



Konkurransetilsynet
Norwegian Competition Authority

Legislative Changes • Cartels • Aviation • Books • Energy • Financial Markets
• Pharmaceuticals • Agriculture • International Cooperation

Annual Report 2003



Competition
means better
and cheaper
products



New Competition Act

■ The new Competition Act is to a large extent harmonized with EU/EEA competition law. – Life becomes easier for Norwegian companies. Up until now, they have had to comply with one legislation in Norway and another in the EEA. Now the Norwegian rules will correspond to the EEA rules, says Mr. Mads Magnussen, legal director at the Norwegian Competition Authority.



In 2003, the Norwegian Competition Authority handled several large cases that attracted considerable attention from the media, such as the DNB NOR merger and the sale of pharmaceuticals.



« Air fares have come down considerably. Since Norwegian announced its entry into the market, the fares have been reduced by some 20 per cent.

Mr. Lasse Fridstrøm, Director at the Norwegian Competition Authority



Cartels are costly to society

■ The Norwegian Competition Authority receives an increasing amount of information from the public on suspected price collusion or other kinds of cartelization. However, these cases are becoming more and more difficult to investigate. – The methods of collaboration are sophisticated, and the participants do their utmost to cover it up, says Ms. Cecilie Wetlesen Borge, director of the Corporate Investigation Department at the Norwegian Competition Authority.



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« The Norwegian Competition Authority is depending on a close cooperation with other supervisory authorities like the Financial Supervisory Authority of Norway, the Norwegian Water Resources and Energy Directorate, the Norwegian Post and Telecommunication Authority, the Consumer Ombudsman, and the Consumer Council, and also the economic crime department of the prosecutor's office. Our cooperation arrangements have been further developed to increase the effectiveness of the competition policy.

Mr. Knut Eggum Johansen,
Director General

Abolish the dairy price equalizing

■ The price equalizing regulation in the dairy trade should be abolished. This is the opinion of the Norwegian Competition Authority, which points out that the regulation is a complicated system of taxes and subsidies. We believe it would be more efficient for prices and production to be determined to a larger extent in the market, says Mr. Lasse Ekeberg, director at the Norwegian Competition Authority.



« The competition is not vigorous enough, neither between the products nor between the pharmacies and the new outlets.

Mr. Lasse Fridstrøm,
director at the Norwegian Competition Authority



Every fourth electricity customer with access to Internet has visited our website, to check the prices offered by different suppliers.





The customers are deceived!

The Competition Authority has asked Special Advisor and former French Magistrate Eva Joly and Editor and Investor Trygve Hegnar to give their opinions on the fight against cartels.

■ The question is a little tricky. It calls for some speculation. The cases certainly prove that the competition does not function well in the current markets. Cartel cooperation is absence of competition.

Actual cases of cartelization in a trade suggest statistically that the collusive behaviour extends beyond the case uncovered. It is however difficult to claim that cartelization in one branch may indicate similar cooperation in another. The markets may be too different to make such analogies.

The Norwegian Competition Authority (NCA) has uncovered widespread illegal cartel cooperation in certain markets.

What does this indicate?

■ In fighting cartels, I have difficulty seeing that there are other efficient tools than extensive and efficient powers to investigate and to impose severe sanctions. In my opinion, personal liability is also very important for effective deterrence. I also think that personalized penal sanctions are important in a philosophical perspective.

When it comes to combating competition crime, I think it is important to focus strongly on international cooperation. An increasing number of cases are cross-border cases. Unless there is efficient legislation and an environment of international cooperation that may cross borders, one may end up with a situation where many important cases will never be disclosed, and that the extent and severity of the cases will never become known.

How should the authorities attack this problem?

■ In my opinion, the business community should have a “zero tolerance” strategy against everything resembling cartel cooperation. This implies that whoever takes issue with those responsible for a cartel, should see to it that the person involved is redeployed! I think Norwegian companies have a lot to learn in this respect. One must pass the message that a conviction for cartel cooperation is not to be seen as a working accident.

I also think that in the fight against competition crime, the companies should identify departments and persons that are exposed to risks, and provide the remedies necessary to prevent “cartel environments” from developing.

What should the business community, the company concerned, the managers and employees do when they discover such behaviour?

■ It is difficult for me to suggest what amount of resources may be needed for enforcement. They should be sufficient to achieve the aim. I then assume that the legislation is adequate. When it comes to human resources, you need, first and foremost, a certain number of officers who master the tasks. Having a certain number of experienced officers is important. Since the cases are complex and comprehensive, I believe they should be handled by a team that is able to work on a long-term basis and in a focused manner.

What kinds of resources are needed with the NCA and with the public prosecutor in order to ensure compliance with the law and ensure healthy competition?



■ It may be discussed how widespread the problem is. The fact that several large cases have been uncovered is mainly due to the efforts of the competition authorities, and to the fact that the costs of cartelization have become clearer to more people. This has resulted in more whistleblowing and disclosure.

Unfortunately, many members of the business community have still not understood how serious and damaging such cooperation is. Collusive pricing, bid rigging and market sharing have been a part of everyday life. It was probably a shock to most people when it was disclosed that Norwegian ship owners were involved in illegal price collaboration in the USA, and that they were fined and sentenced to imprisonment.

■ By becoming more rigorous and by prosecuting every possible illegal cartel that affects the competition and society.

■ Alert the NCA, but it is naive to think that this will become the rule. The vested interest of the company, its employees and managers will be too strong. I think it is the most spectacular cases, which may be the most difficult to prosecute, that will have the strongest deterrent effect and be useful to go for by the NCA.

■ This is an impossible question to answer. What is enough? Neither the NCA nor the public prosecutor will ever get the resources needed to fully obtain compliance with the law and a healthy competition. And do we want to have such a surveillance system within our society?

Everyone wants more, but I do not know whether the NCA and the public prosecutor utilize their resources efficiently or not.

The Norwegian Competition Authority celebrates its 10 years' anniversary

The Norwegian Competition Authority was established on 1 January 1994, coinciding with the entry into force of the Norwegian Competition Act. The aim of the Act is to achieve efficient utilization of society's resources by providing the necessary conditions for effective competition. During the anniversary year 2004 a new Competition Act will enter into force in Norway, more adapted to the competition legislation of the European Union and containing prohibitions against anti-competitive collaboration and abuse of dominant position.

Competition legislation since 90 years back - a European pioneer

The outbreak of World War I triggered statutory provisions that, among other things, empowered the authorities to stipulate maximum prices. As early as in 1917, anti-trust regulation was introduced in Norway, in the form of provisions under the Price Regulation Act.

In 1920 a statutory provision entered into force, which required that monopolies and dominant companies of every kind, as well as all kinds of associations, agreements and other arrangements with the purpose of restricting competition, should be notified to the Price Directorate and entered into the Cartel Register.

In 1926 the Trust Act, related to the control of restrictions to competition and abusive pricing, came in to force – in its time one of the most modern competition acts in Europe.

Three eras in the post-war period

The price and competition policy in Norway during the economic stabilization period following World War II can naturally be split into three phases:

During 1954-1971, especially in the 1960s, the dominant idea was to make competition more efficient. Between 1972 and 1980, the main task was to control inflation. Since 1981 effective competition in the corporate sector has been the highest priority.



The year 2003 was a challenging one for the Norwegian Competition Authority

A number of large cases were handled attracting considerable attention from the media. This annual report accounts for the more important cases.

■ To vitalize the report, in this year's edition we resort to more pictures, presenting some of the cases in the form of interviews, while also allowing for external comments.

■ Particular attention has been given to markets that have recently been deregulated. One example is the market for electric power, where important steps have been taken towards a harmonized competition policy, both in the Nordic market and in a future, integrated European market. We have also, in cooperation with the Norwegian Water Resources and Energy Directorate and the Financial Supervisory Authority of Norway, developed tools for continuous surveillance of this important industry. In civil aviation, too, the intervention by the competition authorities has contributed to a healthier situation. Consumers face more options today than earlier, and the prices have been forced down.

■ This, together with increased competition in other markets, has contributed to historically low inflation and interest rates. Commentators have pointed to the fact that the Norwegian economy may possibly have entered into a new "path", with lower inflation under economic growth than what has previously been experienced. This may imply that it will be possible in the future to combine reduced unemployment with low inflation. Although this may be due to several circumstances, there is reason to believe that competition policy has contributed to this improvement in the mode of operation of the Norwegian economy.

■ The Government's proposal to move eight government supervisory authorities from Oslo and the Parliament's debate on this proposal (White Paper No. 17 2003-2003) have of course occupied the minds of the employees of the Norwegian Competition Authority. In spite of this, the Authority has maintained focus on its tasks, while at the same time preparing for the relocation.

■ The relocation of the Norwegian Competition Authority to Bergen is to be executed over a period of three years, in such a manner that:

- the Norwegian Competition Authority operates efficiently during the relocation period,
- as many employees as possible follow the Authority to Bergen, while no one ends up in unemployment, and
- a new, efficient organization is built up systematically.

■ The activity in Bergen will commence already in the spring of 2004. As a first step, we are establishing a new Market Monitoring Department. The allocation of resources within the health sector and the possibility of improvement through competition policy remedies is a new area of work to be focused on. The health sector demands considerable resources, and even small improvements can imply large cost reductions and improved supply.

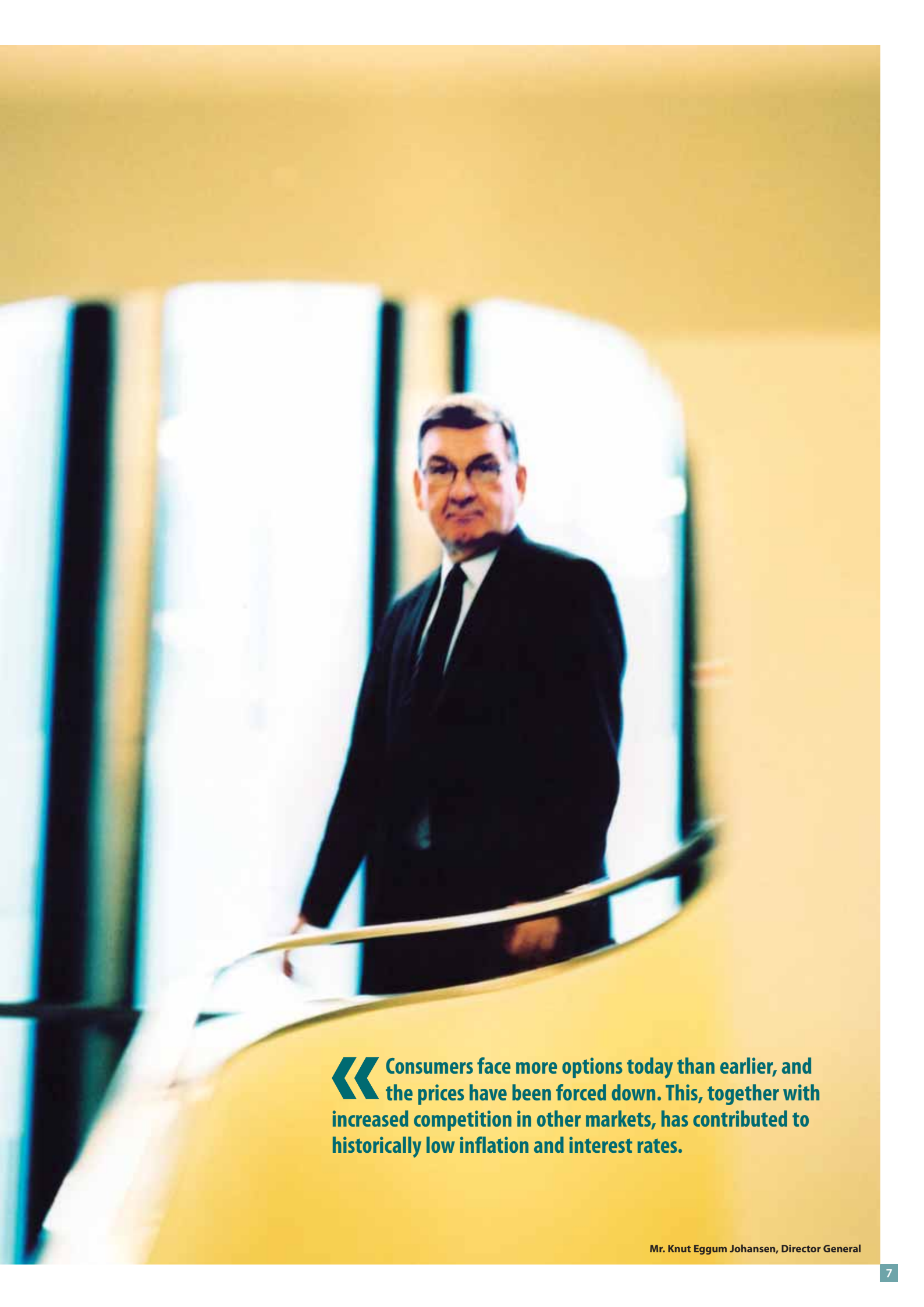
■ The activity in Bergen will be built up gradually, so as to ensure the necessary transfer of competence. By 1 January 2007

the relocation of the Norwegian Competition Authority shall be completed.

■ The Norwegian Competition Authority was established on 1 January 1994, by merging two of the previous competition authorities – the Price Directorate and the Price Inspectorate. The merger was a consequence of a modern Competition Act that came into force that year. In 2000, the Government appointed a committee to revise the Competition Act. Based on the committee's report, the Government introduced in the autumn 2003 a legislative bill for a new Competition Act. Stortinget (the Parliament) passed the bill in March 2004. The Act implies that Norwegian competition rules will be harmonized with the EU/EEA competition rules, so that the Norwegian Competition Authority acquires more suitable provisions to prevent abuse of dominant position and combat collusive behaviour. The new Competition Act will enter into force on 1 May 2004. The new Act gives us also the opportunity to revise and modernize our working methods and routines. This will help increase the efficiency of the competition authorities in the years to come.

■ In 2004 the Norwegian Competition Authority is celebrating its 10 years' anniversary, launching various professional arrangements.

Oslo, March 2004
Knut Eggum Johansen



◀ Consumers face more options today than earlier, and the prices have been forced down. This, together with increased competition in other markets, has contributed to historically low inflation and interest rates.



Mr. Mads Magnussen, legal director of the NCA

The Parliament (Stortinget) has recently passed a new Competition Act, more severe than the previous one. The prohibitions are more comprehensive and the penalties tougher.

Important changes in the new Competition Act

The new Act introduces more comprehensive prohibitions against concerted practices that restrict competition and against abuse of dominant position. The Norwegian Competition Authority (NCA) can no longer grant exemptions from the prohibitions. Whatever exemptions are allowed is contained in the Act. It is now for the undertakings themselves to decide whether their practices fulfil the conditions for exemption. Violations will henceforth result in severe penalties. Also, the new rules facilitate investigation and disclosure of illegal collaboration.

– The improvements are substantial compared to the previous Act. Abuse of dominant position will now be prohibited per se – this is a major advantage. We will be able to impose fines – this will lead to more efficient enforcement. This new regime is inspired by the European Union, where the Commission may impose fines of up to 10 per cent of the undertakings' annual revenue. Violations of the Competition Act may be serious criminal offences, and we are satisfied to have more efficient instruments available in our fight against these violations, says Mr. Mads Magnussen, legal director of the NCA.

EU/EEA HARMONISATION

The prohibitions against anti-competitive behaviour and abuse of dominant position in the new Act are copied from the corre-

sponding EU/EEA competition rules. –This is an advantage to undertakings in Norway. Predictability is increased when companies face one set of rules, says Mr. Magnussen. He also emphasizes that the NCA now obtains competence to enforce the EEA competition rules. This may increase their practical impact.

LENIENCY

The new Competition Act introduces the principle of leniency: penalties may be reduced for undertakings that assist the NCA in investigating their own violations and those of others.

– This will be an important instrument to

sitions to the NCA. The Act contains a prohibition against implementing the merger or acquisition during the first phase of the procedure.

– We are quite satisfied with this prohibition. We have seen cases where the implementation of the merger had come so far that it was not feasible to stop it, even though the merger led to a significant lessening of competition, says Mr. Magnussen.

FASTER HANDLING OF CASES

The introduction of mandatory notification will allow for speedier case handling. According to the new Competition Act, the NCA must notify the parties of any possible

 **The new Act introduces more comprehensive prohibitions against concerted practices that restrict competition and against abuse of dominant position.**


detect illegal collaboration. If a cartel member chooses to assist us, the Act provides for reduced fines for the undertaking in question. Experience from the European Union, and from European countries with corresponding leniency programs, shows that these increase the probability of detection and the efficiency of investigation related to serious violations, he says.

MERGER CONTROL

The new Competition Act introduces a general obligation to notify mergers and acqui-

intervention within 25 business days after receipt of a complete notification. The final deadline for intervention is 100 business days. The corresponding deadlines in the previous law were three and six months, respectively.

– Less time consuming procedures are of course an advantage. The shorter deadlines are more demanding for the NCA. We will see to it that this does not reduce the quality of our competition analyses, says Mr. Mads Magnussen.



« Since it is expensive for a newcomer to gain entry, many markets are characterized by few and large players. This makes the markets transparent and it is easy for the players to collude.

Ms. Cecilie Wetlesen Borge, director of the NCA's Corporate Investigation Department.

– Cartels cost society billions

To an increasing extent, the Norwegian Competition Authority (NCA) receives information from the public on suspected price collaboration or other kinds of cartelization. However, these cases are becoming increasingly difficult to investigate.

The methods of collaboration are sophisticated, and the participants do their utmost to cover up their illegal activity, says Ms. Cecilie Wetlesen Borge, director of the NCA's Corporate Investigation Department.

Cartel activity means that two or more undertakings in the same market collaborate rather than compete; instead of competing for contracts, as expected by the customers, the cartel partners agree on market sharing, price collaboration, the size of the discounts etc.

– The result is higher prices. The consumers end up paying much more than in a competitive situation, says Ms. Wetlesen Borge. She assumes that this excessive pricing costs the consumers, the corporate consumers and the taxpayers several hundred million NOK annually. In addition, cartelization reduces the participants' competitiveness, as they create an artificially protected business environment in their markets.

WIDESPREAD ACTIVITY

– It is difficult to estimate how widespread cartelization is in Norway. The cases referred for prosecution by the NCA suggest that this kind of economic crime is doing extensive damage. It can take place anywhere. Often, the collusive behaviour involves the better part of the industry. There is no reason to think that Norway is much different from other countries. Because of its extent and potential harm, there is an increasing awareness about cartelization in other countries, both on the national and the international level. The US anti-trust authorities have been fighting cartels vigorously for many years, and in the European Commission it is an area of high priority, says Ms. Wetlesen Borge.

In the United Kingdom, a new Act allows for tapping and bugging, infiltration, and the imposition of competition disqualification order, in the fight against cartels. Ms. Wetlesen Borge finds it difficult to quantify the damages to society. – International studies indicate that prices may go up by 10 to 30 per cent, in some cases 50 per cent, when competitors collude, Ms. Wetlesen Borge states.

NORWAY IS VULNERABLE

Ms. Wetlesen Borge thinks there is reason to believe that Norway is more vulnerable than many other countries. – Norway is a geographically extended country with few inhabitants. Since it is expensive for a newcomer to gain entry, many markets are characterized by few and large players. This makes the markets transparent and it is easy for the players to collude, Ms. Wetlesen Borge explains.

In 2003, the NCA has been working to disclose a cartel in the building and construction trade. Ms. Wetlesen Borge thinks that cartels are present in many trades and markets.

– The business community is continuously exposed to restructuring. The companies are becoming fewer and larger. Hence it becomes easier to influence the price level through collusive pricing or other forms of cartelization. The benefit to the participants

may be large and the risk of discovery small. It is usually hard for the customers to find out if the prices are artificially high. There are examples of cartels that have been operating for more than 30 years, without the customers becoming aware of their existence, she explains.

FIGHTING CARTELS

The Norwegian Competition Act is a good instrument for fighting cartels. The prohibitions are far-reaching and transparent, the duty to provide information is comprehensive, and the sanctions are severe. Negligent and intentional violations are subject to fines or to a maximum of six years' imprisonment. Sanctions may be imposed both on companies and individuals. It should be admitted, however, that most sanctions are strongly delayed, and in general the level of sanctions imposed in Norway has been low.

Must attend to both efficiency and legal protection



– Fighting cartels is a priority of the Norwegian Competition Authority. This is fine. But the Authority must also attend to the companies' legal rights, says Ms. Siri

Teigum, partner of the law firm Thommessen Krefting Greve Lund AS.

Ms. Teigum thinks that the Authority has a tendency to give higher priority to efficiency than to legal rights, particularly when it comes to the seizure of electronic information.

– These kinds of seizure give rise to some particular concerns. No one disputes the Authority's power to do this, but the problem is that they sometimes seize more information than necessary. The Authority duplicates the entire content of a server or certain sectors of it. This can be compared with the seizure of all hard copy documents in a building, something

which, to my knowledge, the Authority has never done or claimed the right to do, she says.

Ms. Teigum stresses the importance of informing the companies of the Authority's suspicion as early as possible.

– It is important to give the companies the opportunity to correct possible misunderstandings on which the investigation may be based, to take into account the Authority's legal understanding and if necessary defend themselves against the allegations. Lengthy investigations cause great strains on the employees, disturb the business, and stain the company's reputation. Delayed clarification may also constitute a problem to customers in the markets concerned. The Authority must be assured sufficient resources to carry out effective investigations at greater speed than what we have become used to in recent years, Ms. Teigum concludes.



The Authority is cooperating with competition authorities in other countries.

Investigation and enforcement

Cartel investigation is a top priority at the Norwegian Competition Authority (NCA). Some investigations attract considerable attention from the media, but most pass unnoticed by the media and the public.

The number of indictments may differ from one year to the next, as most investigations are terminated without any subsequent prosecution. The maximum sentence possible is six years' imprisonment, but so far prosecution has only resulted in fines.

In 2003, the NCA conducted dawn raids in four cases. About 25 cartel cases were handled formally. One infringement of the Competition Act was reported to the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim).

PRICE COLLABORATION AND BID RIGGING IN THE BUILDING AND CONSTRUCTION SECTOR

This case was referred to Økokrim for prosecution. The NCA uncovered comprehensive price collaboration and bid rigging, in addition to market sharing. The reported cooperation took place during 1994-2000 and involved several large public construction projects, concerning industrial buildings, power plants, bridges and harbours, as well as the construction of Oslo Airport Gardermoen and its express railway. The total cost of the projects amounted to more than 2.5 billion Norwegian kroner (NOK). The companies referred to the police for prosecution were Selmer Skanska AS, NCC Construction AS, Veidekke ASA and Reinertsen Anlegg AS (former Anlegg AS). NCC assisted the NCA to uncover the case and is cooperating with the police during their further investigation.

DAWN RAID AT THE PHARMACEUTICAL CHAINS

In November 2003 the NCA conducted dawn raids at the premises of the largest pharmaceutical wholesalers in Norway and at their trade organisation. The NCA sus-

pected collaboration to influence prices within the newly established index price system for prescription drugs. One of the companies filed a petition by the court to invalidate the seizure of electronic information. The Attorney General conducted the case before the court on behalf of the NCA. In January 2004 the municipal court decided in favour of the plaintiff, i. e. against the NCA, which then appealed the decision to the regional court. On March 17, the regional court decided in favour of the NCA. It is not clear whether the plaintiff will appeal the case to the Supreme Court.

COMPETITION CRIME

In line with the general globalization of

trade and industry, cross-border competition crimes are becoming even more common. The NCA cooperates with competition authorities in other countries, both bilaterally and through the EEA Agreement. In February 2003 the NCA assisted the European Commission and the EFTA Surveillance Authority in securing evidence in the Odfjell case (maritime transport of chemicals). One case regarding market sharing between a Norwegian and a foreign company was investigated in cooperation with the other country's competition authority, until the Norwegian company filed for bankruptcy in 2003.



Cases terminated in 2003

Some cases dating several years back were terminated during 2003:

- A company selling high-pressure water hoses accepted, just before the start of the trial, a settlement amounting to a NOK 400 000 fine, on account of resale price maintenance.
- One person who gave incorrect and incomplete information to the NCA accepted a fine of NOK 30 000 for infringement of the duty to provide information.
- The NCA had indicted a lawyer for threats against a civil servant during a dawn raid. The public prosecutor dismissed the case in December 2003 on account of insufficient evidence.

« The airlines operate according to different concepts. This has forced the fares down. From the consumer and competition point of view, today's situation is far more satisfactory than before the SAS-Braathens merger



Shortly after the Norwegian Competition Authority had intervened against the frequent flyer programme of the SAS Group, a new entrant appeared: Norwegian Air Shuttle (Norwegian). – Competition was enhanced and fares have come down, says Mr. Lasse Fridstrøm, director at the Norwegian Competition Authority.

– The fares have come down considerably

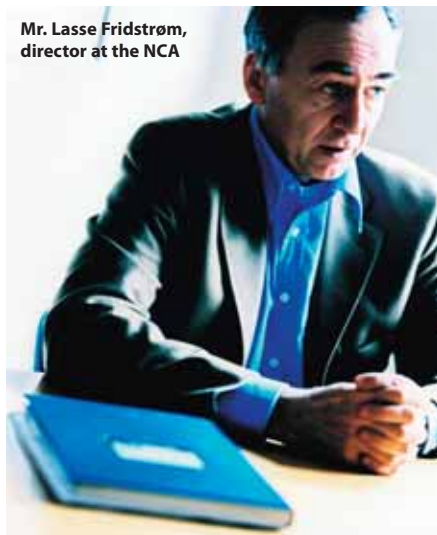
On the most important domestic routes, which are served by the SAS group as well as by Norwegian, the fares have decreased considerably. Since September 2002, Norwegian has been serving the routes Oslo-Bergen, Oslo-Stavanger, Oslo-Trondheim, and Oslo-Tromsø. Calculations made by the Authority suggest that domestic passengers save about 1.5 billion Norwegian kroner annually due to the reduction of fares since April 2002, when Norwegian announced its entry into the market. The fares have fallen by some 20 per cent, Mr. Fridstrøm states.

PROHIBITION AGAINST FREQUENT FLYER POINTS

Following the acquisition of Braathens, SAS had a de facto monopoly in Norway. – Our most important task was then to pave the ground for renewed competition. In 2002, the Authority barred the SAS-group from awarding frequent flyer points on domestic Norwegian routes. Shortly after the prohibition came into force, Norwegian entered the market and soon gained a market share of about 20 per cent on the four largest routes, says Mr. Fridstrøm.

In the autumn 2003, Norwegian extended its network to comprise eight additional routes: Oslo-Harstad/Narvik, Oslo-Bodø,

Mr. Lasse Fridstrøm,
director at the NCA



Trondheim-Tromsø, Oslo-Molde, Oslo-Alta, Oslo-Ålesund, Bergen-Stavanger and Bergen-Trondheim.

CORPORATE DISCOUNT SCHEMES

In 2004, the Authority will continue its efforts to facilitate competition in civil aviation. In December 2003, the Authority intervened against certain elements of the corporate discount schemes of the SAS group.

– The Authority prohibited the use of so-called progressive discounts, where the rate of discount increases with the amount of air services purchased. We also banned cer-

tain provisions in the agreements, which obliged the client to prefer SAS to other airlines. These agreements create customer loyalty. At the same time they allow the airline to strongly reduce the fares to the most attractive customers, without risking reduced revenue from other customers, says Mr. Fridstrøm.

He nevertheless describes the intervention against the corporate deals as rather limited in scope, given that the number of agreements with progressive discounts was already quite small.

MONITORING THE MARKET

Both the SAS Group and Norwegian are obliged to report fares, costs and capacity monthly to the Authority.

– We need this in order to uncover any use of price strategies that will damage competition in the long run, or, alternatively, to be able to monitor any reduction in fares, which may be due to healthy price competition.

By and large, the Authority is fairly satisfied with the present situation in the Norwegian air travel market. – The airlines operate according to different concepts. This has forced the fares down. From the consumer and competition point of view, today's situation is far more satisfactory than before the SAS-Braathens merger, Mr. Lasse Fridstrøm states.



The need to strengthen competition in European aviation

European civil aviation may be facing a considerable wave of mergers the next few years. Such mergers may give rise to certain efficiency gains, but they may also imply serious restrictions to competition, if the European aviation industry becomes too concentrated. This is one of the conclusions drawn by the Nordic Task Force on Airline Competition, which presented its report in June 2002.

The Task Force pointed to several challenges in the international aviation market:

- Efficient control with airline mergers and alliances.
- Efficient interventions against predatory pricing and other abusive behaviour.
- Efficient restrictions on frequent flyer programmes.
- Prohibition on airline price collaboration through tariff consultations.
- Open and non-discriminatory business conditions in travel agent agreements.
- Interventions against anti-competitive effects of corporate discount schemes.
- Control of the configuration and use of ticketing and computer reservation systems.

■ In September 2003, the Government prolonged its agreement with Norwegian, on the procurement of domestic air services. The agreement is valid until September 2004.



Vice President of Scandinavian Airlines System (SAS): – Understands the Authority’s role – but calls for more humbleness

■ – The Norwegian Competition Authority is doing a necessary and important job, for which I have a great deal of sympathy. I might, however, sometimes wish that the Authority exercised more humbleness and consideration with regard to the companies that are examined, says Mr. Gunnar Reitan, Vice President of SAS.

Mr. Reitan stresses that he understands and acknowledges the fact that the Authority must be strongly concerned with markets dominated by one large player. - It is appropriate and important that they monitor these markets, both to

create efficient competition to the benefit of the customers, and because this is to the advantage of the business community. But it is important that the Authority act in such a way that one does not precociously condemn or insinuate conditions, which in retrospect prove to be unfounded, or give the impression of a suspected violation of the law when this is not the case. The Authority must endeavour to behave deferentially when cases are examined. It has happened more than once that someone has crossed the line in this respect, says Mr. Reitan.



Weak competition in the book market

In the opinion of the NCA, the situation in the Norwegian book market leaves a lot to be desired. Competition is weak in several respects. This prevents innovation and efficient utilization of resources and implies higher costs for consumers, students, and schools.

While accepting that cultural policy interests must be taken into account, the NCA considers that the aims of this policy may be achieved with much less use of distorting regulations than under the present regime.

The publishers' and the booksellers' associations have concluded an agreement (the Book Trade Agreement) granting the publishers the right to fix retail prices. The Norwegian Association of Publishers has been granted exemptions from the prohibitions on price collaboration and resale price maintenance of the Competition Act. These exemptions expire at the end of 2004. During 2004, the NCA intends to start a dialogue with the publishing industry, in order

to replace the present regime with a more competitive and efficient one.

The Book Trade Agreement allows the Book Clubs to undercut prices fixed by the publishers by up to 25 per cent. This has resulted in large market shares for the Book Clubs, reaching about 70 per cent in the market for fiction for adults. The agreement also grants the bookstores an exclusive right to sell textbooks.

The aim of the Book Trade Agreement is to promote the availability of and interest in literature and to disseminate knowledge of the Norwegian language and literary tradition. The NCA, however, does not consider fixed prices or textbook monopolies as efficient means to achieve these objectives. The Agreement restricts competition because it deprives bookstores of the

Intervention against the Norwegian Book Clubs' waiting period provisos

■ The Norwegian Competition Authority has forbidden the largest Norwegian book clubs to include exclusivity clauses in their publishing agreements for new Norwegian and translated fiction for adults. These exclusivity clauses used to imply that the book could not, for a period of about two years, be distributed by other book clubs. The prohibition entered into force on 1 July 2003 and applies for two years after publishing of a book's first edition.

opportunity and incentive to compete on price and hence does not provide scope for new and more efficient channels of distribution (e.g. the Internet). The Authority thinks that the objectives of the Agreement may be achieved more efficiently through free and competitive pricing on books.

The book market is subject to a number of other regulations, subsidy schemes, and agreements. There are, e.g. agreements on royalty, on publishing through the Book Clubs, and on the purchase of books by public libraries. Books are also exempted of Value Added Tax (VAT).



The Norwegian Competition Authority proposes to split up the largest supplier of electric energy, Statkraft

The Norwegian Competition Authority (NCA) is of the opinion that the state ownership in the electricity market should be reconsidered. A more appropriate ownership structure may contribute to improved competitive conditions in this market. The cross ownership relations should be reduced and a split should be considered for Statkraft, in particular if the company should become wholly or partly privatized.

Commissioned by the Ministry of Labour and Government Administration, an expert committee consisting of four leading economists has analyzed the competitive conditions in the electricity market. The expert committee supports the NCA's proposal to reconsider state ownership and to sort out the structure of cross ownership in this market.

COMPETITION IN THE NORDIC ENERGY MARKET

The Nordic competition authorities have, in their joint report "A powerful competition policy", examined the competitive conditions in the Nordic energy market and addressed the need to coordinate competition policy enforcement.

The report's main conclusion is that, by and large, the deregulation of the Nordic energy market has been successful.

Through the Nordic energy trade, the advantages of interconnecting hydropower and thermal power systems are being exploited. The existence of a common Nordic market has enhanced competition, in spite of a few obstacles.

The report shows, nevertheless, that there still is a great potential for exercising market power and for charging excessive prices. Regional markets are subject to high concentration, which is partly due to cross



Our electricity price survey is well liked

■ A large number of consumers have visited the electricity price survey on the NCA website.

-I have visited the website regularly and have used the information provided there when I have changed from one energy supplier to another, Mr. Kjetil Bondevik from Asker says.

Mr. Bondevik has changed energy supplier three times in the last three years and praises the Authority's website, which in his opinion gives a good overview of prices and is easy understandable. – It is useful to get an overall overview and the website makes it easier for consumers to choose energy supplier, he says.

The survey has been published since 1998. A poll made by Norsk Gallup, an independent survey company, shows that the Authority's electricity price survey is well known. Every fourth electricity customer with access to Internet has visited the website and checked the prices they

may have to pay for electricity from different suppliers. More than 80 per cent of those who have used the price survey express great confidence in the price information provided.

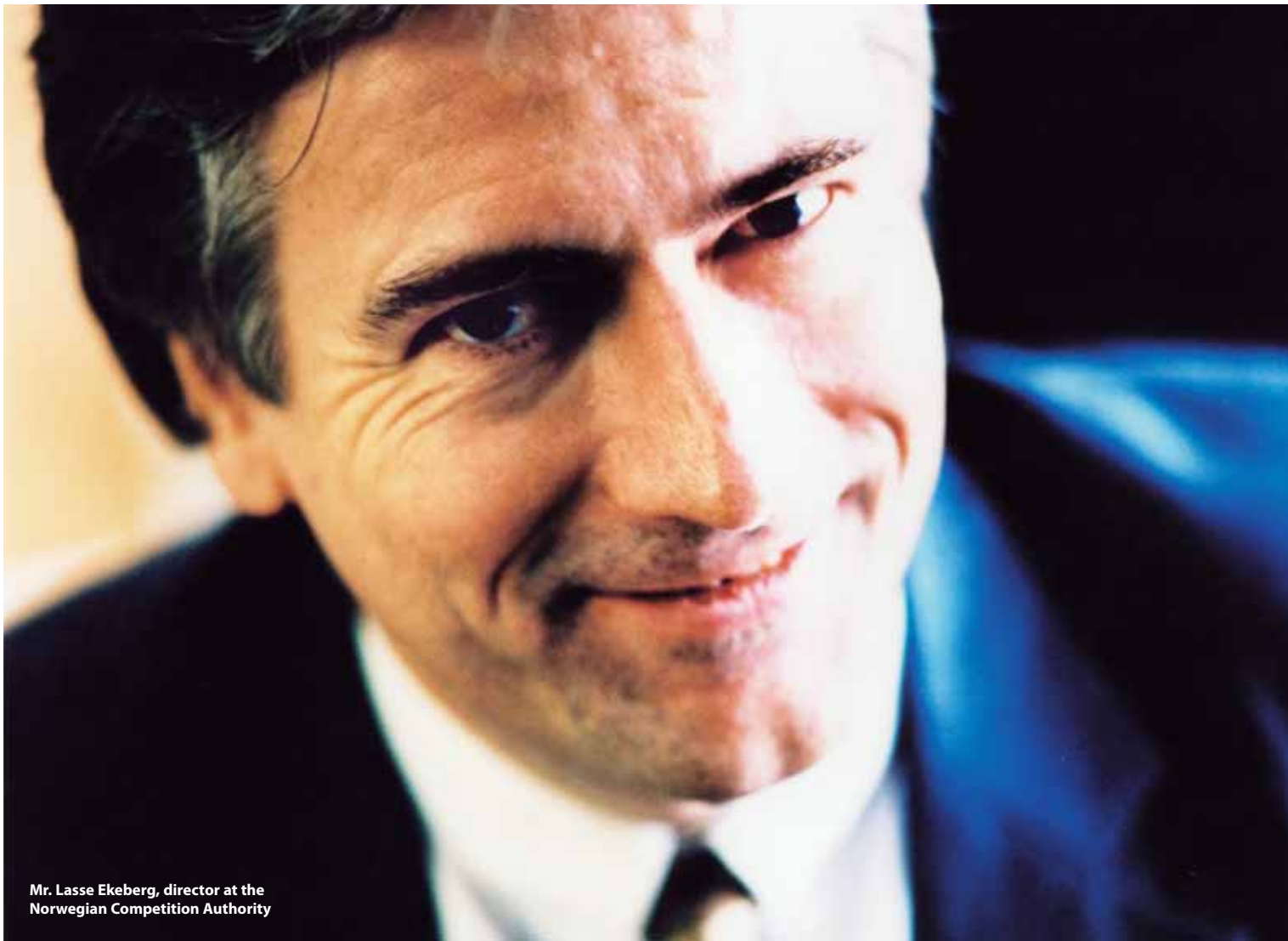
The consumers may choose between different kinds of contracts. The increase in electricity prices during the winter 2002-2003 made many consumers aware of the possibility to change supplier and/or contracts. The NCA received numerous requests to include spot prices and fixed prices in the survey.

Thus, to further improve the information on consumers' options, the NCA's website has been upgraded. Now consumers may easily get an overview of spot prices as well as of fixed price contracts, lasting for one or three years. In addition the consumers can still find the standard variable electricity price. This makes it easier to compare different contracts and suppliers and to choose the most suitable one.

ownership and joint ownership of power plants. Second to Denmark, Norway's national energy market is the most concentrated one in the Nordic countries. Increased capacity in the transmission network will reduce, but not completely eliminate, the problems of dominance.

The report recommends that the authorities consider how a more competitive ownership structure, with reduced cross ownership, can be developed. In each country, one or two large suppliers dominate the domestic national market. Cross ownership is far-reaching. Subsequent mergers that will further increase market concentration should be carefully analysed. Nordic competition authorities should cooperate more closely in cases affecting more than one country.





Mr. Lasse Ekeberg, director at the Norwegian Competition Authority

Large banking merger conditionally approved

In November 2003 the Norwegian Competition Authority approved the merger between the two largest banks in Norway, DnB and Gjensidige NOR. The Authority imposed several conditions, which implied that the merger would not result in efficiency losses.

The Norwegian Competition Authority (NCA) held that the merger would restrict competition in the markets for loans to consumers and smaller enterprises, payment transactions, and group pension schemes. However, the conditions imposed by the Authority reduce the damage to competition.

– Because the merger will result in large economic efficiencies, there was no provision in the Competition Act to intervene against the merger, director Lasse Ekeberg says, rejecting the criticism against the decision that arose from some quarters. The Norwegian

Competition Act is based on a total surplus standard.

PROMOTING COMPETITION

One of the conditions imposed by the NCA was that DnB NOR had to let competitors take over a number of bank premises.

– Our opinion was that the competition would be restricted because the number of banks would be reduced, resulting in higher prices. Therefore we wanted to make it easier for DnB NOR's competitors to take over the old bank premises, Mr. Ekeberg explains. The Authority also imposed other conditions to make it more profitable for new entrants to penetrate the local markets.

REAL ESTATE AGENCY

The NCA also required divestment of the real estate agencies Aktiv Eiendomsmegling and Postbanken Eiendomsmegling.

Thus, important sales channels for house mortgage loans became accessible to competitors. DnB NOR also had to sell Elcon Finans for the sake of competition in the markets for factoring and leasing, Mr. Ekeberg says.

SALE OF SHARES

Furthermore, the NCA imposed as a condition that DnB NOR had to sell its 10 per cent stake in Storebrand ASA – the company's largest competitor in the market for

group pension schemes to private enterprises, as well as a minor competitor in the banking market. Yet another condition imposed was that the financial insurance company Gjensidige NOR Fondsforsikring had to be sold to an independent competitor. The Authority also demanded that the accident insurance company Gjensidige NOR Forsikring, which was not a part of the merger, should be free to sell products from other banks than DnB NOR.

◀ **Our opinion was that the competition would be restricted because the number of banks would be reduced, resulting in higher prices. Therefore we wanted to make it easier for DnB NOR's competitors to take over the old bank premises**

– Independent savings banks that cooperate with DnB NOR shall face no restrictions regarding sales of competing banking products, Mr. Ekeberg explains.

EFFICIENCIES

The NCA found it verified that the intended merger would result in substantial gains to the companies. According to DnB NOR, the merged company would be able to save 1630 man-years.

– It is clearly an efficiency gain when the same (amount of) work can be carried out by fewer employees. The redundant manpower can be used in other fields or sectors, Mr. Ekeberg points out.

In a report by DnB and Gjensidige NOR, the yearly cost reductions caused by the merger were estimated at 1 690 millions NOK. –We believed the efficiency gains to be smaller, and had to weight them against the efficiency losses caused by restricted competition, resulting in higher prices, less innovation and a narrower range of products. We concluded that the merger would result in an efficiency surplus only if the imposed conditions were made to apply. To completely ban the merger, or to approve it without these conditions, would result in efficiency losses, Mr. Lasse Ekeberg says.

The merger in brief

- By the opening of the Oslo Stock Exchange on 13 March 2003, the management of DnB and Gjensidige NOR notified their plans to merge the two financial institutions into a new company, DnB NOR. DnB was Norway's largest financial group of companies with 7000 employees and total assets amounting to 680 000 million NOK. Gjensidige NOR had 7800 employees and total assets amounting to 317 000 million NOK.
- The synergies were estimated an annual 1700 million NOK in cost reductions, with full effects from 2007.
- On 18 March the two boards entered into an agreement regarding the merger.
- The general assemblies of DnB and Gjensidige NOR approved the merger on 19 May 2003.
- On 19 August the NCA notified the parties that the Authority considered prohibiting the merger. The Authority claimed that the merger would restrict competition in the markets for loans to consumers and to small and medium sized enterprises, as well as for group pension schemes.
- The Financial Supervisory Authority of Norway did not share the point of view of the NCA, recommending, on 29 August the Ministry of Finance to approve the merger. The Financial Supervisory Authority emphasized the importance of maintaining a competent Norwegian financial group of companies within the Nordic market.
- The NCA finally approved the merger on 7 November 2003, subject to conditions. DnB NOR stated the same day that they would comply with the conditions.

– They should have said no!



■ – The consumers and the small enterprises will suffer due to the merger between DnB and Gjensidige NOR. The Norwegian

Competition Authority failed its task when the merger was approved, says Mr. Carsten O. Five, the owner and former editor of the business magazine Dine Penger (Your Money).

Mr. Five is merciless in his criticism of the State as owner, of the Norwegian Competition Authority (NCA), and of the politicians. –The Members of Parliament were dazzled by the idea of a large Norwegian bank. They did not take into account that the merger would restrict competition and make the small enterprises and the consumers suffer. They did not consider our interests when they supported the merger, says Mr. Five.

A GIANT PAINTED BRIDE

Mr. Five thinks that the conditions imposed by the NCA were of no avail. This was only about painting a giant bride. Even if the conditions may seem adequate on paper, they will be of very little importance as the financial markets develop, he says.

THE STATE IS THE ENEMY

In addition, he thinks that the merger proves that State ownership is not to the benefit of people in general. – The State's economic interests are too comprehensive, and this merger is a prime example of the unfortunate effects of State ownership. The competition will undoubtedly be restricted when the State is a major player in the market. It becomes an enemy of the consumers. The NCA should definitely have vetoed this merger, according to Mr. Five.



More outlets for non-prescription drugs

Since the autumn 2003, consumers can buy non-prescription drugs in grocery retail shops, convenience stores, kiosks and petrol stations. - Competition between the sales channels will probably mean lower prices to the consumers, says Mr. Lasse Fridstrøm, director at the Norwegian Competition Authority.

Non-prescription drugs are subject to free pricing. They have become considerably more expensive since the trade became partly deregulated in March 2001.

- This underlined the need for competition from other sales channels. To enhance competition in this market, the Norwegian Competition Authority gave an expert opinion on the proposed regulation allowing non-pharmacy outlets for non-prescription drugs. Several of our suggestions were agreed to. This opened the market for competition between the channels, says Mr. Fridstrøm.

The regulation entered into force on 1 November 2003.

SUCCESSFUL ADVOCACY

In its expert opinion, the Authority opposed the idea of imposing a minimum assortment of drugs upon each retailer and a full-scale assortment upon their wholesalers. Also, it was essential that pharmacies and alternative outlets be subject to the same regulations concerning package size.

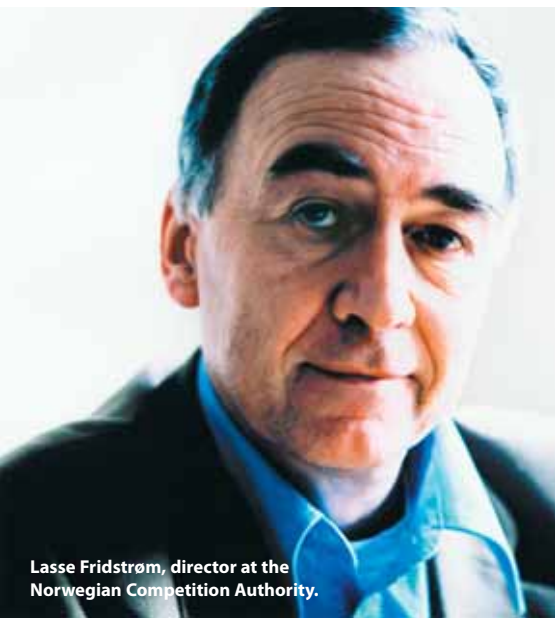
- This is an experience gained from abroad. When drugs sold through alternative outlets come only in smaller packages, they become more expensive, and hence less competitive, explains Mr. Fridstrøm.

He adds that the Authority opposed that the possible existence of local pharmacy outlets be given weight in the handling of applications for sales licences for non-prescription drugs.

REFUSAL TO DEAL

In the autumn 2003, the Authority received signals that the retail grocery chains would be refused delivery of the most well known brands of painkillers and nasal decongestant. It turned out that the pharmacy chains were indeed putting pressure on the pharmaceutical suppliers to reserve some brands for the pharmacies. In the Authority's view, this was liable to restrict competition.

- We notified the pharmacy chains that we intended to prohibit exclusivity agreements with the pharmaceutical suppliers, as well as any attempt to obtain such exclusivity. Following this warning, the retail grocery trade has gained access to the products in question, says Mr. Fridstrøm.



Lasse Fridstrøm, director at the Norwegian Competition Authority.

« We feel that competition develops too slowly. Some players among the pharmacy chains are slow to take signals from the health and competition authorities.

SITUATION STILL UNSATISFACTORY

The Authority is, however, not quite satisfied with the development in the market for pharmaceutical products.

– We feel that competition develops too slowly. Some players among the pharmacy chains are slow to take signals from the health and competition authorities. If this persists, even more severe interventions will be considered. The competition is not strong enough, neither between the products nor between the pharmacies and the new outlets. This may partly be related to the particular regulations regarding marketing of drugs, which imply that the shops may not advertise the drugs inside or in the area around the outlets, nor are they allowed to advise the customers. TV commercials for drugs are also forbidden. We have, however, been in touch with the retail grocery chains, the Norwegian Medicines Agency and the Consumer Council in order to disseminate information about the marketing opportunities. Written instructions on the medicine package are allowed. All pharmaceutical products with the same chemical agent are equivalent. Advertising in the papers is allowed. It is now to a large extent up to the consumers to make competition work and bring prices down, says Mr. Fridstrøm. – If consumers act to systematically choose the cheapest product with a given chemical agent, it will make a difference!

Report on the market for pharmaceuticals



■ Commissioned by the Norwegian Competition Authority, the Ragnar Frisch Centre for Economic Research and the BI Norwegian School of Management have written the report “The pharmaceutical markets

after the pharmacy reform: Regulation, market structure and competition”. The report was published in May 2003.

The report divides the pharmaceutical market in two, non-prescription drugs and prescription drugs. For non-prescription drugs prices are set in the market, while the prices on prescription drugs are regulated.


According to the report, the reform of the pharmaceutical market has resulted in more pharmacies and increased availability. However, this has meant reduced profitability in pharmacies – and non-prescription drugs have become more expensive. Their prices increased by 27 per cent from 1999 to 2002.



– Easier for us



■ – It is very good to be allowed to buy non-prescription drugs in your local grocery retail shop or in the kiosk. Better availability is to the benefit of consumers, Mr. Arild Martinsen says. He is very pleased with the fact that the pharmacies' exclusive right to sell non-prescription drugs is lifted. –Why should the regulation be stricter in this country than abroad? There you may buy non-prescription drugs everywhere. It is of course important to see to it that the consumers get reliable information. The pharmacies have a task to provide information, and I also agree that they should be the sole providers of prescription drugs. But when it comes to nasal decongestant and painkillers, I cannot understand why we should be denied access to these drugs in the grocery retail shop. In addition, the latter has longer opening hours than the pharmacies, Mr. Martinsen says.



« The separation will facilitate the monitoring of Tine's business practices, aimed at preventing discriminatory treatment of smaller competitors in the dairy trade.

– Competition in the dairy trade should be enhanced

In 2003, the dominant Norwegian dairy firm, Tine, announced two dairy plants for sale. This was an important condition imposed by the Norwegian Competition Authority (NCA), as we approved the merger between ten independent Tine dairies.

The independent Tine dairies consist of the ten main cooperatives, each one owned by local farmers and their joint national cooperative (Tine Norske Meierier BA), which was owned by these ten dairies. In the NCA's opinion, the merger would prevent any future competition among the ten local dairies.

The NCA believes there is a need for stronger competition and more efficiency in the dairy trade. - Even if the conditions are about to improve, we think it is necessary to remove more barriers to entry and relax regulations, while at the same allowing the market to work, says Mr. Lasse Ekeberg, director at the NCA.

NEW REGULATION

On 1 January 2004 a new regulation in the milk market came into force. The most

important change is that Tine Norske Meierier BA's (Tine BA) competitors now get access to considerably larger supplies of unprocessed milk from Tine BA. The latter has an almost unlimited obligation to supply competing dairies with unprocessed milk. This is important, because the quota regulation on unprocessed milk effectively limits the quantity available. Tine BA receives almost 98 per cent of the total production of unprocessed milk in Norway, obtaining almost complete control of the supply. The quota regulation also limit the possibility for the establishment of dairies based on delivery from the dairies own farmers.

A REGULATION STILL IN FORCE

The regulation that equalizes prices in the dairy trade will continue. The NCA's view is that this regulation should be repealed, since it produces misallocations in the production and consumption of dairy products

through its complicated system of taxes and subsidies. The regulation implies that any new entrant must offer a wide range of products in order to be able to compete with Tine BA.

– We think that the market should determine the production and prices to a larger extent, says Mr. Ekeberg. – It is an important task for the NCA to monitor the competition in the dairy market. The dairy trade is strongly concentrated, and the rules related to the market regulation are non-transparent and complicated, he says.

SEPARATION DIFFICULT

Tine BA is the dominant player both in the market for purchase of unprocessed milk and in a number of markets for processed products like cheese, consumption milk, butter, and cream. The competitors Synnøve Finden and the Q-dairies are small.

– The new regulation for milk implies a



Mr. Lasse Ekeberg, director at the NCA

Critical assessment of the role of market regulators

■ In many of the expert opinions submitted by the NCA during 2002 and 2003, the need to reconsider the necessity of the various market regulations in agriculture was called for. The dominant suppliers Tine, Prior, Norsk Kjøtt, and Felleskjøpet are regulators of the milk, eggs, meat, and grain markets, respectively. The NCA has proposed to transfer the responsibilities of market regulation to an independent administrative authority.

The NCA favoured the introduction of a regulation on the market regulator's duty to make public whatever regulatory measures are taken. However, the NCA's is of the opinion that the information should not go beyond what is necessary in order to carry out the market regulation and comply with the aims of the agricultural policy. The Authority has underlined several times the possible distortions of competition generated by a quota allocation system based on previous purchases. Such allocation mechanisms may contribute to freeze the market structure and create a barrier to entry. The Authority also pointed out that the new market regulation for grain products, in force from 1 July 2002, did not seem to function satisfactory.

As a result of the NCA's advocacy, new regulations were adopted regarding the market regulator's duties to purchase, to supply and to inform in the markets of meat, grain products, eggs and poultry. For instance, purchase requests from new entrants are to be effectuated, unless they are deemed unreasonable. The work to improve the market regulation mechanism in the grain sector is continuing.

separation between Tine's activities in the sectors for unprocessed milk and dairy production, respectively. This will facilitate the monitoring of Tine's business practices, aimed at preventing discriminatory treatment of smaller competitors in the dairy trade. In the NCA's opinion, competition would be enhanced if Tine's handling of unprocessed milk were structurally separated from its dairy processing activities.

AN UNFORTUNATE ROLE AS MARKET REGULATOR

The NCA thinks it is in general unfortunate that one of the market players is responsible for the market regulation. Tine BA is charged with the market regulator task to keep the market in equilibrium, but the NCA thinks this may give the incumbent a considerable competitive advantage. If market regulation is called for, a neutral administrative authority should be responsible.

Mr. Dag Swanstrøm: – The work of the Norwegian Competition Authority' is important



■ – We are pleased with the Authority's work, which is of considerable value to us, says Mr. Dag Swanstrøm, managing director of Synnøve Finden ASA. Mr. Swanstrøm stresses

particularly the importance of the Authority's work in the last two years.

– It is important to enhance competition the dairy trade, and this work has of course large impact on our business activities. We also see that the Authority does an important job in other fields, like in telecommunications and aviation. We see in these fields, too that the market power of the dominant companies is reduced, to the benefit of the consumers, says Mr. Swanstrøm.

Acquisition of flour manufacturer prohibited

In July 2003, the Norwegian Competition Authority (NCA) vetoed the acquisition of Norgesmøllene by Felleskjøpet Øst Vest BA (FKØV).

The former firm is the largest manufacturer of consumption flour in Norway, while the latter is a cooperative supplying cereal grain products, concentrated cattle foods, machinery, and other inputs to agriculture. In the NCA's view, the acquisition would have increased FKØV's possibility to exercise market power, while also reducing the possibilities for new entries. The decision has been appealed to the Ministry of Labour and Government Administration.

The deal was made already in 2002, when FKØV, through its subsidiaries Stormøllen AS and C. A. Thoresen AS, closed an agreement to buy Norgesmøllene from the owners Cermaq ASA, Skiens Aktiemølle ASA and Fritzøe Møller AS.

Norgesmøllene FKØV had no interests in the flour market before the acquisition, but was heavily involved in the grain trade as purchaser and trader of grain products and manufacturer of grain feed for livestock.

Cereal grain is the most important raw

material input in the production of both cattle foods and consumption flour. FKØV is the largest purchaser of grain for consumption flour. By acquiring Norgesmøllene, FKØV would have obtained a stronger position in the distribution chain, ranging from grain production to the sale of flour to households.

On account of FKØV's strong position in the grain sector, the acquisition would have affected other markets as well. It would have meant increased FKØV control of infrastructure and other essential inputs, with spillover effects into the grain and cattle foods markets. Competition in these three

markets was weak even prior to the acquisition, with few players and large barriers to entry.

The NCA thus concluded that FKØV's acquisition of Norgesmøllene would have increased the former company's market power while reducing the possibilities for new entries. Competition would have been reduced in all the three markets affected. The acquisition was therefore prohibited in July 2003. The decision was appealed to the Ministry of Labour and Government Administration. As of February 2004, the final decision is still pending.

« **The acquisition would have increased FKØV's possibility to exercise market power, while also reducing the possibilities for new entries.**



Price labelling investigation

Satisfactory price labelling in the retail grocery trade – less satisfactory in convenience stores



According to Section 4-1 of the Competition Act, price labelling is mandatory in the retail trade. To enhance transparency, retailers should also provide information on the price per unit (litre, kilogram, etc). An investigation executed by the Norwegian Competition Authority in March 2003 showed that the retail grocery trade complies by and large with these obligations. 38 grocery shops in the counties of Akershus, Buskerud, Oslo and Østfold were examined, and only a few violations, regarding goods like tobacco and bakers' products, were uncovered.

The investigation also showed that the

small-scale grocery outlets (convenience stores, newspaper shops, candy stores, petrol stations, etc) failed to comply with the requirements to the same extent. There were large differences in compliance between the shops, and price labelling was by and large dissatisfactory. In some outlets price labelling was almost absent, in others the labels did not coincide with the prices requested at the cash register. The price labelling of one nation-wide company, Narvesen, was especially dissatisfactory. In most of the company's outlets price labelling was virtually non-existent, only a few of the company's outlets had complied with the regulation in an acceptable way. Narvesen was warned in December 2003 against its insufficient price labelling. When the Norwegian Competition Authority pointed to the possibility of imposing sanctions, the company pledged to provide complete price labelling in all of its 440 outlets by the end of January 2004.

Snapshots from 2003



The Norwegian States Railways (NSB) should divest its bus company Nettbuss AS

■ NSB's ownership of Nettbuss may restrict

competition in the markets for long and medium haul passenger transport. The Authority expressed this view in its expert opinion submitted to the Ministry of Transport and Communication (13.05.).

Payment card users will benefit from competition in assembling card transactions



■ The Authority has forbidden an agreement that ties the banks to use the Banks' Central Clearing House (BBS) to assemble card transactions from

retail outlets. The prohibition paves the ground for competition in offering these services to the banks, something that will benefit the card users (29.03.).

Cooperation to broadcast football matches allowed

■ NRK and TV2, the two largest nationwide TV networks in Norway, may continue their cooperation regarding football matches. The parties were exempted from the prohibition against market sharing, since the cooperation will improve the supply of TV programmes to the viewers and give rise to efficiencies (21.11.).

Prohibition of exclusivity clauses in fixed telephone agreements between Telenor and the housing cooperatives



■ The Authority has forbidden certain exclusivity clauses in the fixed telephone agreements between Telenor (Norway's largest telecom company) and the Norwegian

Federation of Co-operative Housing Associations (NBBL). The decision gives local housing co-operatives the possibility to enter into agreements with other telecom companies in addition to Telenor (06.10.).

No intervention against the websites of Finn, Tinde and Zett

■ In the Authority's opinion, the compe-

tion will not be restricted because private individuals are denied the right to advertise their homes for sale on the websites of Finn, Zett and Tinde. Since individuals have the possibility to advertise their homes for sale in the newspapers, the Authority did not intervene (22.12.).

Simpler rules for public procurement recommended

■ The Authority supported, in its expert opinion, the introduction of penalties against public purchasers who do not comply with the rules for public procurement. The Authority also recommended to simplify the rules and to provide more information about them (13.08.).

Kolo Veidekke's acquisition of Litra Grus approved on conditions



■ The Authority approved Kolo Veidekke's acquisition of Litra Grus, two local suppliers of crushed rock, gravel and

asphalt, on the condition that the parties sell their shares in a local competitor, while continuing to offer crushed rock and gravel to competitors on non-discriminatory conditions (29.08.).

Monopoly to be abolished following an expert opinion by the Authority

■ The monopoly on industrial alcohol may be abolished on 1 May 2005, due in part to an expert opinion provided by the Authority in 2003. The Authority stated, among other things, that the prices on industrial and medical alcohol are considerably higher than they would have been in a market with effective competition. This expert opinion was immediately taken up by the Ministry of Finance, which has sent a proposal to abolish the monopoly in 2005.

Intervention against Telenor Mobil became unnecessary due to reduced price differentials

■ Telenor Mobile's customers pay one price for mobile telephony in Telenor's own network and a higher price for calls terminating in another network. The Authority deemed the price differential to be larger than justified by the differ-



ences in network termination charges and hence considered intervening against this practice. During 2003, however,

Telenor reduced these price differentials considerably, and in the end an intervention was considered redundant (16.12.).

Enhanced competition in the market for valuation of car damages

■ The Authority has ordered the Norwegian Financial Service Association (FNH) to let all qualified engineer assessors get access to its computer system for valuation of car damages. Prior to the order, only a few selected engineer assessors had complete access to the system. This, in the Authority's opinion, served to restrict competition (24.07.).

TV2's acquisition of shares in the radio channel Kanal4 was approved



■ The Authority decided not to examine TV2's acquisition of shares in Kanal4 any further, since neither company had any significant ownership interest in other radio channels (05.09.).

Free delivery and sale of cod



■ The Authority wants to liberalise the sale of freshly caught cod and does not favour the

present system of mandatory delivery from licensed trawlers to designated buyers. The system of forced delivery is liable to distort competition between purchasing companies. In its expert opinion, the Authority argued that a liberalised cod trade would lead to the most efficient allocation of the raw material (07.08.).

Read more about these and other cases on our website:

www.konkurransetilsynet.no



International cooperation

The Norwegian Competition Authority's (NCA) is actively involved in international cooperation, more so than ever in 2003. Cases related to the European Economic Area (EEA) are, as before, a top priority, but cooperation through the OECD and within the Nordic countries is also important.

It is essential that the Authority, representing a small country outside the increasingly larger European Union, establish and maintain international contacts. This is achieved through the many networks in which the NCA participates.

THE EEA AGREEMENT

The NCA emphasizes cooperation with the EFTA Surveillance Authority and with the European Commission, with a view, in particular, to strengthen and improve the enforcement of EEA competition law. During the recent years the European Commission has undertaken a substantial revision of the competition rules. This new legislation will enter into force concurrently with the extension of the European Union in May 2004. The NCA assists the Ministry of Labour and Government Administration

in incorporating the rules into the EEA agreement and into Norwegian law. The aim is simultaneous entry into force in Norway and the European Union.

From 1 May 2004, there will be considerable changes in the procedures regarding enforcement of the prohibitions against anti-competitive collaboration and abuse of dominant position in the European Union. The aim is to strengthen and simplify the enforcement of the competition

« **The NCA assists the Ministry of Labour and Government Administration in incorporating the rules into the EEA agreement and into Norwegian law.**

rules. The notification system will be put an end to, and enforcement will be decentralized to national competition authorities and courts. The undertakings will themselves be responsible for ensuring that they do not infringe the prohibitions. For the future they will have to decide themselves whether their agreements fulfil the conditions for exemptions. The possibility to apply for exemption from the prohibitions will no longer exist.

The revised enforcement rules will imply that the notification procedure will be abolished in the EFTA pillar. It has been difficult to find a good solution regarding decentralized enforcement. The Commission did not want to include the EFTA/EEA States in the European Union's network for cooperation regarding enforcement. On account of this, there will be certain differences in the systems of enforcement between the



ted during the spring of 2004. The NCA has taken part, on behalf of Norway, in the revision of the EU rules in various other areas, since these rules will be implemented even in the EEA States. This applies, inter alia, to the new legislation on electronic communication and the revision of the block exemptions covering insurance agreements, technology agreements, and maritime transport.

In order to protect Norwegian interests, the NCA has involved itself in the Commission's case handling, especially in merger and cartel cases. This involvement has been given high priority, so as to increase the Authority's competence in EU/EEA law. The NCA participates actively in the European Competition Authorities (ECA) network, formed by the directors general of the EEA competition authorities. The Authority has been strongly involved in the ECA Air Traffic Working Group on competition in civil aviation. In September 2003, the NCA hosted a meeting of the EEA directors general, including the ten new member states. Important topics of discussion were competition in civil aviation and in the health sector. The joint Nordic report on the market for electric power was presented.

NORDIC COOPERATION

The Nordic competition authorities meet regularly and cooperate closely on competition policy, analyses, and enforcement. Joint studies turn the differences in competence and experience into an asset. This cooperation contributes to a more efficient enforcement in the Nordic countries and gives the Nordic countries a stronger say in international fora. In 2003, Sweden joined the Nordic cooperation agreement, which allows for the exchange of confidential information between the competition authorities of the respective countries. Norway, Denmark and Iceland signed this agreement in 2001.

In 2003, joint Nordic reports on competition in the market for electrical power and on merger remedies were finalized.

INTERNATIONAL COMPETITION NETWORK (ICN)

ICN was established to provide a forum for discussion of competition policy to authorities and independent experts in developed and developing countries alike. The NCA participates in this network. The cooperation aims to make institutions, legislation, and enforcement more efficient. As of 1 January 2004, the competition authorities of 84 countries were participating in the network. Topics of discussion during the last year have been merger control, advoca-

cy and capacity building. Guidelines have been published in these areas. The Norwegian competition authorities have adjusted to these guidelines.

THE ORGANIZATION OF ECONOMIC COOPERATION AND DEVELOPMENT (OECD)

The competition authorities of OECD's 30 member countries meet three times annually in the OECD Competition Committee. The objectives of the meetings are to exchange experiences on enforcement, development and promotion of competition policy. This work also results in recommendations on how to fight illegal cartels and on procedures for merger control. Important topics in 2003 were the interaction between consumer and competition policy, deregulation in order to enhance competition, and the organization of public entities' commercial activities.

In 2003, the NCA made several (written and oral) contributions during the meetings of the Competition Committee, covering topics such as remedies in merger control, financing and public procurement of non-commercial services in deregulated markets, prosecution of individuals in cartel cases, and the relationship between consumer and competition policy.

Another important task for the OECD is to propose multilateral competition rules that may become part of the WTO Agreement. After the collapse of the WTO negotiations in Cancún, Mexico, the OECD works to present proposals that may contribute bringing the negotiations back on track. Through the Global Forum on Competition, the OECD member states help develop competition policy in economically less developed countries.

Regulatory reforms are changes that aim to improve the competition and the performance of markets. The Competition Committee finalized in 2003 a broad evaluation of Norwegian competition policy. The OECD recommended an amendment to the present Competition Act, compatible with the Government's own proposal, and advised the Government to continue reforming the Norwegian economy and civil administration with undiminished strength.

The OECD evaluates the performance of the Norwegian economy annually. These evaluations are presented to the OECD's Committee of Economic Development and Regulatory Reforms. One of the conclusions of the 2003 evaluation was that the competition policy had been substantially strengthened over the last few years.



Vera Holst Eckbo, international coordinator

European Union and the EFTA pillar. The system for cooperation in fighting cartels and abuse of dominant position in cases where the trade in the EEA is affected, will become less effi-

cient. The EFTA countries, the EFTA Surveillance Authority and the Commission foresee finding a solution to this problem during the spring of 2004.

The Competitiveness Council of the European Union agreed by the end of 2003 on the principles of a new Council Regulation regarding merger control. The work to incorporate this regulation into the EEA Agreement is expected to be comple-

– We shall enforce the act and enhance competition

The aim of the Norwegian Competition Act is “to achieve efficient utilization of society’s resources by providing the necessary conditions for effective competition”. When competition is effective, the price of a product becomes equal to its marginal cost and to the consumers’ marginal willingness to pay.

In competitive markets, the resource allocation is geared towards satisfaction of consumer demand, implying no waste of resources. Hence, competition contributes to the largest possible value added to society, for the benefit of consumers, taxpayers, and suppliers.

THE INSTRUMENTS OF THE NORWEGIAN COMPETITION AUTHORITY

The main task of the Norwegian Competition Authority (NCA) is to enforce the Competition Act. One priority is to uncover price cartels, bid rigging, and market sharing. The Authority sometimes reports cartels to the police’s economic crime department for prosecution. In other cases, the parties may apply for exemptions from the prohibitions.

The NCA may intervene against legal market behaviour with an anti-competitive effect and e. g. issue a prohibition. The same applies to mergers and acquisitions, which are sometimes allowed subject to conditions.

« The main task of the Norwegian Competition Authority (NCA) is to enforce the Competition Act.

The NCA may implement measures to increase the markets’ transparency, such as general information initiatives, price surveys, and price labelling directives.

While these instruments are targeted at market players, the NCA may also, on its own initiative, call attention to public regulations that result in competitive restrictions. Such advocacy initiatives are typically aimed at facilitating market entry or otherwise enhancing competition.



Public relations, advocacy, and information

In the recent years, the Norwegian Competition Authority has intensified its activities within public relations, advocacy, and information. These efforts appear successful.

THE GOVERNMENT'S ACTION PLAN FOR ENHANCED COMPETITION

Through its action plan for enhanced competition, the Government has expressed its intention to improve the resource allocation. The focus is aimed at the public sector. The NCA has actively followed up the five main elements of the action plan, which are:

- To strengthen the competition authorities.
- To review public regulations and measures that may restrict competition.
- To ensure that public procurement enhances competition and facilitates market access.
- To ensure that privatisation of public enterprises does not restrict competition or create monopolies.
- To ensure that the public sector is organised and run in a manner promoting competition.

On assignment from the Ministry of Labour and Government Administration, the NCA has made a survey of public regulations and measures that may restrict competi-

« **The Government has expressed its intention to improve the resource allocation. Special focus is put on the public sector.**

tion. Being based on information from market players, the Ministries, and a selection of municipalities, the survey contains 650 cases in point. Entry regulations, distortionary taxes, and unfair competition between private and public entities are the most frequent subjects addressed.

Based on this survey, the NCA has issued recommendations to the Ministry of Labour and Government Administration on the more fruitful areas for further consideration. These include the markets for public service pensions, annuities, and elevator safety control. Also, it was proposed to review the Planning and Building Act, the restaurant regulations, and the agricultural and dairy regulations.

In 2003 media interest in the Authority's activities was larger than ever. In general, the Authority was portrayed from a quite positive angle. There is now a rather common understanding among the main target groups – members of the business community and the consumers – of the need for an active competition policy. The Authority enjoys a good reputation.

Our heavy focus on consumer interests has proved to be a rewarding strategy. When consumers are well informed, they can make rational decisions regarding price and quality. In so doing, they actively contribute to promote increased competition and hence more efficient resource utilization, in accordance with the purpose of the Competition Act.

FOCUS FROM THE MEDIA

The Norwegian Competition Authority actively disseminates information about cases of current interest as part of its advocacy role. These initiatives attract considerable attention from newspapers, trade magazines, websites, radio, and television.

The Dnb NOR banking merger and several cases in the pharmaceutical market, including a large-scale dawn raid, were among the top media events in 2003. The Government's decision to relocate the Norwegian Competition Authority to Bergen likewise received extensive media coverage.

NEWSLETTER WITH BROAD COVERAGE OF CARTELS

Konkurransenytt, the Authority's newsletter, has now been published for more than three years. Eight new issues were published in 2003. The newsletter reports on current and important cases from the Norwegian Competition Authority. It aims to be a reliable and easily accessible gateway to the subject of competition.

One of newsletter's objectives is to show the scope of work of the competi-



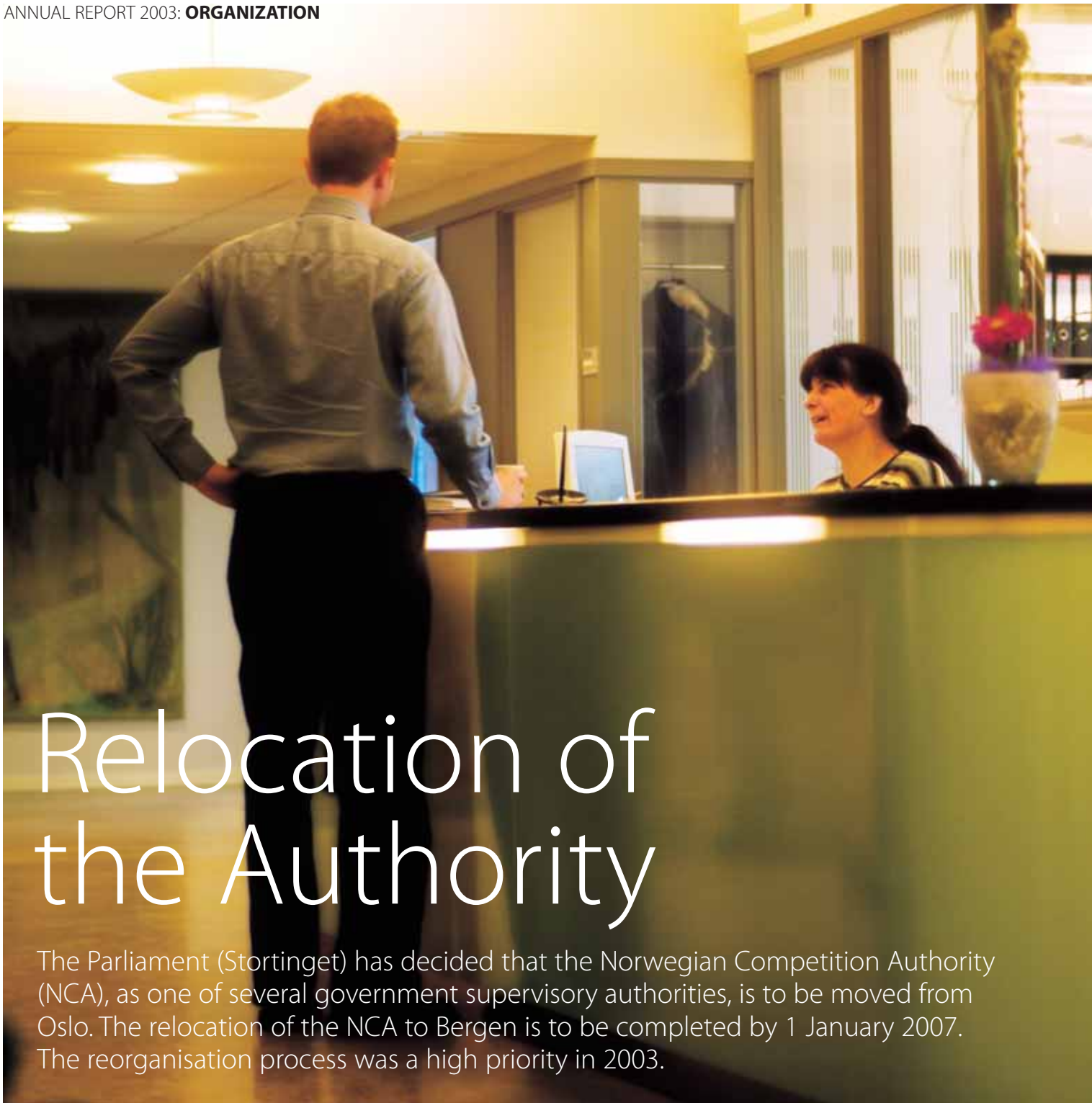
tion authorities, by focusing on various local, national and international markets for goods and services. Thus, the cases described range from cartels, anti-competitive behaviour and mergers to measures to stimulate competition, such as consumer awareness programmes and expert opinions advocating the abolition of public regulations that restrict competition.

In 2003, our newsletter contained a number of articles on cartels, reporting on current cases and legislation in the European Union, USA, and other countries.

The newsletter is free of charge and is printed in 3000 copies. It is distributed to subscribers within public administration, law firms, industry, mass media, and others. The response suggests that Konkurransenytt does attract attention and arouse interest.

POSITIVE ASSESSMENT OF THE WEB SITE

The Norwegian Competition Authority's web site was ranked first in an evaluation of the web sites among 494 public bodies. The web site was also nominated for distinction in certain other contests. Visits to our web site reached 850 000 in 2003, a doubling compared to the previous year.



Relocation of the Authority

The Parliament (Stortinget) has decided that the Norwegian Competition Authority (NCA), as one of several government supervisory authorities, is to be moved from Oslo. The relocation of the NCA to Bergen is to be completed by 1 January 2007. The reorganisation process was a high priority in 2003.

It is the Parliament's supposition that the relocation process be carried out in such a manner that:

- the Norwegian Competition Authority operates efficiently during the relocation period,
- as many employees as possible follow the Authority to Bergen, while no one ends up in unemployment,
- a new, efficient organization is built up systematically.

In order to achieve these aims, the NCA took a number of steps to prepare for the relocation. Also, it has been equally important to preserve an attractive working envi-

ronment in the Oslo office, so as to maintain productivity at the present, high level throughout the relocation period. Strong emphasis has therefore been put on measures to keep key personnel from leaving.

RELOCATION AND REORGANIZATION PLANS

By the spring/summer of 2004 the NCA will be partly established in Bergen. As a first step, a new Market Monitoring Department will be set up. The core of the new department will consist of people transferred from Oslo. The process of external recruitment has been initiated, and the management team of the new department is supposed

to be in place before summer. Further recruitment will be done gradually.

We expect that the process to obtain appropriate office space in Bergen will be completed in the spring of 2004. Provisional solutions are needed from this summer, while the permanent offices should be in place by the summer of 2006.

The NCA emphasises efficient cooperation between the units in Oslo and Bergen. The need for organizational adjustments is continuously being reviewed. The Authority is using – and will develop further – modern electronic administrative and communication systems, so as to simplify and improve interaction and cooperation. The

systems will facilitate the introduction of more flexible modes of operation e.g. during travelling, from home offices or through teleconferences etc. This is necessary for an orderly and successful relocation process.

The NCA emphasises flexible and efficient utilization of the competence and the resources of each employee. The tasks being varied, we frequently establish cross-departmental projects in order to solve them. Quality assurance is another priority.

STAFF AND WORKING ENVIRONMENT

As of the end of 2003, the NCA had 121 employees of whom 47 per cent were women and 53 per cent men. The proportion of women in leading positions was 38 per cent. The estimated turnover of employees was 16 per cent.

In 2002, the Authority entered into an agreement with the National Insurance Service in order to reduce the incidence of absence due to illness, which in 2003 was 4.7 per cent. This was a one percentage point reduction from 2002, and below the 5 per cent target level specified in the agreement.

INITIATIVES IN RELATION TO THE EMPLOYEES

The relocation will represent a major challenge to the management as well as to the employees. So far, only a small proportion of the employees have accepted to follow the NCA to Bergen. It is therefore crucial to uphold the competence and capacity of the NCA in Oslo, while at the same time building up a new organization in Bergen.

In January 2004, the management presented its incentive package to the employees. At the core of the package are various incentives for continued education and training. Each and every employee has been offered some programme aimed at increasing his or her skills. These measures are meant to enhance the competence of all employees, including the ones that will not relocate to Bergen and, for that reason, will need alternative employment in the Oslo area within some time.

Several of the Authority's executives participated in external management programmes during 2003. The Authority will maintain its emphasis on this subject throughout the relocation project.



The Authority will maintain its emphasis on enhancing the employees' competence.

« **The NCA emphasises flexible and efficient utilization of the competence and the resources of each employee. The tasks being varied, we frequently establish cross-departmental projects in order to solve them.**

MODERNISATION AND IMPROVED EFFICIENCY

The management of the NCA works consistently to modernise the organisation and to improve its efficiency. The objective is to improve our service and accessibility, while at the same time reducing the cost of case handling.

The optimal use of modern information technology is crucial. As a part of the relocation project, we will make use of technology

that improves the case handlers' access to information, while also allowing for a more flexible utilization of resources between the Oslo and Bergen offices.

An important part of this project is to develop the public user interface. In connection with the entry into force of the new Competition Act, electronic services will be provided, so that, e. g., a merger or acquisition can be notified to the NCA by means of electronic forms.

Organization

The Norwegian Competition Authority is organized in four departments and an Executive Staff. The Authority emphasises the organization 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.
- Competence building within 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, including:

- Intervention against anti-competitive practices.
- Intervention against mergers and share acquisitions.
- Exemptions from prohibitions.
- Advocacy and expert opinions.

MARKET MONITORING DEPARTMENT I

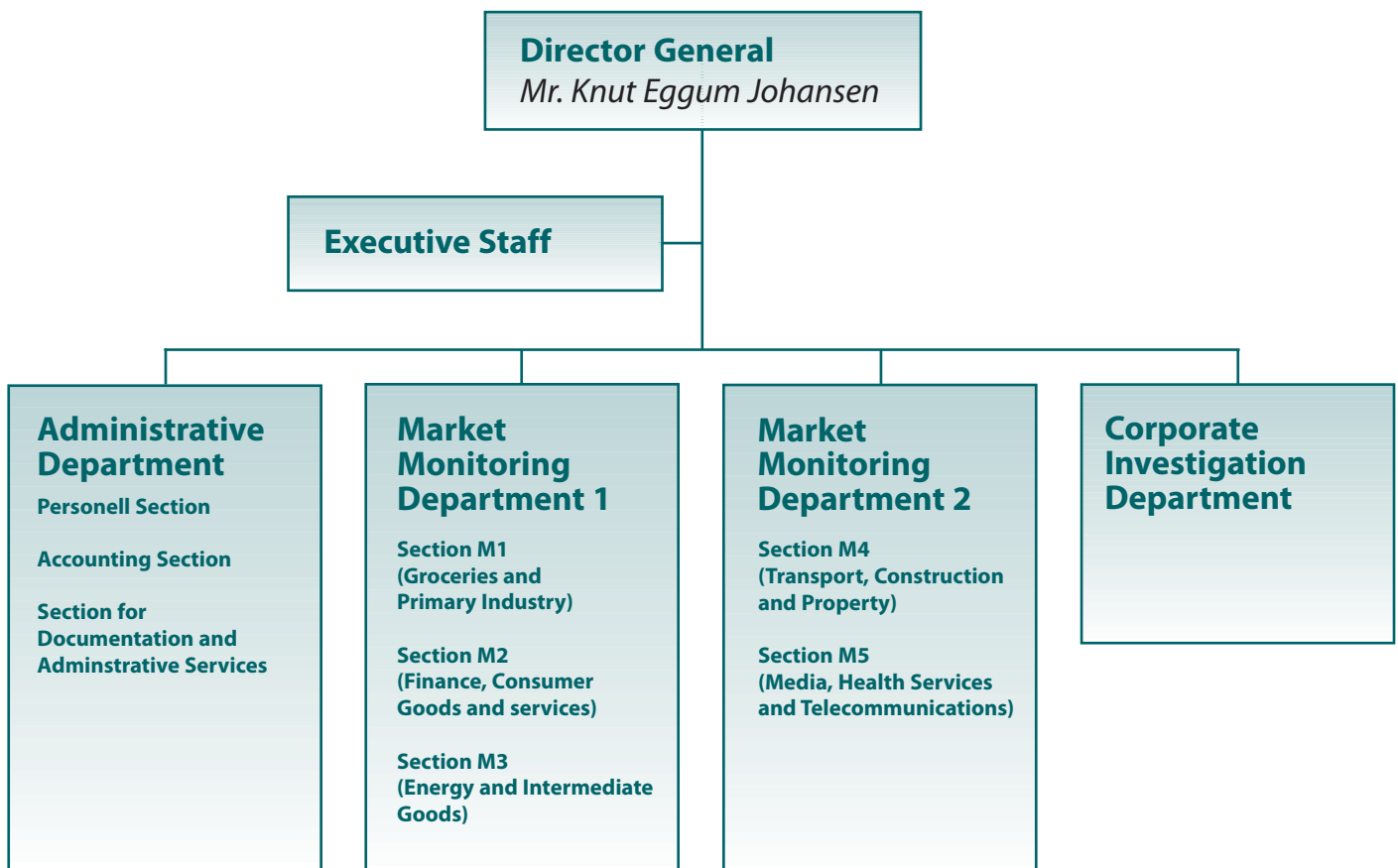
- Section M1: Groceries and Primary Industry.
- Section M2: Finance, Consumer Goods and Services.
- Section M3: Energy and Intermediate Goods.

MARKET MONITORING DEPARTMENT II

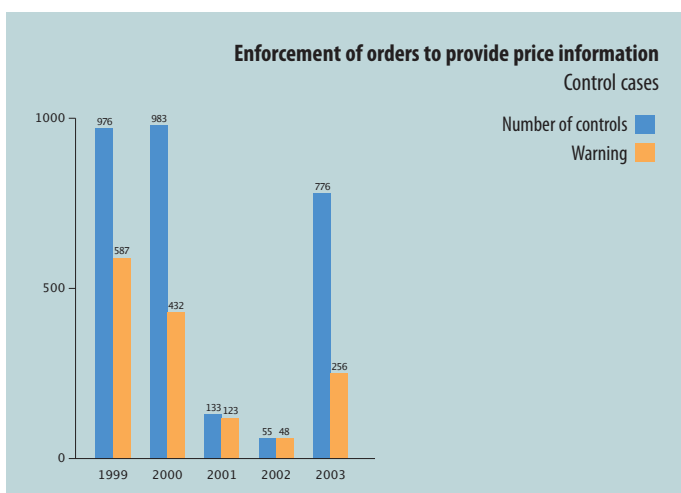
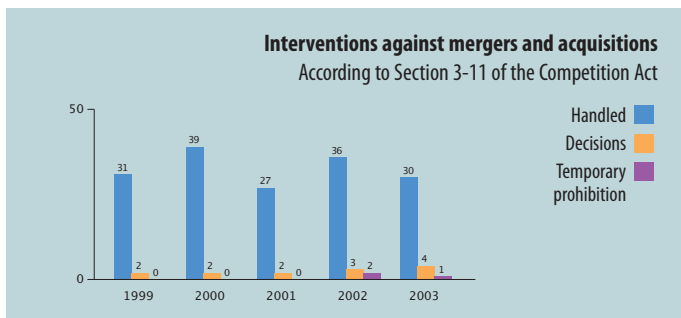
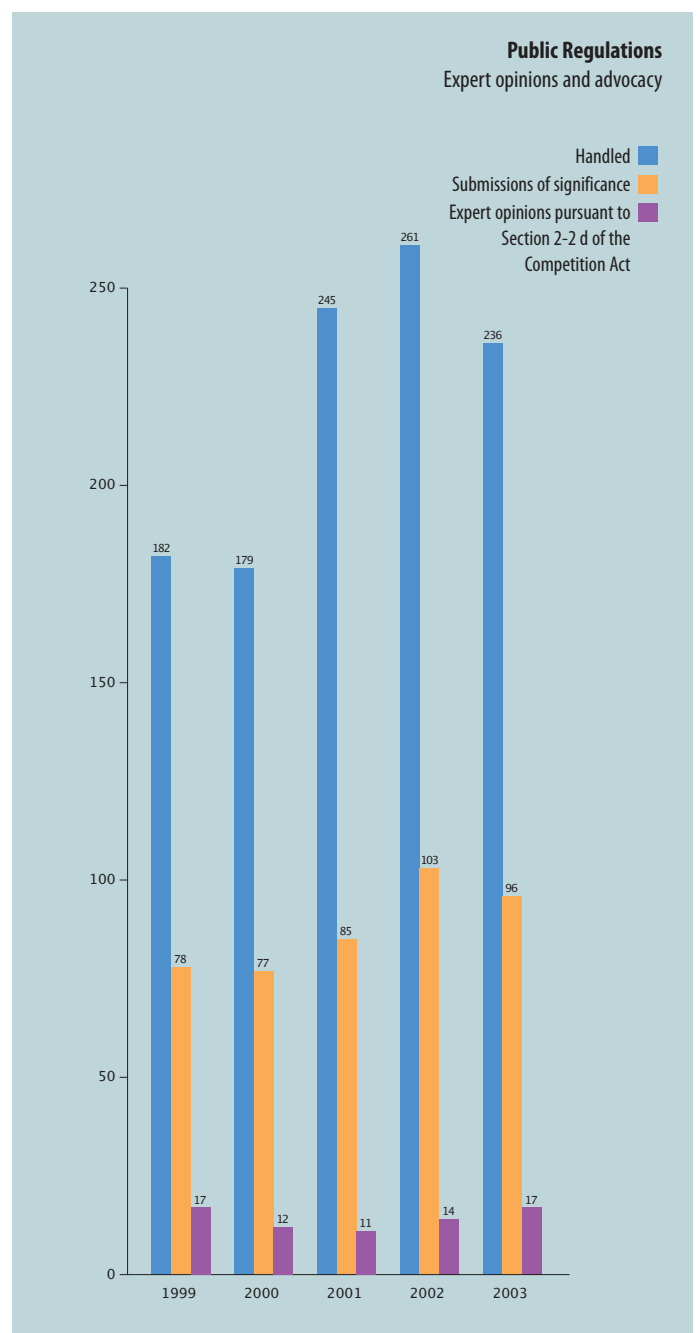
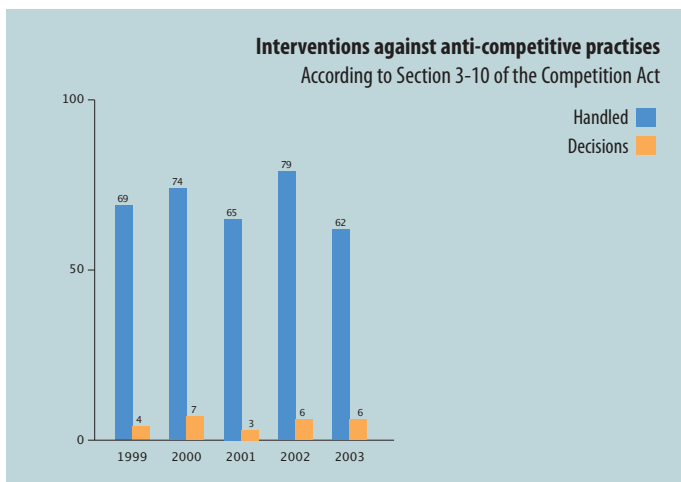
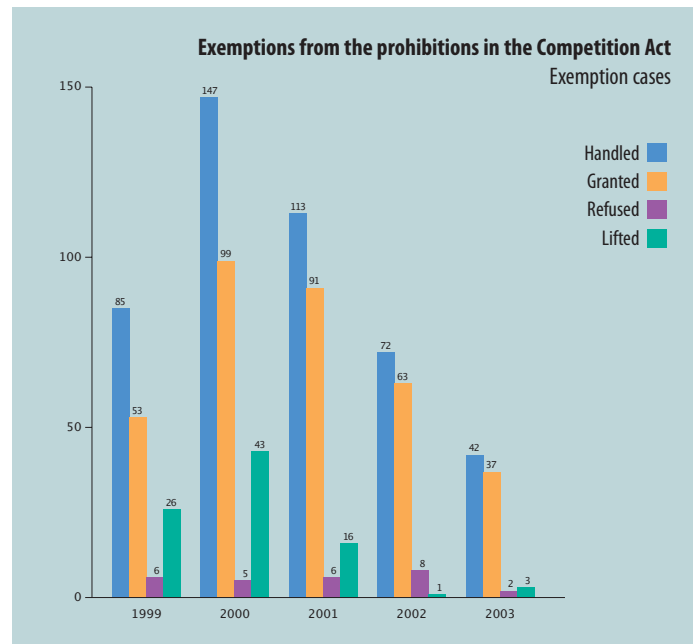
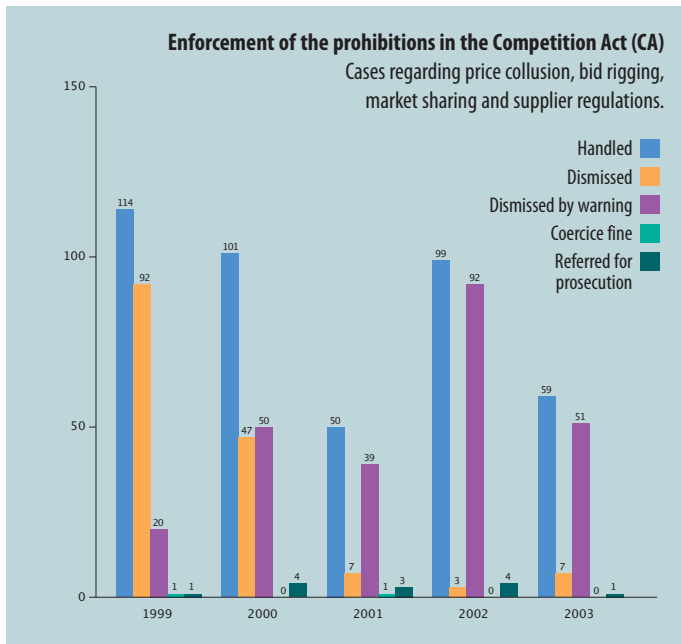
- Section M4: Transport, Construction and Property.
- Section M5: Media, Telecommunications, and Health Services.

CORPORATE INVESTIGATION DEPARTMENT

- Principal responsibility for investigative activities.
- Planning and execution of investigations, including dawn raids and depositions.



The statistics contain a survey of the number of cases handled by the Norwegian Competition Authority in the years 1999-2003





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