doing so. (...)”



Remarks and proposals

Public initiatives can have negative consequences on competition. The Norwegian Competition Authority is increasingly being used as a hearing body by other public authorities. This provides an opportunity to influence the decision process and include the competition aspect in the consideration of concrete initiatives. The Authority has the opportunity to suggest alternative solutions or advise against the implementation of initiatives.

In 2001, the Norwegian Competition Authority prepared a report on the agricultural industry’s general conditions. The report is discussed in the annual report under “Information and communication”.

The Norwegian Competition Authority handled 245 hearing cases during 2001. This figure is high compared with previous years. The Authority had significant remarks to make in 85 cases. The Authority pointed out the unfortunate effects of public regulations to other government departments in eleven cases, to councils and country councils in two, and to ministries or directorates in nine.

Hearing cases

	1996	1997	1998	1999	2000	2001
Dealt with	154	180	159	182	179	245
Significant remarks	64	92	60	78	77	85
Observations cf. section 2-2	4	11	51	17	12	11

Scrapping of vehicles

The Norwegian Pollution Control Authority (SFT)

suggested in a submission that the European Parliament’s and the Council of Europe’s Directive 2000/53/EC should be incorporated into Norwegian Law via a new regulation about scrapped vehicles. It also suggested that a sector trade agreement should be signed between the Ministry of the Environment and the car trade represented by the Bilimportørenes Landsforening (BLF).

The Directive requires the introduction of a manufacturer liability for vehicles. This liability is expected to be introduced via a regulation that gives everyone such as manufacturers or importers of vehicles an obligation to ensure the collection and scrapping of an equal number or share of vehicles. As well as the primary environmental motive the directive also stresses the functionality of the internal market and the maintenance of effective competition.

The Norwegian Competition Authority was critical about the Ministry of the Environment signing an exclusive agreement with BLF. Such an agreement could lead to only one recycling company being formed. This company would, under the proposed arrangement, probably only be subjected to limited competition. The regulation and practice must be done in such a way that every importer, which means both importers associated with the car manufacturers’ distribution system and independent importers, is treated the same and can thus compete on the most equal terms possible.

An optimum “environmental charge” must in the opinion of the Norwegian Competition Authority reflect the actual costs associated with collecting and scrapping each vehicle. The costs of collecting and scrapping different models of car will probably vary. From our experience we also believe vehicles will have different lifetimes. If one if going to impose an



optimum environmental charge, account must be taken of vehicles' varying characteristics.

The Norwegian Competition Authority couldn't see that the inquiry contained good arguments for abolishing the current arrangement of having a wrecking deposit even if manufacturer responsibility were introduced. Meanwhile, other ways than those suggested in the hearing of organising the collection and scrapping of vehicles should be considered. The Authority recommended that no agreement be signed between the Ministry of the Environment and BLF.

Follow-up of VAT reform

The new VAT Act made a series of new service areas liable for VAT. Some services were exempted from this obligation and foodstuffs were VAT rated at 12 per cent instead of 24 per cent. A submission regarding the follow-up of the reform from the Norwegian Competition Authority stressed that the VAT Act ought to have far fewer exemptions than was the case.

In general the Norwegian Competition Authority submitted that a single tax system with a single rate and as few exemptions as possible was technically the easiest to administer and enforce. It is also far easier for business people to relate to a single system. If as many sectors of the economy as possible are liable to the tax, this reduces the risk of distortions in the competition between sectors or companies resulting from different treatment by the tax system. The best idea is to have one system in which public business activities are also included.

The Norwegian Competition Authority highlighted the cleaning sector as an example of the distortion that arises between private and public sectors due to the tax system. A public institution that wishes to purchase cleaning services from a private player would have to pay VAT on the service. Should the institution perform the service itself instead, VAT is not added. This may lead to public institutions choosing to perform the service themselves to a greater extent instead of purchasing the service in the market, even when external production would be the cheapest for society.

Bookkeeping and legal services were also listed as examples of areas where problems arising from the

distortion of competition may become appreciable in the future. Institutions may lose the incentive to make activities in new areas the subject of competition. The Norwegian Competition Authority believes that a solution to this type of problem would be to compensate public institutions for VAT if the institution chooses to purchase a private player's services. Such compensation exists in a number of areas today, but the arrangement should be as widespread as possible.

Voluntary and ideology based organisations want to have their own VAT exemption for membership fees that act as compensation for goods and services that form part of the organisation or association's ideological activities. If what is meant by "voluntary" and "ideology" is not clarified more precisely, the VAT exemption could in principle influence the form of organisation that an organisation chooses to take. Besides this, the Norwegian Competition Authority believes that this exemption basically provides the conditions for considerable new competition distortion problems arising.

The Norwegian Competition Authority also made a submission concerning the differentiation of the tax rate resulting from the reduced tax for foodstuffs, and about the distortions to the competition between house building co-operatives and other managers.

Food fish concessions for salmon

According to the Breeding Act, special permission is required from the fisheries authorities to operate a fish breeding business. The last national licensing round for new concessions to operate food fish breeding

The Competition Act, Section 2-2

– The duties of the competition authorities:

"The competition authorities shall supervise competition in the various markets. Among other things they shall: (...) d) Call attention to the restraining effects on competition of public measures, where appropriate by submitting proposals aimed at increasing competition and facilitating entry for new competitors. (...)"



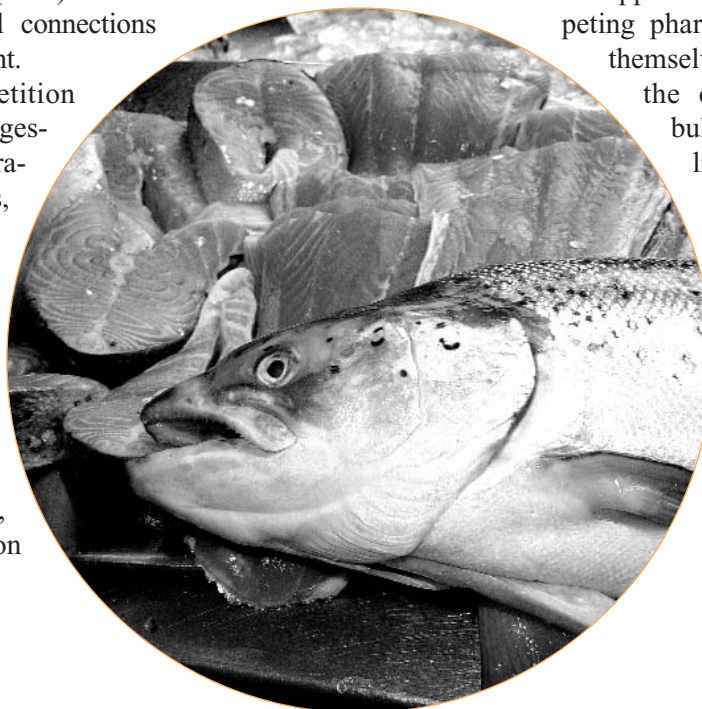
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businesses concentrating on salmon and trout took place in 1985. The Ministry of Fisheries planned to award 38 new concessions along the coast from Finnmark to Rogaland during 2001.

In its submission the Norwegian Competition Authority focused on the effects on competition of the provisions that regulate the awarding of concessions. Among other things, the Authority believed a more detailed explanation needed to be provided as to how that specific number of concessions was arrived at. Market demand was not being met and the limited number of concessions available hindered the setting up of new businesses.

The Ministry of Fisheries wanted to give priority to concession applications from businesses with local connections and businesses that were integrated or planned to integrate with other trade and industry in the area. The Norwegian Competition Authority pointed out that these types of criteria would limit the range of companies that could participate in the application round. This meant that companies without local connections that might be in a position to administer the concession more effectively would be locked out of the market to the advantage of local businesses, which might perhaps administer the concession less effectively. Furthermore, EFTA's surveillance authority (ESA) believed that the provisions regarding local connections contravened the EEA Agreement.

The Norwegian Competition Authority supported the suggestion of introducing a consideration for individual concessions, but not the method chosen to fix the amount of the consideration. The concessions ought to be awarded through auctions where the amount paid is determined by bidding rounds, with no upper bid ceiling. By awarding concessions to the highest bidder, one would make the allocation of concessions efficient.



Concessions for establishing pharmacies

The Act Concerning the Operation of Pharmacies, Etc. authorises the authorities to introduce an upper ceiling to limit the number of new pharmacies being established in key parts of the country. The number of new concessions was for the first half of 2001 set at 30. Early in the year, the Norwegian Competition Authority criticised draft regulations that would shape the concession scheme and which, among other things, suggested the drawing of lots should more applications be made in regulated areas than the total fixed number of new concessions that were available.

The new Act Concerning the Operation of Pharmacies, Etc. attempted to make it easier to establish yourself in the pharmacy market by winding up the scheme whereby the need for a new pharmacy had to be officially tested.

The Norwegian Competition Authority's main objection to the draft regulations was that a concession ceiling would in itself limit competition because it would hinder new players entering the market, especially in areas with a ceiling scheme. The draft regulations allowed concession ceilings to apply to both larger and smaller cities, and their surrounding communities. This meant that in practice the ceilings would limit the opportunities for new, competing pharmacies to establish themselves in those parts of the country where the bulk of the population lives.



Pricing information and surveys

Goods that are sold to consumers must be labelled with their prices in such a manner that the prices can be easily seen by customers. A number of goods must also be labelled with their unit price. The Norwegian Competition Authority has stipulated regulations concerning the price labelling of goods.

Prices should also be stated when selling services to consumers. The Norwegian Competition Authority has stipulated regulations concerning how such price information should be provided.

In 2001, the Norwegian Competition Authority conducted five price surveys. Two of them concerned groceries and the others the prices of petrol, electrical power and construction materials. The grocery price surveys are discussed in the annual report under “Markets”. The report on the last of these surveys forms part of the “Pamphlets from the Norwegian Competition Authority” series and is also discussed under “Information and Communication”, as is the petrol prices report.

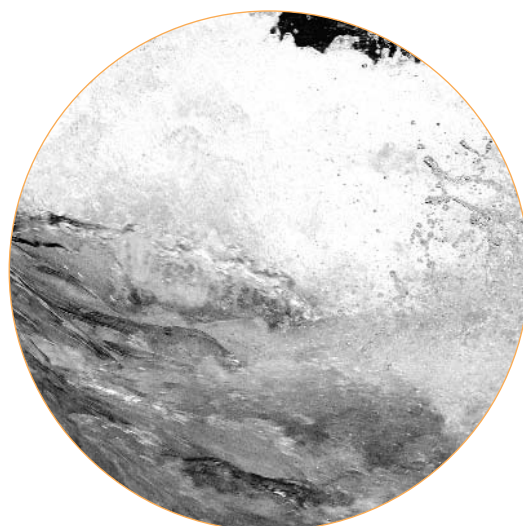
The Norwegian Competition Authority conducted a total of 133 controls regarding compliance with the price information provisions. The controls primarily concentrated on following up the new provisions about unit labelling. Our overall impression was that the provisions have over time become well known and that on the whole they are complied with. In particular the large grocery supermarket chains have well integrated routines that ensure shops comply with the provisions.

To compensate for the closure of of the regional offices, the Norwegian Competition Authority took the initiative and contacted the Consumer Council with a view to closer co-operation on initiatives that will ensure good price information for consumers. The Authority still wants to some extent to conduct price surveys to make the market more comprehensible to consumers, and arrangements have been made to enable the Consumer Council to contribute in the preparation and carrying out of individual surveys. The initiatives will also contribute to the freeing up of casework capacity in the Norwegian Competition Authority and increase user friendliness for the public.

Electrical power suppliers report their electricity prices for households to the Norwegian Competition Authority and the Authority updates an overview of the prices on its Internet website every week. Work has been done to enable the Consumer Council to deal with the public to a greater degree than before, while the Norwegian Competition Authority maintains the technical and legal responsibility for collecting and processing data.

Checking re. price information provisions

	1996	1997	1998	1999	2000	2001
Number of controls made	2804	2970	2586	976	983	133
Enjoining of provisions	1559	1581	1075	587	432	123





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Other tasks

In addition to the Norwegian Competition Authority's core areas it also has responsibility for a number of other tasks. Some of these were removed in 2001. The reorganisation of the Authority meant that, among others, the tasks associated with enforcing the Marketing Control Act and some provisions in the Act relating to the Sale of Goods on Credit etc. were transferred to the Office of the Consumer Ombudsman.

A new act relating to building leases came into effect on 1st January 2002. The regulations relating to the increase of ground rents with applicable multipliers, which the Norwegian Competition Authority had responsibility for, was effectively repealed on the same date.

At the request of the Ministry of Labour and Government Administration, the Norwegian Competition Authority has prepared prognoses regarding the development of the consumer price index twice a year. This was also done in 2001. Hereafter this job will be performed by Statistics Norway.

In 2001, the Norwegian Competition Authority also had responsibility for controls and cash outgoing in connection with subsidy schemes for milk, fruit, fuel oil and paraffin in northern Norway, as well as freight subsidies for petrol and vehicle diesel. 345 received claims were checked and passed for payment and a total of NOK 147 million was paid out in state subsidies. In connection with the budget negotiations for the 2002 budget, the Storting decided to wind up the scheme from 1st January 2002, and payments ceased during the course of the first quarter of 2002.

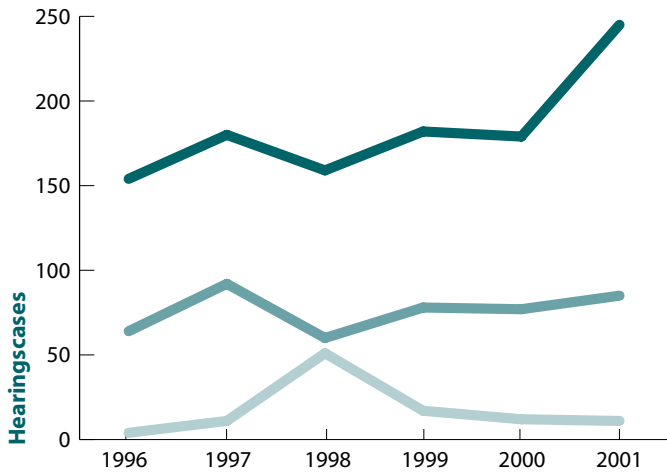
The Norwegian Competition Authority is the body that handles appeals against decisions made pursuant to the Rent Control Act, which now only applies to Oslo and Trondheim. In 2001, it handled 17 cases related to this act. There has been a considerable reduction in the number of appeals since 1996. This is due to amendments to the legislation including the fact that the geographical area covered by the act has been reduced, at the same time as the factual basis on which a judgement can be rendered has been limited.

Rent control cases

	1996	1997	1998	1999	2000	2001
Received	131	116	105	58	25	17
Concluded	124	116	105	58	25	17

The Norwegian Competition Authority dealt with a total of 30 appeals in 2001 pursuant to section 2 of the Price Policy Act relating to unreasonable prices and business terms. All the cases were dismissed.

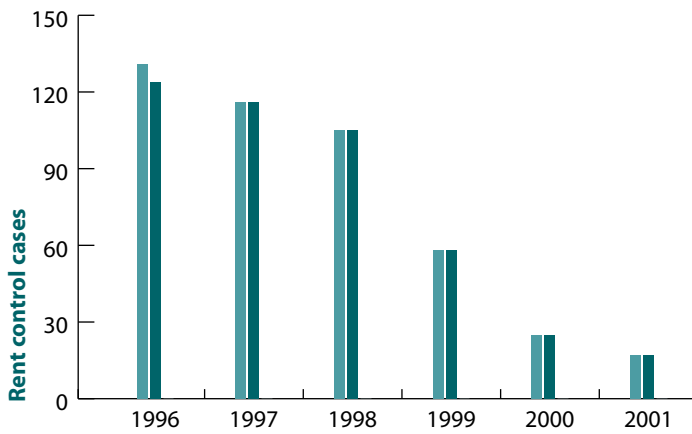




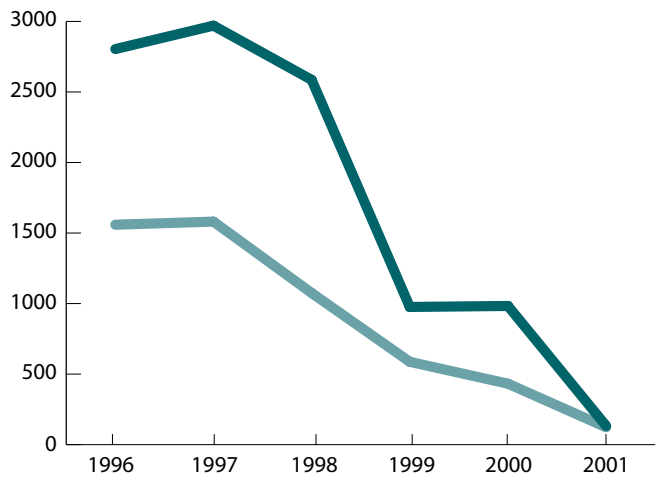
Dealt with
Significant remarks
Observations cf. section 2-2



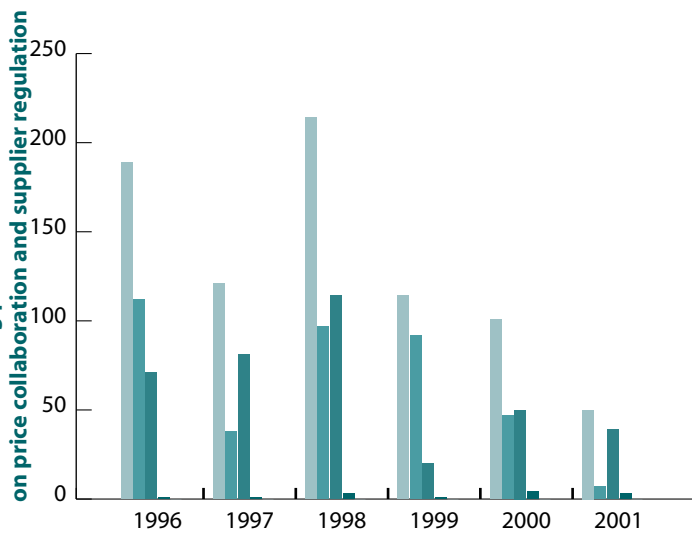
Intervention cases dealt with
Intervention decisions



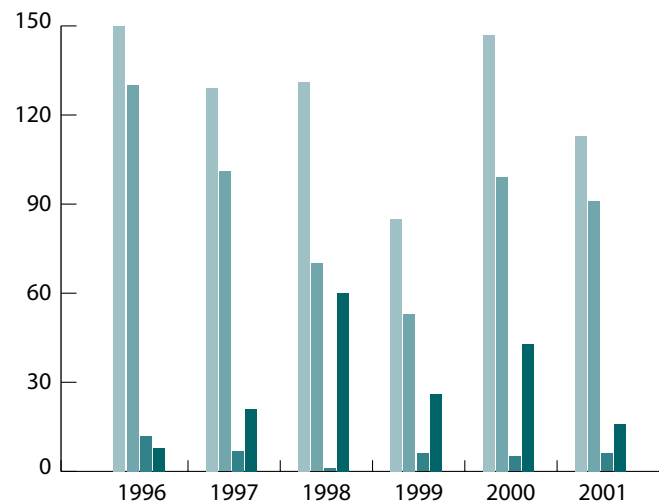
Received
Concluded



Number of controls made
Enjoining of provisions



Handled
Dropped
Enjoined
Formal complaint made



Death with
Granted
Rejected
Annulled





On the following pages we present a brief analysis of the competitive situations and dilemmas faced by competition policy in some markets. The markets were selected to illustrate the breadth of the Norwegian Competition Authority's work and to provide examples of specific dilemmas that may be of significance with respect to competition in the individual markets. This is not an attempt to provide a complete picture of the competitive situations in the markets discussed.

The 2000 annual report presented five markets, all of which had in common the fact they could be described as emerging competition markets: e-commerce, mail, railways, taxi transportation and the dairy sector.

We have selected five markets this time as well. These are the end-user market for electrical power, groceries (with an emphasis on trade sliding and the Opening Times Act), cinema operation, driver training and express coach services.

markets





End-user market for electrical power

An increasing number of household customers are changing electricity suppliers and during the course of autumn 2001 many claimed that suppliers had increased their profit margins. The Norwegian Competition Authority conducted a detailed analysis of the competitive situation in the market, but found no basis for intervention by the Authority.

Regardless of which electricity supplier a consumer chooses, the local network company must be used to transmit the electricity.

Household customers increasingly less loyal

During the first six months of 2001, the Norwegian Water Resources and Energy Directorate (NVE) recorded 105,400 changes of supplier. As of 1st July, 14 per cent of households had a supplier other than the dominant supplier in the actual network area. This share has increased steadily during the last four years. Suppliers can no longer rely on the loyalty of their customers should prices increase. This probably applies a certain amount of pressure to the larger suppliers to operate with competitive prices.

Nevertheless, a lot of money can be saved by price conscious household customers by switching suppliers. The Norwegian Competition Authority's weekly overview of electricity prices for households shows that the difference between the lowest achievable prices and the most expensive suppliers' prices can be great.

Network owners must act neutrally

One important prerequisite for a free electricity mar-

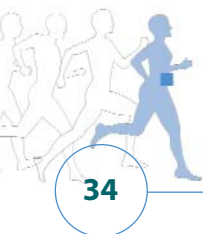
ket is that the transmission network is available to all users on non-discriminatory terms. The NVE is the body that ensures that network owners act neutrally with respect to suppliers and end-users. At the end of 2001, the NVE was analysing how network owners act with respect to sales organisations that they have a ownership interest in, and the Norwegian Competition Authority will follow up this analysis by establishing a dialogue with the NVE.

Similarly, it is crucial that network owners are not allowed to subsidise their sales activities with income from network activities. During the last few years, the NVE has introduced stringent controls on network companies' income by stipulating a structure for companies' income and requirements regarding increased efficiency. These regulations allow network companies little room to take advantage of their network business to create profitability from sales of electricity.

Is the competition working?

The end-user market is characterised by a large number of suppliers, many of which supply customers all over the country. The Norwegian Competition Authority's overview shows that 28 suppliers have standard contracts that are offered nationwide. In addition to this there are probably a number of others who also have such offers but which are not reflected in the Authority's overview. Even though there have been some mergers and takeovers on the supplier side during the last few years, there is still reason to believe that the number of players is so large that it would be difficult for them to achieve an increase in prices by co-ordinating their conduct. This is a good starting point for achieving satisfactory competition.

The Norwegian Competition Authority is also interested in the conditions in which new players have to



establish their businesses. Little investment is necessary to establish yourself in the end-user market. Electricity can be purchased on the Electricity Exchange and the resources needed to serve a larger or smaller number of end-users are deemed to be relatively small. The Authority's list of suppliers includes suppliers who are among the cheapest, but who have small organisations that serve a considerable number of people. One prerequisite for this is of course that new suppliers should not be discriminated against by network owners in the areas in which they offer their electricity.

Price conscious end-users are an important prerequisite for a functioning market. Naturally not every end-user needs to keep up to date on the lowest prices at any given time. It may be enough that a certain percentage of them swap suppliers for suppliers to experience sufficiently large pressure from competitors.

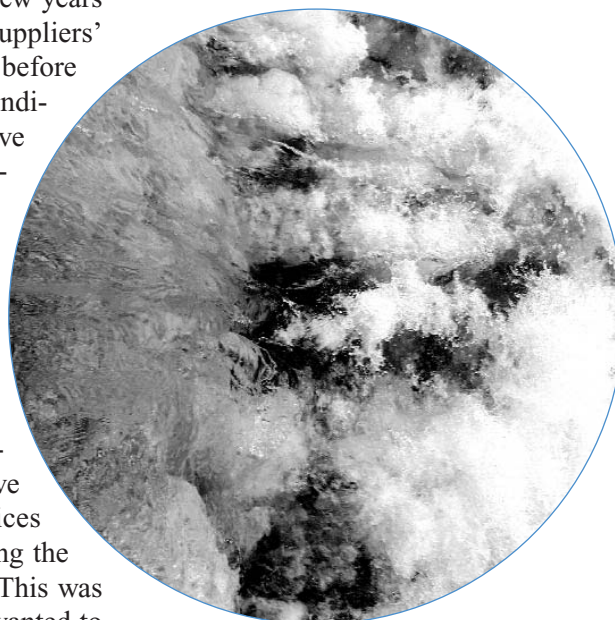
As mentioned earlier, the percentage of users who change supplier has been increasing, at the same time as a lot of attention is being paid by the mass media to individual suppliers' prices. During the last few years we have noticed a tendency for different suppliers' prices to become more alike than they were before competition took off. This trend may be an indication that the most expensive suppliers have had to reduce their prices to avoid losing customers.

Profit margins

During the last few years, the competition situation has not provided suppliers with room to achieve high profit margins from sales of electricity to end-users. In the autumn of 2001, it was pointed out from several quarters that margins seemed to have increasingly dramatically. While spot prices (wholesale prices) had been decreasing during the autumn, end-user prices remained constant. This was why the Norwegian Competition Authority wanted to look at the competition situation more closely. The figures for the last months of the year however showed that this trend did not continue. A survey conducted

by Statistics Norway showed that the opposite was true, namely that end-user prices decreased during this period while wholesale prices increased. Statistics Norway explained that this development was due to a certain time lag before the spot price is reflected in the end-user price.

The Norwegian Competition Authority basically holds the opinion that there is competition in the end-user market. There are many competing suppliers and an increasing number of active end-users who swap suppliers. The cost of establishing yourself in the market is low, though you might encounter some barriers in the form of network owners favouring their own suppliers. Despite the fact that suppliers' profit margins increased during autumn 2001, this trend was reversed during the last months of the year. During this period, end-user prices decreased on average, while spot prices increased. There is therefore no basis for claiming that weakened competition has provided suppliers with room to increase their profit margins in the end-user market.





Groceries

Almost 100 per cent of groceries are sold through traditional shops, which today are concentrated into four groups, the umbrella chains: Norgesgruppen, Hakongruppen, Coop Norge and Reitan Narvesen. The formation of these chains has been an important competitive element, though the further concentration of sales outlets might jeopardise competition.

Grocery turnover through retailers amounts to just under NOK 90 billion. In addition, petrol stations and kiosks sell about NOK 12 billion worth of groceries.

Since the middle of the 1980s, there has been a dramatic increase in the concentration of the grocery sector. The focus has been on prices and this has contributed to the development of low price concepts. At the moment however there is an increasing focus on full range concepts. Several of the umbrella chains have shop concepts that prioritise quality and variety above simply low prices. For example, it has been Norgesgruppen's experience that the full assortment shops, the supermarkets, have experienced more growth than the narrow assortment or the so-called low price chains.

There are a lot of signs that the grocery market is undergoing structural changes where low prices are no longer the only parameter that determines a consumer's choice of shop. Today, other factors than simply price seem to have considerable importance when it comes to choosing a shop, including factors such as location, product range and service.

All in all, it appears that the formation of these chains in the grocery market has contributed to an increase in competition, which has benefited con-

sumers in the form of lower prices. However, from the point of view of competition it is unfortunate that the considerable concentration in the market means that the umbrella chains' incentive to compete with each other has been weakened.

Price surveys

In May and October 2001, the Norwegian Competition Authority conducted price surveys in the grocery market in co-operation with the National Institute for Consumer Research (SIFO). An equivalent survey was conducted in October 2000. The purpose of these surveys was to stimulate customers' general price awareness and encourage as effective competition between the chains as possible.

The Norwegian Competition Authority collated prices from eleven shops connected with the various chains. SIFO processed the data and presented the results in a report. The prices were obtained from the same shops in all three surveys. The two last ones showed that the full assortment shops were more expensive than the narrow assortment shops, which was not unexpected given the pricing concepts.

Rema 1000 was the cheapest in both May and October, while ICA Supermarked was the most expensive. Both surveys also showed that the price differences between the cheapest of the full assortments shops (Meny, Obs! and Rimi Stormarked) and the most expensive low price shop (Rimi) was relatively small.

In the period between these two surveys, the grocery chains reduced their food prices by approximately 10 per cent. Most of this reduction was probably due to the VAT changes that were introduced on the 1st July.

Trade sliding and the Opening Hours Act

The umbrella chains' market shares have remained



relatively stable for the last few years. However, changes have taken place in the market in the form of trade sliding and the increased interest of grocery players in the institutional household sector and services trade (kiosks, petrol stations, etc.).

Since the Opening Hours Act was passed in 1985, the character of many kiosks and petrol stations has changed. So-called large kiosks and “convenience stores” have become common, which in addition to traditional kiosk goods also sell an increasingly broader range of groceries. Both large kiosks and petrol stations serve consumers on a broader basis than before. From serving customers across counters, many kiosks and petrol stations have become self-service shops.

Thus grocery groups are competing to a greater extent than previously with other similar sectors. These changes have contributed to the traditional divide between kiosks, petrol stations, and grocery shops becoming increasingly blurred. Several large kiosks already carry a product range that is well on its way to being the same as those carried by traditional grocery shops and sell as many groceries as kiosks goods.

Trade sliding makes it difficult to draw a clear line between grocery businesses, kiosks and petrol stations and the trend is for the relevant players to compete in increasingly the same product markets. In general, competitors in the same market ought to be subject to the same general conditions.

The new Opening Hours Act came into force on 1st January 1999. Today’s opening hours provisions normally require shops to remain closed between 21:00 and 06:00. On Saturdays and the day before public holidays, they have to close at 18:00. These limitations do not apply to shops with a floor area of less than 100 square metres and which sell kiosk goods or groceries and to some other types of outlets.

The restrictive opening hours provisions means that only kiosks and petrol stations can sell groceries outside normal opening hours. This gives these players a competitive advantage with respect to the grocery groups and other grocery shops. The reduced compe-

tion in groceries outside normal opening hours may be one of several reasons why these outlets operate with higher prices than one would otherwise find in traditional grocery shops.

If one wants effective competition in the sale of groceries on Sundays and holidays as well, players in the grocery trade must be subject to the same general conditions as far as opening times are concerned. The current Opening Hours Act does not fulfil this requirements as long as only smaller outlets can remain open for as long as they want. Introducing common opening hours provisions would provide the conditions for more effective competition in the sale of groceries in Norway. This may again benefit consumers in the form of lower prices and better quality throughout the entire grocery market.

In March 2002, the Norwegian Competition Authority made a submission regarding the Ministry of Children and Family Affairs’ proposal to repeal the Opening Hours Act and amend the Public Holidays Act. The Authority’s general point of view was that the proposal did not go far enough as far as ensuring equal competitive conditions between outlets – shops, kiosks, petrol stations etc. – which sell groceries is concerned. The proposal would mean that, among other things, there would still be opening hours limitations on Sundays and public holidays and a continued exemption for the sale of groceries and kiosk goods from smaller outlets and petrol stations on these days, while ordinary grocery shops would have to remain closed. In the Authority’s opinion, the opening hours limitations for ordinary shops on Sundays and public holidays should also be abolished to ensure the same competitive conditions for both the grocery and services sector.



Cinema market

The cinema market has changed and many cinemas are now run on a more commercial basis. Private owners are entering the market and chains are starting to be formed. New technology may change the way films are presented at cinemas and distributed, and there will be great changes in the future.

Norway has a distinctively Norwegian cinema monopoly where almost every council has operated the local cinema. One of the reasons for this was that until around 1960, cinemas brought in a great deal of income. Other reasons for this included the desire to provide people with information and censor speculative films. Following pressure from, among others, teachers, the cinema Act was passed in 1913. This gave councils responsibility for licensing cinemas. The control of films was centralised to ensure uniform assessment and to avoid different treatment from one district to another. During the following 13 years, the cinemas in almost all the larger cities and suburbs were taken over by councils.

The great reduction in cinema audiences occurred with the arrival of television and cinemas were therefore no longer big money machines. Between 1960 and today, many small cinemas closed down and some private cinemas became council run. Television took over the job of providing people with information. Audience figures fell from 34 million per annum in 1959/60 to around 11 million per annum in 2001. Audience figures have remained stable at around this level for the last ten years.

In 2000, the turnover of Norwegian cinemas was approximately NOK 608 million. The 17 largest council and seven largest private cinemas accounted for

around 78.5 per cent of total ticket income. There were a total of 236 cinemas in Norway. It is primarily the cinemas in the larger cities that are profitable.

Privatisation and competition

Cinemas in large cities are now run more commercially than previously and are looking for alternative methods of operating. There are two private cinemas in Tønsberg competing against each other. In 1997, Kino 1 in Sandvika was opened. There is one private cinema that competes with Oslo Kinematografer. In 2000, Sandnes Kino and Stavanger Kino merged into Kino Z and in 2001 Det Norske Kinosekskap became a part owner, with a stake of 49 per cent of the shares. The City of Oslo is soon going to sell 66 per cent of Oslo Kinematografer and several players want to come in as owners. The private SF Kino AS has been granted a licence to operate cinemas in Stavanger, Lillestrøm and Asker. There is a private cinema in Moss and a partly privatised cinema in Drammen. In addition several councils are considering privatisation. Some want to part privatise, while others want to sell up completely.

In the future, one will probably see more competition between cinemas than can be seen at the moment. Up to now there has been some inter-county cinema competition. Cinema audiences may be willing to accept higher transport costs to see films in better cinemas. Cinemas can compete on price, film choice, technical standard, and location. Many of the people who go to the cinema combine their visit with a trip to a pub or café. This means that cinemas need to be located near amenities.

The formation of chains

Several owners such as SF Kino and Kino 1 want to



incorporate several cinemas in the country into a chain. Bergen Kino AS has set up an operating company that wants to set the programmes of other cinemas across the entire country. Smaller cinemas in particular can benefit from such co-operation. Cinemas can show films earlier than they do at the moment if films are distributed from the larger cinemas in the chains to the smaller cinemas.

Film distributors and film rental agreement

In 1953, the Kommunale Kinematografers Landsforbund, Kommunenes Filmcentral and Norske Filmbyråers Forening signed the first film rental agreement. The agreement stipulates, among other things, the amount cinemas have to pay for renting films and a minimum price for small cinemas. This has ensured the distribution of films to the smallest cinemas.

The film rental agreement contravened competition regulations concerning prices and advances, which received Royal assent on 1st July 1960. In December of the same year, the Ministry of Wages and Prices granted an exemption to the film bureau and the Kommunale Kinematografers Landsforbund, based on a desire for rationalisation and in the interests of the general public. The agreement was reviewed by the Price Directorate in 1981 and 1988, but the directorate found no reason to withdraw the exemption.

On the 1st January 1994, the Competition Act came into effect. The Norwegian Competition Authority reviewed the agreement and decided that it could not grant an exemption. The refusal was appealed to the Ministry of National Planning and Co-ordination, which in 1997 granted an exemption in the interests of the districts and culture. When the film rental agreement was reviewed in 1999, the Authority granted an exemption with certain conditions, but the parties appealed to the Ministry of Labour and Government Administration. The Ministry exempted the agreement from the Competition Act.

E-cinema

The latest development in the cinema market is e-



cinema. In other words, films shown using electronic storage media such as DVDs or via satellite or cable TV. Producers of e-cinema have yet to agree on a common standard. Additionally, the resolution is not as good as with a cinema film even though only a few people might be able to see the difference. The equipment is also very expensive compared to ordinary film projectors and this may be a contributory factor to why many councils wish to privatise cinemas. By bringing in private owners, councils will avoid having to foot the whole bill for upgrading cinemas.

In the future, e-cinema may change the film rental and distribution market. Developing film on electronic media is considerably cheaper than copying films for today's projectors. In the future film producers will be able to send cinema films directly to the cinemas. By transmitting the film via satellite, cinemas will be able to receive them without going through expensive distributors. It will no longer be necessary to make several copies of a film either. This may change the existing role of film distributors in the cinema market. Questions concerning rights will also arise if the satellite transmission of cinema films becomes the standard. Cinema films can be considered as "pay per view" or broadcasting. This will require the legislative delimitation of cinema films, videos and broadcasting as technology develops.



Driver training

In the driver training market, practical considerations and public requirements are often the reasons why driving schools want to collaborate closely on prices. However, we only accept collaboration between driving schools on prices in special cases.

A large part of the education sector is still protected from competition and funded by public budgets. The way society is developing however appears to be making competition and user financing increasingly more relevant in this sector as well. The driving training sector has long been subject to competition and user financed.

There is still considerable scepticism in Norway regarding market based education services. In 1998, 30 per cent of people expressed a positive attitude towards more private schools in Norway, while in 2000 this figure had increased to about 45 per cent. Many people say that the reason they are sceptical is because they want everyone to have the same educational opportunities, regardless of their income or where they live in the country. From this perspective it is perhaps a little surprising that there is no great debate about the fact that driver training has been completely entrusted to market forces. Driver training is after all something that every Norwegian is effected by and where it is quite clearly desirable that the education provided should be of a high quality.

Organisation

What makes driver training special is that it is a part of the education market that has always been based on private service providers and where there is therefore no public education provision.

The theory part is taught at individual driving schools and online. The Norwegian Public Roads Administration is responsible for the regulations governing driver training, driving licences, and the validity and issuing of driving licences. The department also prepares curricula for driver training, stipulates requirements regarding knowledge and proficiency, and monitors the administrative running of and teaching at the schools. The road authorities have created a standard plan for driver training that all driving schools have to follow. Schools can put together their own plans within the framework of the standard plan, though the standard plan stipulates certain minimum requirements that must be met before tests can be taken.

You must pass a one-year course at the Norwegian Driving Instructor School and have five years practical experience as a driving instructor before you can start your own driving school. It is therefore relatively simple to establish a new driving school. There are currently around 700 schools in the market. A driving licence currently costs average between NOK 12,000 and NOK 15,000. In 1999, around 110,000 theory and practical exams were taken. A total of around NOK 500-600 million is spent on driving training each year.

Special characteristics of the driving school market

One special characteristic of the driving school market is that individual driving instructors may have an incentive to establish their own school for tax purposes. Another special characteristic is that the authorities stipulate that every company must have an office, which must be manned for a specified number of hours per week. This can be expensive for individual instructors/schools, so instructors often want to shares offices with other instructors.



It is not always easy for several driving schools to share an office and office personnel and at the same time operate with different prices for their driving school services. Driving schools will easily be able to gain a full overview of other schools' services and prices and this can mean that it is difficult in practice for the schools to operate with independent price policies. This may also occur because of the fact that one might have to use vehicles from several schools at the same time when holding courses on skidpans and trunk road driving, and that different prices would be unnatural in such circumstances.

Driving schools that train students with physical handicaps are another example of where collaboration on prices and sharing offices are desirable from the viewpoint of the schools. With this type of training it is normal for several driving schools to work with a student or group of students together and therefore it would not be good practice for the schools to have different prices. The market therefore dictates that several driving schools that are sharing offices would want to have the same prices and possibly share the number of incoming jobs between themselves (market sharing). This is of course a problem with respect to competition in the market and is an example of how public regulations can create competition problems in a market.

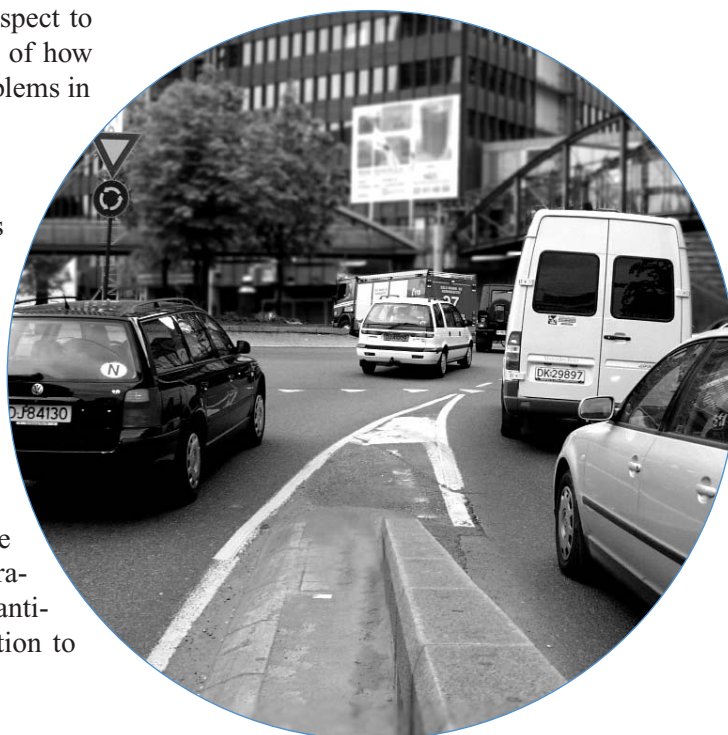
Exemption from the Competition Act

The Norwegian Competition Authority has previously come down hard on cases of sector encompassing collaboration on prices. Cases of collaboration on prices between a limited number of driving schools are normally considered with a view to exemption from competition regulations. There are clear efficiency gains to be had from several driving schools sharing an office and the Authority weighs this argument up against the anti-competitiveness that results from collaboration on prices. There is also the point that the anti-competitiveness can be viewed as an adaptation to orders from the road authorities.

The demand for driver training is probably not very price sensitive, especially in sparsely populated areas where public transport is often not an adequate alternative to using your own car. The economic losses from poorer competition will not be particularly large in this market. The efficiency gains will thus often exceed the competitive losses that collaboration on prices between driving schools can lead to. This can weigh in favour of price collaboration exemptions even for pretty small efficiency gains.

The Norwegian Competition Authority believes it is important to continue to monitor the driving school market so that a culture of general acceptance with respect to collaborating on prices does not take root in the sector.

It is important to make the sector aware that the exemption's conditions, e.g. that the efficiency gains of a collaboration exceed the disadvantages of anti-competitiveness, must be fulfilled in order for price collaboration between driving schools to be acceptable.





Express coach market

The Norwegian Competition Authority believes that the regulation of express coach traffic with respect to the railways should be abolished and that companies should be free to work all routes in Norway.

If some form or other of licence granting is going to continue to be practised for coach operation, the Norwegian Competition Authority recommends that testing whether there is a need for a service when a licence is granted ceases. Instead conditions can be stipulated so that in the customers' interests reasonable departure intervals with respect to railway timetables can be ensured.

The Norwegian Competition Authority's assessment

The present express policy has led to market sharing between the railways and the various coach companies in Norway so that most relevant routes are subjected to local monopolies. At the same time this has led to private cars becoming the only alternative on many routes. Full deregulation of the express coach market would probably lead to some reduction in the use of cars because express coaches would have greater flexibility and lower unit costs, and therefore find it easier to compete with private cars.

The Norwegian Competition Authority believes that increased competition will result in improvements in the efficiency of the railways and express coach routes. This will result in lower prices, better quality and significant benefits for users of transportation services. If more people used coaches instead of cars, one might also achieve some environmental benefits.

It is the opinion of the Norwegian Competition Authority that express coaches would in most cases

represent a very good alternative to the railways, assuming that express coach companies are free to mould their own products. Freer competition in this area will in the opinion of the Authority probably result in more efficient use of resources and considerable benefits for users of transportation services. An expanded range of services may lead to freedom of choice for customers and fulfil various consumer groups' needs as far as choice, quality and service are concerned. Furthermore, increased competition may lead to service providers having to manage their resources efficiently in order to hold their own competition wise.

Concession schemes

Express coach routes are coach routes that cross one or more county limits. Companies that want to operate such routes must have a concession from the Ministry of Transport and Communications or regional Authorities. Apart from the diesel duty compensation scheme, no public subsidies are available to express coach companies.

In principle, the concessions do not provide exclusive rights. However, there are few examples where more than one company has been granted a concession when "the demand is met" by the first company. In this sense, the awarding of concessions is demand tested. A company that has previously received a concession will as a rule be in a strong position when concessions are awarded anew at a later date.

One main aim of the concession scheme is to protect the railways from damaging competition because running railways involves large, fixed costs and they receive considerable public subsidises – listed in the budget as the public purchase of transport services – to ensure that running costs balance. Once society and taxpayers have actually paid these costs, it is rational



to try and ensure that the available capacity can be used and that ticket earnings cover as large a part of the costs as possible.

The transport authorities are therefore reluctant to award concessions for coach companies in parallel with the railways. For this reason little competition has been allowed between coaches and trains or between the individual coach companies.

Local monopolies

In the Norwegian Competition Authority's opinion, the concession scheme, as it works today, has resulted in local coach and/or railway monopolies. The concession scheme results in various railway and coach companies sharing the market between themselves which is contrary to the intention of the provision prohibiting market sharing in section 3-3 of the Competition Act and probably contributes to the inefficient use of resources.

The efficiency gains that may result from the good utilisation of the railways' capacity must therefore be weighed against the lack of competition associated with monopolies. If express coach services were allowed to run in parallel with the railways, with comparable timetables and prices, the Norwegian Competition Authority believes that express coaches would prove to be a very good substitute for trains. At least this would be the case if express coach companies were free to mould their own products. Currently, the situation is such that express coach companies are subjected to restrictions with respect to where coaches can pick up or drop passengers.

Market concentration

NSB (the Norwegian railway transport company) owns Norway's largest coach/bus company, Nettbuss. The company has 1,500 coaches and buses at its disposal and provides local buses, express coaches and touring coaches. It operates an express coach network, which in part parallels the railways.

During the last few years, Nettbuss has bought up local bus companies and in several cases the companies' concessions have been operated under the auspices of Nettbuss.

Another large player in the express coach market is Nor-Way Bussekspress AS, of which NSB through Nettbuss owns five of its 52 shares.

In other words, considerable horizontal ownership concentration exists in the land passenger transportation market on long and medium distance routes in southern Norway. The Norwegian Competition Authority assumes that this market concentration involves significant limitations to competition, which may conflict with the aim of efficient resource utilisation.

Regulation instead of monopolies

Nevertheless, it may be economically efficient to grant NSB monopoly rights, i.e. the exclusive right to operate both railways and coaches between two destinations. The reason for this is as follows:

Taking market share is of great importance to individual market players. It would therefore be in an independent express coach competitor's interests to coordinate departure times so that they matched NSB's departure times to as great an extent as possible. From an economical perspective, parallel departures would be a waste of resources. It would be far better for travellers if departure times were spread so that "hidden waiting times", i.e. the average time travellers have to wait until the next departure, were as short as possible.

In the Norwegian Competition Authority's opinion one can, by means of certain initiatives to regulate competition, e.g. by fixing departure times, achieve pretty much the same overall service offered by a monopoly without losing the efficiency gains that result from competition.

If NSB's coach concession for a route contributes to limiting public subsidies and thus the need to raise taxes this may be an argument for accepting such monopolies. On the other hand, if the coach operations, with the aid of public means, are cross-subsidised to such a degree that passenger income does not cover the extra costs, this means that one will be confronted with a particularly inefficient use of resources. This inefficiency will be further increased should the cross-subsidisation lead to possible competitors being kept out of the market, such that the most efficient providers of transportation are perhaps not given a chance.



Revision of the Competition Act

On the 24th November 2000, the Government appointed a public committee to review Norwegian competition legislation and present proposals for new competition regulations by the 1st November 2002. The committee is chaired by Professor Hans Petter Graver. The Competition Law Committee presented its initial recommendations to the Ministry of Labour and Government Administration on 6th July 2001.

The reasons given for needing a broad review of competition legislation included, among other things, experiences with the Norwegian Competition Act and the EEA's competition legislation, and developments in the EU's and EEA's competition policy in recent years.

The following questions will be of particular importance in the formulation of new Norwegian competition law: organisation of the competition authorities, including decision processes and various models for reconsidering and assessing the authorities' decisions, the allocation of tasks and responsibilities between the competition authorities and various sector authorities, and the formulation of appropriate means of control and sanctions to ensure the effective enforcement of and compliance with the regulations.

The Competition Law Committee has 13 members. The Norwegian Competition Authority is represented by its legal director, Elisabeth Roscher, and also has responsibility for the committee's secretarial tasks.

Initial recommendations

The Competition Law Committee's initial recommendations presented on 6th July 2001 unanimously recommended that Norwegian competition authorities be

given the Authority to enforce the prohibitions against anti-competitive collaboration and the abuse of market power in Articles 53 and 54 (decentralised enforcement) of the EEA agreement.

The committee proposed provisions that would provide the Norwegian authorities with the Authority to enforce the prohibitions in articles 53 and 54 of the EEA agreement. It recommended that the casework regulations and sanctions system used to enforce the Competition Act's substantive provisions also be used as a basis for the Norwegian competition authorities' enforcement of the two aforementioned articles. However, it did propose certain exemptions from this. In these cases, it suggested that the EEA Agreement's rules be applied instead.

The Competition Law Committee also recommended that a new Competition Act should contain prohibitions against anti-competitive collaboration and the abuse of market power in accordance with articles 53 and 54 of the EEA agreement. The recommendation in the initial recommendations was consequently limited to the extent to which the provisions relating to the regulation of conduct ought to be harmonised with the regulations stipulated in the EEA Agreement. As far as other sections of the competition regulations are concerned, the committee recommended that the question of harmonisation should be discussed in the main report in connection with the preparation of the various sections of the regulations. The committee stressed that adaptation to the EEA would not hinder national adaptations in the form of, for example, special exemption provisions.





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