

**NORWAY**

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## EXECUTIVE SUMMARY

**The conclusion of the OECD's country review for Norway, published in autumn 2002, was that «Competition Policy is Strengthened». The OECD review was referring to the successful reorganisation of the Authority, and to cases the Authority handled in 2002.**

1. Intervention against the loyalty programmes of the airline Scandinavian Airline Systems and the mobile telephone operator Telenor Mobile were two of the most important cases regarding anti-competitive practises. With regards to merger and acquisitions, the most important interventions were against the state owned energy company Statkraft and the dairy concern Tine.

2. The NCA investigated a number of cartel cases, and uncovered four new cases of illegal collaboration. Two of these cases were reported to the National Authority for Investigation and Prosecution of Economic and Environmental Crime, while the Authority still is investigating the other two cases by the end of the year.

3. The NCA pointed out a series of anti-competitive practises regarding the public sector in 2002. In addition the NCA has recorded more than 600 cases identified by the private sector, the ministries and the NCA itself.

4. International competition cases and policy were followed up through international organizations, and bilateral co-operation. Work on matters regarding the European Economic Area demanded considerable effort. This was particularly the case as regards the process of preparing to implement and enact the EU's modernisation reforms in the European EA Agreement and in Norwegian law. A key element in that respect was the negotiations with the European Commission on decentralised enforcement of competition rules in the EEA Agreement.

5. The Nordic Task Force on Airline Competition published its report in June 2002. The report is now providing the basis for further studies by a European group.

6. 2002 was a year of consolidation and stabilisation of the NCA's organisation, and production increased. Turnover was reduced, and several professionals recruited. A survey revealed that the NCA is perceived as honest, neutral and highly knowledgeable.

### **I. Legislation and strengthening of Competition Policy**

#### ***1.1 Strengthening of Competition Policy***

7. The Government launched in 2001 a five-point action plan to strengthen the competition policy where the main elements were:

- 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

8. The OECD's country review of Norway concluded that the Competition Policy is strengthened. The review was referring to the successful reorganisation, which took place in 2001, when the Norwegian Competition Authority's regional apparatus was phased out and operations concentrated at the head office in Oslo. Staffing levels were reduced by a third in 2001, while at the same time production in core areas increased. The Authority's intervention against Statkraft's acquisition of the power companies Agder Energi and Trondheim Energiverk, and the measures taken to strengthen competition in domestic air traffic, were emphasised as particularly positive in the OECD review.

9. The NCA began in 2002 to record public regulations that may restrict competition. The private sector, ministries and the NCA itself have so far identified more than 600 cases that are recorded in a database. Regulations related to barriers to entry, direct and indirect taxes and competition between private companies and public entities are identified to be the most important restriction.

### ***I.2 Revision of the Competition Act***

10. In November 2000, the Government appointed the Competition Law Reform Commission, to review Norwegian competition legislation and present proposals for new competition regulation. The Commission presented its initial recommendations to the Ministry of Labour and Government Administration in July 2001.

11. The work of drafting the new Competition Act involved the NCA in extensive secretariat duties. The Committee submitted its proposal in the Green Paper "New Competition Act", 9 April 2003.

## **II. Enforcement of competition law and policies**

12. This section deals with the issues of illegal collusion, exemptions from the prohibitions in the Competition Act, other anti-competitive activities and acquisition of enterprises.

### ***II.1 Illegal collusion***

**Sections 3-1 to 3-4** in the Competition Act contain explicit prohibitions against

- Collaboration and influence on *prices, mark-ups and discounts*.
- Collaboration and influence on *tenders*.
- Collaboration on, or use of influence to achieve, *market sharing*.
- *Associated undertakings* determining or encouraging these competition restraints.

13. In 2002, the NCA dealt with 99 cases relating to the prohibition of collaboration and influence on prices, mark-ups and discounts, and on supplier regulations. Four cases were reported as crimes, while enforcing the provisions concluded 92 cases.

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Verification and enforcement cases	1998	1999	2000	2001	2002
Handled	214	114	101	50	99
Dropped	97	92	47	7	3
Enforced	114	20	50	39	92
Compulsory fine	0	1	0	1	0
Reported as crimes	3	1	4	3	4

14. The NCA carries out investigations of individual companies, to make sure that the business community complies with the prohibition provisions of the Competition Act or with resolutions made in accordance with the Act.

15. The court of examination and summary jurisdiction is the authority that permits the NCA to secure evidence. Cases that are investigated and assessed are often complex and time consuming.

16. In 2002, evidence was secured at asphalt contractors, producers of flour for human consumption, building and construction contractors and a chemical industrial plant. The NCA reported the asphalt contractors and flour producers to National Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim), while the other two cases were still under investigation by the Authority at year-end.

17. A Norwegian court fined Aanø Elegante AS, a manufacturer of furniture, and Bohus AS, a furniture retail company, for price collusion. The fine was set to about 100 000 USD (750 000 NOK) for each company.

### *Cases*

#### Three hotels and the Hotell-gruppen chain in Bergen

18. In May, the NCA reported the Bergen hotels Radisson SAS Hotel Norge AS, Radisson SAS Royal Hotel AS and Augustin Hotel AS, as well as Hotell-gruppen, to Økokrim. The alleged offence was illegal collaboration with intent to raise the prices of hotel services in Bergen and the exchange of price and capacity information in that connection. The collaboration began in 1995 and lasted until the Authority carried out a control in spring 2000.

#### Asphalt contractors

19. In July, the NCA reported Skanska Asfalt AS, Lemminkäinen Norge AS, Kolo Veidekke AS and Oslo Vei AS to Økokrim for infringement of the prohibition on price collaboration, collusive tendering and market sharing. In addition, NCC Norge AS was reported for infringement of the market sharing prohibition.

20. The collaboration comprised price-fixing on stone mastic asphalt, collusive tendering/project collaboration in eastern Norway, and market sharing/customer division on a nationwide basis during the period from 1997 to 2001.

#### Flour producers

21. In September, the NCA reported Cerealia AS and Norgesmøllene DA to Økokrim for price collaboration. Two persons were also reported. The collaboration between the only two producers of flour

concerned a warning of a price increase in the autumn of 2001 and a price increase carried out after the turn of the year 2001/2002.

Transport companies

22. In November, the NCA reported the carriers Linjegods AS, NOR Cargo ASA, DFDS Tollpost Globe AS and Danzas ASG Eurocargo AS to Økokrim for collaborating on a specific tender for transport services made to a retail groceries supplier in spring 2001. The collaboration involved the introduction of a “pallet charge” for pallet trips.

## II.2 Exemptions from the prohibitions

Section 3-9 of the Competition Act empowers the NCA to grant exemptions, subject to certain conditions, for agreements that conflict with the provisions of the Act that relate to prohibitions. The conditions that must be met for dispensation to be granted are that competition in the respective market is strengthened, that the efficiency gains made offset any effects that restrict competition, and that the competition regulations are of little significance on competition or that specific factors have to be taken into account.

23. In 2002, the NCA assessed a total of 72 requests for exemptions. In 63 cases, an exemption was granted for the whole, or parts of, the planned collaboration. Eight requests for exemptions were rejected, while one exemption was rescinded. Exemption is seldom granted for sector-wide collaboration on prices, mark-ups or discounts, whether local or nationwide.

Exemption cases	1998	1999	2000	2001	2002
Handled	131	85	147	113	72
Granted	70	53	99	91	63
Rejected	1	6	5	6	8
Dropped / Rescinded	60	26	43	16	1

24. The tables below show the prohibition provisions that the NCA granted exemption from, and the legal basis for these exemptions. In some cases, more than one legal foundation can be applied, and exemption from more than one provision may be granted at the same time.

Provisions from which exemption was granted	2000	2001	2002
Section 3-1, Subsection 1, price collaboration	87	78	49
Section 3-1, Subsection 2, vertical price influence	9	13	14
Section 3-2, collaboration on tenders	28	17	7
Section 3-3, market sharing	29	17	11

Legal basis for the exemption	2000	2001	2002
Section 3-9 a) competition strengthened	32	37	25
Section 3-9 b) efficiency gains	31	26	15
Section 3-9 c) minor significance for competition	39	28	17
Section 3-9 d) special considerations	1	4	9

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### *Exemption granted*

#### Taxi companies

25. The NCA has prepared regulations providing exemptions from the Competition Act for taxi dispatching centrals. The new regulations bring together current practice in one set of rules, and provide general exemption for dispatching centrals to fix a common scale of fares.

26. The regulations came into force on 1 November 2002. They do not apply where there is collaboration on prices or tendering between dispatching centrals or collaboration between licence-holders participating in different dispatching centrals. If dispatching centrals wish to enter into collaboration that includes joint price setting, special exemption from the prohibitions in the Competition Act must be sought.

27. In May 2000, the maximum price regulation system was abolished in areas with two or more dispatching centrals and where conditions for competition were favourable.

#### Choice Hotels Scandinavia ASA

28. The hotels in the chain Choice Hotels Scandinavia ASA were granted exemption, from the price collaboration prohibition in the Competition Act, to collaborate on prices and discounts as part of the system product Nordic Hotel Pass. With a Nordic Hotel Pass, customers can stay at reduced rates when on holiday.

29. In December 2001, a total of 143 hotels were affiliated to Choice Hotels Scandinavia. Of the 143 hotels, 72 are in Norway, where 29 of these are affiliated to Choice Hotels Scandinavia through franchise agreements. Choice Hotels Scandinavia has the rights to market hotels in Scandinavia under the brand names Comfort, Quality and Clarion.

#### Coordination of advertising sales

30. The NCA granted the Norwegian Media Businesses' Association (NMBA) exemption from the Competition Act to coordinate advertising sales, and to publish the Newspaper Catalogue. The Authority believes coordination of advertising sales will help achieve efficiency gains that more than compensate for the loss of competition, while the Newspaper Catalogue boosts competition in the newspaper advertising market.

31. Coordination of advertising sales is collaboration between one or more newspapers to sell advertising. By coordinating advertising sales, the newspapers are able to sell advertising to a larger market than they could do individually. The NCA took the view that coordinating advertising sales helped reduce the cost of advertising, and boosted competition between newspapers and other advertising channels.

32. The NCA also granted the NMBA exemption from the Competition Act to publish the Newspaper Catalogue. The Newspaper Catalogue provides an overview of advertisement prices and other information connected with advertising, and is published on paper and on the Internet. The Authority believes that the Catalogue increase competition between newspapers, and between newspapers and other advertising media.

Extended exemption for film rental agreements

33. In April 2002, the NCA extended a temporary exemption from the Competition Act for film rental agreements. The film rental agreements regulate film rentals between the Norwegian Association of Film Distributors and Film&Kino, an association mainly of municipal cinemas.

34. A cinema operating in Oslo (Oslo Kinematografer) lodged a complaint, regarding the film rental agreements, with the EFTA Surveillance Authority for infringement of Article 53 of the EEA Agreement. The EEA Agreement's competition rules for enterprises and the provisions of the Norwegian Competition Act can be employed in parallel on certain cases. Following a request from the EFTA Surveillance Authority the NCA judged it most expedient to postpone considering the matter, pending the decision of the EFTA Surveillance Authority.

***Rejected Exemption Applications***

*Taxi collaboration refused*

35. The NCA refused the application for exemption made by Taxi Transport Service AS (TTS) in the Sogn and Fjordane County. TTS wanted to negotiate on prices and tenders on behalf of the taxi trade in Sogn and Fjordane, with respect to transportation paid for by the public treasury.

36. Since the collaboration in TTS is between taxi-owners affiliated to different dispatching centrals, the collaboration does not fall under the exemption.

37. Østfold Taxitjenester AS also had its application refused, on the same basis. The company had applied for exemption so as to enter into price negotiations on behalf of the taxi trade in Østfold County.

***II.3 Intervention in anti-competitive practices***

38. Interventions in anti-competitive practices 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 Competition Act.

Based on **Section 3-10** of the Competition Act, the NCA may, by means of individual decisions or regulations, intervene to halt conditions, agreements or activities that the Authority considers to have the aim or effect of, or are suitable for the purpose of, restricting competition in conflict with the aim of efficient use of society's resources.

39. In 2002, the NCA assessed 79 cases relating to collaboration that restrict competition, and abuse of market power, as laid down in Section 3-10 of the Competition Act. Six decisions to intervene were made.

<b>Intervention cases carried out in accordance with Section 3-10</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
Cases handled	52	69	74	66	79
Intervention resolutions	4	4	7	4	6

40. In addition to individual decisions, the NCA issued one instruction involving maximum price regulation for taxicabs. The maximum prices were adjusted upwards, due to developments in costs and carriage prices in areas of the country where taxicab companies' prices are not regulated by the NCA.

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### *Cases*

#### Prohibition on earning frequent flyer points on domestic flights

41. The NCA prohibited SAS, Braathens and Widerøe (the SAS Group) from awarding passengers bonus points for domestic flights in Norway. The existing frequent flyer programmes had the effect of binding customers to the companies concerned, making it extremely difficult for other companies to start up business on individual routes.

42. With frequent flyer programmes, customers get the biggest benefits when they concentrate their purchase of air tickets to one company or alliance, thus creating loyalty to one specific alliance. Price, quality, service and other competition factors are then less important. The detrimental effects are particularly great when players with high market share operate loyalty programmes. At the beginning of 2002, the SAS Group had a virtual monopoly in the Norwegian domestic market.

43. The system of accumulating and redeeming bonus points is organised so that it favours companies offering many destinations. Where one company has a large network,

44. customers earn bonus points more quickly, while at the same time a free flight will have greater value for customers if they can choose between several destinations.

45. The NCA's determination was appealed to the Ministry of Labour and Government Administration, which upheld it. The regulation came into force on 1 August 2002.

#### Telenor had to change the Mobilbonus programme

46. Telenor Mobil was ordered to make certain changes in the set-up of its Mobilbonus programme. The Authority considered that, in its original form, the programme was liable to restrict competition.

47. The Mobilbonus programme awarded customers points for using Mobil services. The value of the points could be exchanged for other services from Telenor Mobil. Through the intervention, certain restrictions were imposed on Telenor Mobil with respect to the set-up of the programme.

48. Telenor Mobil was ordered to pay the value of bonus points automatically to customers when they left the bonus programme or closed their Mobil subscription. In addition the NCA prohibited Telenor Mobil from making the financial value of the bonus points dependent on how the bonus points were realised. This was designed to prevent Telenor Mobil from locking customers into the company.

49. Furthermore, the NCA prohibited Telenor Mobil from making the accumulation of bonus points dependent on which network the customer was calling. The Mobilbonus programme could restrict competition by channelling traffic towards Telenor Mobil's Mobil network.

50. It was also prohibited to allow bonus members to use bonus points to buy Mobil phones. If bonus points could be used to buy a Mobil phone, it could heavily influence customers where they choose to take out subscriptions.

51. The Authority's decision came into force on 1 October 2002 and will remain in force for three years. It was not challenged.



An end to exclusive agreements for Mobile subscriptions

52. In October 2002, the NCA prohibited Telenor Mobil from agreeing or demanding sole supplier conditions, when concluding contracts with distributors of Mobil subscriptions. Telenor was also ordered to notify any proposed dealership acquisitions. The purpose of this intervention was to bring about greater competition and lower prices for Mobil phone users.

53. The “exclusive agreements” between Telenor Mobil and Mobil telephony dealerships have precluded dealers from selling products and services for other Mobil phone companies, which compete with Telenor Mobil.

54. The NCA took the view that exclusive agreements restrict competition between Mobil phone companies and are a barrier to entry into the market. The prohibition on these agreements opens up for stronger competition in the Mobil telephony market and gives Telenor Mobil’s competitors access to sufficiently good distribution channels. At the same time, it prevents Telenor Mobil from giving differential treatment to dealerships depending on whether they have concluded or intend to conclude distribution agreements with other companies.

Prohibition on television discount scheme

55. In July 2002, the NCA prohibited TV 2 from giving discounts depending on how large a proportion of its advertising budget a customer spent on advertising with TV 2. It also extended to clauses stipulating that the level of discount depended on the customer not advertising on other TV channels.

56. Previously, some customers had been given an extra discount if they were willing to use their entire television-advertising budget on TV 2. The Authority took the view that discount schemes of this kind could restrict competition in the television market. The scheme led to customers being locked into TV 2 to a greater extent than would otherwise have been the case.

Cattle semen

57. A request to intervene against a clause in the Basic Agreement between GENO and the Norwegian Veterinary Association resulted in the NCA nullifying a clause in an agreement relating to cattle semen.

58. The clause was to the effect that GENO would confiscate the container used to store the semen if a veterinary also distributed semen from other suppliers. This clause and another clause, dealing with the use of semen containers, had an anti-competitive effect because of GENO’s very strong market position.

**II.4 Supervising mergers and acquisitions**

Founded in the provisions of **Section 3-11** of the Competition Act, the NCA has the power to intervene in business acquisitions if it finds that they would lead to, or would strengthen a significant restriction of competition in breach of the intent of the Act relating to the efficient use of the society’s resources. The term “business acquisition” here is intended to include mergers, acquisition of shares or interests, and part-acquisition of a business. Intervention may take the form of issuing prohibitions, giving orders, or granting consents subject to certain conditions. Intervention must be carried out within six months of the acquisition contract having been concluded. Where special grounds so indicate, the Authority may intervene up to one year from the same date.

The acquisition of shares or merger of companies does not involve a notification obligation

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59. pursuant to the Competition Act. However, the Norwegian Competition Authority monitors the markets closely to consider whether acquisitions significantly weaken competition.

60. In 2002, the NCA assessed 36 cases relating to business acquisitions. The NCA intervened in five cases, including two occasions where the Authority issued decisions temporarily prohibiting mergers from being implemented.

<b>Business acquisitions</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
Total cases assessed	46	31	40	27	36
Interventions	2	2	2	2	5

### *Interventions in merger cases*

#### Interventions against two Statkraft acquisitions

61. In March 2002, the NCA prohibited Statkraft from acquiring 45.5 per cent of the shares in Agder Energi. When Statkraft bought Trondheim Energiverk (TEV), its largest competitor in central and northern Norway, Statkraft was ordered to dispose of TEV's production operations or sell off other power production in the area.

62. Emphasis was given to Statkraft's market shares in production and reservoir capacity. Following the acquisition of shares in Agder Energi, Statkraft and its partners in the Statkraft-alliance would have controlled 47 per cent of the total power production, and 52 per cent of the reservoir capacity in southern Norway. After acquiring Trondheim Energiverk, Statkraft would have controlled 54 per cent of total power production, and 58 per cent of reservoir capacity in central and northern Norway.

63. The NCA's intervention against Statkraft's acquisitions of Agder Energi and Trondheim Energiverk were both appealed to the Ministry of Labour and Government Administration. The Ministry gave Statkraft permission to implement the purchase of Agder Energi, albeit subject to stringent conditions. Statkraft is required to sell its 20 per cent stake in Norway's second largest power producer, E-CO Vannkraft AS. The 49 per cent stake in Hedmark Energi AS must also be sold to an independent third party. This should make market entry possible for one or more significant companies capable of competing with Statkraft in southern Norway.

64. In February 2003, the Ministry decided to uphold the NCA's intervention in the case of Trondheim Energiverk. Statkraft was, however, given a long deadline to sell the production operations in central and northern Norway.

#### Conditions for dairy-merger

65. In October 2002, the NCA intervened against the merger between Tine Norske Meierier BA and the ten Tine dairies. Permission was given to carry through the merger provided that Tine fulfilled a number of specific conditions, aimed at remedying the anti-competitive effects of the merger.

66. The NCA feared that a merger without conditions would lead to less pressure to improve efficiency, a narrower choice of products, and higher prices for Tine's customers and for consumers. Had the merger simply gone ahead, it would have given Tine even tighter control over the «raw» milk resource and would have made it even more difficult for other players to set up as real competitors to Tine. The merger would also have led to a further weakening of competition in the primary product and processing stages of the chain.

67. Prior to the merger, there was a certain amount of competition between the ten dairy companies in the Tine cooperative, not least potential competition.

68. In order to remedy the anti-competitive effects of the merger, Tine was required to fulfil a number of conditions:

- Sell or divest two of its dairy facilities: one in eastern Norway and one in central Norway.
- Supply the milk wanted by other producers of dairy products.
- Amend its articles of association, enabling milk producers to leave the cooperative faster.

69. The conditions imposed also oblige Tine to notify the NCA of all future sales and closures of dairy facilities. All production facilities scheduled for closure must be made publicly available for sale, and Tine's competitors must not be discriminated against in the sales process. Finally, Tine is prohibited from setting up anti-competitive clauses preventing future owners from continuing to run a dairy business in the facilities sold.

70. Tine did not appeal the decision. It remains valid for another five years, and the NCA will monitor the situation closely to ensure that Tine complies with the conditions.

*Temporary prohibitions in two merger cases*

*Aker Maritime and Kværner*

71. The NCA considered that the merger between Aker Maritime and Kværner's oil and gas divisions would not confer increased market power on the new company, and did not intervene against the merger.

72. In considering the merger, the Authority emphasised that the customers in these markets are large oil companies with a strong bargaining position. There is also over-capacity in the market for construction of oil and gas installations, which will counteract any exploitation of market power. It is also possible for other companies or alliances to become established in the markets concerned. The markets affected by the merger comprise new oil and gas installations, and maintenance and modifications in the oil and gas sector.

73. The NCA imposed a temporary ban on integration measures while it was considering the merger. It was the first time this provision was employed. In imposing such a ban, there must be reasonable grounds for assuming that the acquisition will materially restrict competition. The Authority must also consider the measure necessary in order to issue a subsequent determination for intervention under the Competition Act.

*Ferry companies*

74. In November, the NCA issued a determination temporarily prohibiting coordination of the ferry companies Color Group ASA and BNR/Fjord Line. This meant that Color Group was unable to exercise its rights of ownership in BNR/Fjord Line.

75. Color Group appealed the determination to the Ministry of Labour and Government Administration, but the Ministry upheld it. At the beginning of December, Color Group sold all its shares in BNR.

76. The NCA considered that integration of the two companies' operations should not take place until the Authority had made a final decision on the acquisition. In the Authority's opinion, there were

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reasonable grounds for assuming that the integration of the companies would weaken the competition for passenger and goods transport from western and southern Norway to the Continent.

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

77. Public initiatives can have negative consequences on competition. The NCA 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.

In accordance with **Section 2-2 d)** of the Competition Act, the NCA is to call attention to the restraining effects on competition, where appropriate by submitting proposals aimed at increasing competition and facilitating entry for new competitors.

In order to do this, the NCA has to issue submissions and specify those factors that restrict competition.

78. The Norwegian Competition Authority handled 261 hearing cases during 2002. The Authority had significant remarks to make in 103 cases. The Authority pointed out the unfortunate effects of public regulations to other government bodies on different levels on its own initiative in 14 cases.

Hearing cases and cases according to the Competition Act, Section 2-2- d)	1998	1999	2000	2001	2002
Handled	159	182	179	245	261
Submissions	60	78	77	85	103
Cases, section 2-2 d)	51	17	12	11	14

#### *Abstracts from hearing letters*

##### VAT on ground services

79. The Norwegian Competition Authority believes that all airlines should face a level playing field when it comes to purchasing ground services. Today, companies buying these services externally must pay 24 per cent VAT, while companies producing the services within their own group are not subject to VAT.

80. This problem arose when the rules on VAT were amended on 1 April 2002. The changes led to major obstacles to business establishment in the air traffic market.

81. Restrictions on competition in the ground services market appear to be of importance for new entries into the air transport market. Potential players must either set up their own production of ground services or buy them from others. In-house production is uneconomical for smaller airlines.

82. The NCA drew the attention of the Ministry of Labour and Government Administration to this matter, and the Ministry of Finance has given notice that it will be considered in the state budget for 2004 whether all or some of the air passenger transport services should be reincorporated in the VAT system, so that input VAT becomes deductible.

##### New market system for milk

83. In July, the Ministry of Agriculture sent out for consultation a proposal for a new market system for milk, drawn up by the Norwegian Agricultural Economics Research Institute (NILF) at the Ministry's request. The NCA took part in the reference group for the report and also submitted a consultation document on the effects on competition of the proposal.

84. The NCA took a positive view of the fact that the Ministry of Agriculture is considering measures to promote competition in the dairy products market. NILF's proposals represent a step in the right direction, although in the Authority's view they do not go far enough. To create equal parameters for Tine and its competitors, it is not sufficient to patch up existing regulatory systems. Market mechanisms should be employed to a greater extent.

85. An important pre-condition for making competition work in the processing stage of the chain is for Tine's competitors to have access to milk as a primary product. Milk supplies must be made available on the same market conditions as those under which Tine's own dairy businesses operate. Creating ownership separation between Tine's primary product and processing businesses will be a good way of achieving this.

86. Tine has been assigned the role of market regulator in the dairy sector. It is a disadvantage that a market player has been assigned such a task. Among other things, it may lead to one-sided access to information in this player's favour. The responsibility for market regulation should be given to an independent body, for example the Norwegian Agriculture Authority.

87. The NCA believes that the price equalisation system should be phased out. It is an exclusively Norwegian phenomenon. Phasing out this system will lead to prices and production being determined to a greater degree by market supply and demand.

#### Airport charges

88. In an expert opinion the NCA proposed that the user charges for Avinor's (formerly the Norwegian Civil Aviation Administration) airports should in the long term be reorganised in a direction, which promotes greater economic efficiency and competition.

89. Such a reorganisation will probably mean lower tax rates imposed on less busy airports and higher rates on the busier ones. This can provide stimulation for new business establishment and competition between airlines, and promote better utilisation of airport capacity.

90. As long as Avinor's current airports belong to the same owner, the NCA considered that it would be right to cover the deficit on the smaller, less busy airports with earnings from the larger airports.

91. The NCA also took the view that it would be favourable if a certain proportion of the payment were to be linked to the price of air tickets, for example through a fixed percentage charge. Another proposal was to have airport taxes vary with the scope and quality of the airport services offered. The NCA also proposed to introduce peak load pricing charging higher rates in rush hour periods.

#### Norwegian Meteorological Institute

92. In a letter to the Ministry of Labour and Government Administration, the NCA recommended divesting the Norwegian Meteorological Institute's commercial operations into a separate company.

93. The NCA considered that with respect to competition in the market for provision of weather and climate forecasts, no barriers should be put in the way of Storm Weather Center AS and other potential competitors also offering their services. The Meteorological Institute's operations can create such barriers

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to competition. The most appropriate method of removing these barriers is to divest the Institute's commercial operations into a separate company, for example a state-owned limited company.

94. On the basis of the expert opinion of the NCA, the Ministry of Education and Research hired Statskonsult to assess possible organisational solutions for the Meteorological Institute.

### Passenger transport by rail

95. In another expert opinion document, the NCA took a positive view of opening up competition on the Norwegian railways. It will be essential to create an institutional framework conducive to competition on equal terms, in order to realise the potential for greater efficiency inherent in exposure to competition, the Authority wrote.

### Supports wider use of auctions for fish trading

96. The NCA supports the wider use of auctions as a form of trading among fish marketing cooperatives. The Authority considers that this will help bring about an economically efficient distribution of fish resources and the highest possible value added.

## IV. International co-operation

97. In 2002, international competition cases were pursued up via the European Economic Area (EEA) Agreement, and through the OECD, WTO, ICN, Nordic network, and bilateral co-operation. Work on EEA cases receives a high priority at the NCA. The Authority believes that it is most important to use its rights under the EEA Agreement to promote its views regarding important cases and legislation being dealt with in the EEA.

### *EU/EEA matters take priority*

98. Where the NCA's international cooperation is concerned, highest priority is generally given to work relating to EEA matters, since the EEA Agreement imposes clear obligations on Norway. The Agreement also bestows rights, which it is important to use.

99. In 2002, the Authority took part in 46 meetings in Brussels, including participation by the Norwegian competition counsellor in Brussels. The meetings dealt with 20 individual matters and 26 regulatory matters.

100. The process of preparing implementation and enacting the EU's modernisation reforms in the EEA Agreement and in Norwegian law, demanded considerable effort on the part of the NCA in 2002. A key element in that respect was the negotiations with the European Commission on decentralised enforcement of competition rules in the EEA Agreement.

101. Representatives of the NCA have also taken part in the European Commission's working groups and in expert groups during the process of reviewing the rules relating to merger control, and have also prepared consultation documents. The rules are important for Norway because Norwegian companies are increasingly involved in mergers and acquisitions considered by the Commission.

### *European Competition Authorities (ECA)*

102. One of the most important international networks is the European Competition Authorities (ECA), which is a network of all the competition directors general in the EEA, the European Commission and the EFTA Surveillance Authority. This forum has been used actively for discussing and promoting

important issues, and in 2002 aviation was an important field. Representatives of the NCA took also part in working groups under the ECA.

***International Competition Network (ICN)***

103. 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 NCA takes activity in this network, by among others providing information about Norway's rules, regulations and practices.

***OECD***

104. The NCA participates in the work of the OECD regarding development of competition policy. Norway, together with New Zealand, headed up the examination of Finland in the October meetings in 2002 of the Competition Committee and WP2. The NCA provided one of the two examiners during the examination of Finland relating to state ownership and the post sector in particular, and during the examination of competition policy. The Authority did also an extensive amount of work to prepare for the OECD country review of Norway to the meetings of the Competition Committee in February 2003.

***Nordic network***

105. 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, which also participate in the network.

106. The Nordic competition authorities meet regularly and enjoy good cooperation, both with respect to competition policy in general and enforcement of specific matters. At any one time, joint projects are in progress relating to issues of current interest. In 2002, a Nordic task force presented a report regarding civil aviation. The report highlighted various factors which restrict competition in Nordic and European aviation, and contained a number of proposals on how competition in the air could be strengthened.

107. At the beginning of 2002, a Nordic working group was appointed to draw up recommendations for standardised methods of measuring market concentration and mobility. An important part of the work has been to survey what type of statistics each country actually possesses, how they have been drawn up, and at what aggregation levels the data are comparable. The working group held its last meeting in December 2002, and its recommendations will help improve comparisons between the Nordic countries in future. The current method is, however still susceptible to improvement.

108. The Nordic competition authorities have appointed a working group to look at the need for better coordination of competition policy in the Nordic electricity market. The working group will identify competition-related problems common to the Nordic region, provide an assessment of measures to deal with any competition problems, consider proposals for changes to regulations which can improve competition, and propose collaborative solutions to improve efficiency in enforcing competition rules.

109. In 2001 Norway, Iceland and Denmark signed a cooperation agreement, which included the exchange of confidential information between the competition authorities. The agreement gives the competition authorities greater opportunity to cooperate on specific matters, and has already brought about closer contacts.

*Several meetings have been held with Nordic colleagues, at which follow-up of specific matters has been discussed and information exchanged, including a two-day seminar in Oslo for contact persons in the*

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control units. The seminar, in which all the Nordic countries took part, focused on interviewing techniques and investigation of electronically stored information.

### V. Resources of the competition authority

110. After many years of uncertainty associated with localisation and the 2001 reorganisation to form a new NCA, 2002 was a year of consolidation and stabilisation of the organisation.

111. The Authority recruited both lawyers and economists with high expertise and relevant experience. Staff turnover was reduced to approximately 11 per cent, roughly in line with the average for government employees. Production also increased in 2002, not least as regards the number of written expert opinions and advocacy proposals made to public authorities. The NCA also handled several very large and demanding intervention cases.

	Person-years	Budget expenditure <sup>1</sup>	Budget expenditure in USD <sup>2</sup>
2002	112	69 878	9 520
2001	120	66 700	9 087
2000	135	71 701	9 769
1999	146	65 624	8 941
1998	139	64 412	8 776
1997	132	63 082	8 594

Employees	Number of persons by the end of	Number of persons by the end of
	2001	2002
Economists	44	38
Lawyers	25	26
Other professionals	24	21
Support staff	20	22
All staff combined:	113	107

### *The Authority's reputation*

112. The NCA is perceived as honest, neutral and highly knowledgeable. This was the conclusion of a comprehensive public survey carried out by MMI in February/March 2002.

113. The sample used in the survey consisted of three groups: members of the general public, professional target groups, and the Authority's own staff. Professional target groups are groups, which have major importance for the work done by the Authority.

<sup>1</sup> In 1000 NOK (Norwegian "kroner")

<sup>2</sup> In 1000 USD. Exchange rate 15.09.03 (1 USD = 7.34 NOK / 1Euro = 8.28 NOK)



114. The main impression is that the NCA is well known, that it enjoys great confidence among consumers and others, and that the work done is regarded as important for society.

115. Among the general public, almost four out of five respondents had heard of the NCA. Half of the professional users and three out of four staff had a good overall impression of the Authority. The Authority scored best on honesty and integrity, neutrality and knowledge of competition policy.

## **VI. Summaries of new reports and studies on competition policy issues**

### *Civil aviation*

116. In June 2002, a Nordic task force presented the report “Competitive Airlines – towards a more vigorous competition policy in relation to the air travel market”. The report contained a number of proposals on how competition in the air could be strengthened.

117. The task force consisted of representatives from the Nordic competition authorities. The report highlighted various factors which restrict competition in Nordic and European aviation. The task force warned that competition can be weakened further if national and European competition authorities fail to pursue an active and vigilant policy in this area.

118. There were five areas in particular which are especially important for the degree of competition in the air travel market:

- Measures to combat predatory pricing and other abuse of market power
- Measures against frequent flyer programmes
- Control of mergers and alliances
- More efficient routines for slot allocation (landing rights)
- Restrictions on the price cooperation between airlines

### *Financial sector*

119. In 2002, the NCA surveyed the competitive situation in the banking, non-life insurance and investment markets. The main purpose of the survey was to describe the development in products and market structure, to call attention to any barriers to competition, and to propose measures to improve the competitive situation.

120. The main conclusions of the survey are:

- The established banks are expanding their range of products to include those not previously associated with traditional banking services, such as non-life insurance.
- Unlike banking services, relatively little information on non-life insurance prices and conditions has been published on the Internet.
- The NCA believes it is important to make it easier for customers to obtain information about the many different insurance products.
- The commission system for fund managers may have an unfortunate effect, because it creates a conflict of roles between offering good products and offering the products that pay the highest commission.

*Essential facilities*

121. A report on **essential facilities** considers different methods to regulate such facilities to promote competition in connected markets. The advantages and disadvantages of vertical separation are also discussed in the report.

*Magazine and Internet*

122. The NCA publishes news and decisions in a magazine called KonkurransNytt, and on the Internet pages of the Authority.