



# Norway

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Norway is located in Northern Europe, bordering the North Sea and the North Atlantic Ocean. Norway proclaimed its neutrality at the outset of World War II, but was nonetheless occupied for five years by Nazi Germany (1940-45). In 1949, neutrality was abandoned and Norway became a member of NATO.

Discovery of oil and gas in adjacent waters in the late 1960s boosted Norway's economic fortunes. The current focus is on containing the expenditure on the extensive welfare system, and planning for the time when petroleum reserves are depleted. In referenda, held in 1972 and 1994, Norway rejected joining the EU.

## Economy

The Norwegian economy displays a carefully crafted balance between free market activity and government intervention. The economy is the world's seventh largest exporter of oil and second-largest gas exporter. Oil along with natural gas accounts for 55 percent of its total exports in 2010.

Norway is not a member of the EU. However, the Agreement on the European Economic Area – the EEA Agreement – is the cornerstone of the relations between Norway and the EU. The EEA Agreement extends the Internal Market of the EU, with its free movement of goods, capital, services and persons, to Norway.

The agreement also adopts the competition legislation applied in the EU, securing a system ensuring equal conditions of competition. In addition, the EEA Agreement includes so-called 'flanking and horizontal policies', intended to strengthen the Internal Market. Other fields of co-operation include consumer protection, culture, education, environment, information services, and Small and Medium Enterprises (SMEs).

## Competition Evolution and Environment

Norway has a long history of competition law. It is one of the first countries in the region to have competition legislation, which dates back to World War I. Between 1914 and 1920, a temporary statutory provision was introduced to tackle the problem of high prices being demanded from

PROFILE	
Population:	4.9 million***
GDP (Current US\$):	417.4 billion**
Per Capita Income: (Current US\$)	87,350 (Atlas method)** 58,843 (at PPP)**
Surface Area:	323.8 thousand sq. km
Life Expectancy:	81 years**
Literacy (%):	100 (of ages 15 and above)**
HDI Rank:	1***
Sources: - World Development Indicators Database, World Bank, 2012 - Human development Report Statistics, UNDP 2012 (**) For the year 2010 (***) For the year 2011	

consumers. The Price Directorate was the enforcement body established in 1917.

However, it was the *Price Regulation Act* of 1920 that introduced competition legislation in Norway. All monopolies, dominant firms and associations of undertakings, had to notify agreements or any other arrangement with the purpose of restricting competition to the Price Directorate and which subsequently was entered into the Cartel Register. Six years later, in 1926, the *Trust Act*, dealing with restrictions on competition and abusive pricing, came into force.

In 1953, the *Regulation of Prices Act* was introduced. Other regulations prohibiting vertical agreements and collusion were enforced in 1957 and 1960 respectively. Another regulation, passed in 1988, empowered the Price Council to intervene against acquisitions of enterprises.

From the beginning of 1960, the policy changed and there were an increasing number of products where the consumer prices were set by the authorities. Until 1980, the Government's policy focussed on the reduction of the inflation, applying regulations of prices, gross margins and several prize-freezes.

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The 1993 the *Norwegian Competition Act* replaced the Regulation of Prices Act of 1953. The objective of the 1993 Act was to facilitate competition and, thereby, contribute to efficient utilisation of society's resources. This considers competition not as an aim in itself, but rather as a means to attain socio-economic efficiency. The Act prohibited, amongst others, the following:

- Price fixing;
- Collaboration on tenders;
- Resale price maintenance; and
- Market sharing.

The Norwegian Competition Authority (NCA), succeeding the Price Directorate, was established on January 01, 1994. Under the Competition Act of 1993, the NCA had the power to:

- prohibit anticompetitive agreements and practices;
- intervene against acquisitions of enterprises that would create or strengthen a significant restriction of competition;
- grant exemptions from the prohibitions, provided that the restrictive agreements or practices would lead to Increased competition or increase efficiency; and
- call attention to restrictive effects on competition of public measures.

The 1993 Norwegian Competition Act was not harmonised with the EU/EEA Competition Law.

### **Competition Laws, Institutions, Competencies, and Anti-competitive Business Practices**

The new *Competition Act of 2004* was adopted by the Parliament (*Storting et*) on March 05, 2004 and entered into force on May 01, the same year. One of the important aims of the new Competition Act was to harmonise the Norwegian competition rules with the EU/EEA competition rules.

#### ***Prohibitions***

The new Competition Act of 2004 is stricter and contains more comprehensive prohibitions than the former Competition Act of 1993. The new Act introduces a general prohibition against anti-competitive agreements and concerted practices, and a prohibition against abuse of a dominant position, corresponding to Articles 81 and 82 of the EC Treaty and Articles 53 and 54 of the EEA Agreement. The new Act also provides the possibility of intervention by way of regulation in order to promote competition in markets.

The Competition Act of 2004 prohibits all agreements and concerted practices, which have as their object, or effect, the restriction of competition. This prohibition includes, for example, the fixing of purchase and selling prices, other trading conditions or agreements limiting production or sales and market-sharing agreements.

The Act contains an exemption from the general prohibition against anti-competitive agreements and concerted practices. Agreements which lead to socio-economic efficiency gains is, subject to certain conditions, automatically exempt from the prohibition. The conditions are identical to those set forth in Article 53(3) of the EEA Agreement and Article 81(3) of the EC Treaty, and will be interpreted in the same way. The system of granting individual exemptions, provided for in the former Act of 1993, is abolished.

Under the new Competition Act, abuse of a dominant position is prohibited, which is contrary to the Act of 1993 where the NCA could only intervene against such behaviour. As under Article 54 of the EEA Agreement and Article 82 of the EC Treaty, this prohibition includes, for example, the imposition of unfair prices; the limitation of production, markets, or technical development; application of discriminatory trading conditions; and tying.

#### ***Merger Control***

The Competition Act of 2004 retains the SLC (Substantial Lessening of Competition) test as the relevant merger test. It provides that the NCA shall intervene against a concentration that will create or strengthen a significant restriction of competition, contrary to the purpose of the Act.

The Act also introduces a mandatory notification system for concentrations. There is an obligation of notifying concentrations exceeding certain turn over thresholds, the most important being a combined annual turnover in Norway of US\$3,127,700. Implementation of the merger in the first phase of the procedure is prohibited.

Moreover, the Act provides the necessary instruments to reduce the procedural time and streamline the case handling. The NCA must notify a party of any possible intervention within 25 business days after receipt of a complete notification. If the NCA does not notify the parties within that time-limit, the concentration is cleared. However, when such a notification is given, the final deadline for any intervention is 100 business days.

#### ***Investigation and Sanctions***

The Competition Act of 2004 maintains the extensive investigative powers of the NCA. It also maintains the system of criminal sanctions (fines or imprisonment) for violations of the Act. Such criminal sanctions may be imposed on both individuals and undertakings, after criminal investigation and prosecution.

The Act also provides the NCA with the competence to impose administrative fines for breaches of the prohibitions. Such administrative fines may only be imposed on undertakings. An undertaking may bring an action before the Court to contest a decision of the NCA imposing fines. The Court may try all aspects of the matter.

### Box 1: Collusion of Asphalt Companies

In 2011, the Competition Authority notified that Veidekke may be fined 270mn NOK (approximately 36mn €) and NCC 165mn NOK (approximately 2 mn €) for violating the competition law related to extensive collusion between the companies in connection with asphalt paving in the counties of Nord-Trøndelag and Sør-Trøndelag, the area surrounding the city of Trondheim. Through close dialog before competitive bidding, the two companies divided large public contracts between themselves. The collusion occurred during 2005-2008. Veidekke may, however, be exempted from the fine because it notified the Competition Authority about the illegal cooperation (leniency).

Source: <http://www.konkurransetilsynet.no> (Oct 2011)

The level of fines was intended to be increased, compared to practice, under the former Act of 1993, where the penalties imposed were relatively small. It follows from the *travaux préparatoires*<sup>1</sup> of the new Act that the level of fines should be harmonised with the level of fines imposed by the European Commission under EU Competition Law. The new Competition Act also contains the basis for a transparent leniency programme, offering a principle of leniency with reduced penalties for whistle blowers.

#### **The Norwegian Competition Authority**

The NCA has approximately 114 employees. The Ministry of Government Administration, Reform and Church Affairs<sup>2</sup> provides the framework for the NCA's activities. Apart from fines, it is the appellate body for NCA's decisions. The responsibilities of the NCA under the new Competition Act are as follows:

- supervision of competition in Norwegian markets;
- enforcement of the Competition Act;
- ensuring adherence to prohibitions and orders issued under the Act;
- intervention against concentration where necessary;
- implementation of measures promoting market transparency;
- enforcement of Article 53 (prohibitions against anti-competitive agreements) and Article 54 (prohibition against abuse of dominance) of the EEA agreement, from January 01, 2005;
- call attention to restrictive effects on competition of public measures; and
- provide guidance to undertakings with respect to the interpretation, scope and application of the Act.

#### **Consumer Protection**

Apart from the Norwegian Competition Act 2004, Norway also has the *Marketing Control Act of 1972*, which was later modified and came into force in March 2001. Some of the features of the Act are as follows:

- prohibition of incorrect, or otherwise misleading, representation that may influence demand or supply of goods, services or other performances;
- prohibit advertisements that are in conflict with the inherent equality of the sexes and those that portray men or women offensively or derogatorily;
- restriction on the use of certain methods of communicating to the consumer like e-mail, text messaging or facsimile without prior consent; and
- prohibition of free-riding i.e. use of copies of distinguishing marks, advertising material etc. of another Product that may be considered as unfair exploitation and result in confusion.

Fines and infringements can be awarded to an offender under the Act, the amount of term of which depends on which particular section of the Act was violated.

This Act has two enforcing bodies: the Consumer Ombudsman and the Market Council. The Market Council (MC) functions like a Court of Law, with regard to disputes between parties and consumers' grievances in the market. It consists of nine members, appointed by the King, for a term of four years. A quorum is constituted at the MC when the Chairman, the Vice-Chairman, and at least four additional members or deputy members are present. Decisions are made on the principle of a simple majority and in the event of a tie; the Chairman has the casting vote. No appeal can be filed against the MC's decision. The MC may also refrain from dealing with a case if it feels the evidence or information at hand is insufficient.

The Consumer Ombudsman (CO) is an independent administrative body that:

- aims to prevent market abuses prohibited under the Marketing Control Act;
- considers cases upon complaints from consumers and traders;
- looks into cases brought forward by foreign authorities and organisations (listed by the EU Commission) that seek prohibition of acts, such as the use of the word 'Guarantee' in the sale of goods and services if the recipient is not given rights in addition to those he would already have or if these rights are limited; and
- seeks to influence traders to adhere to the regulatory framework.

1 The term Travaux Préparatoires refers to materials used in preparing the ultimate form of an agreement or statute, and esp. of an international treaty; materials constituting a legislative history.

2 From January 01, 2010 changed to The Ministry of Government Administration, Reform and Church Affairs.

An appeal against the decision of the CO may be lodged with the MC, though no appeal can be made against the MC's decision.

Norway also has a consumer interest and service organisation called the Consumer Council, which protects the interest so fall consumers. The main activities of the Council are:

- formulation of consumers' political points of view so that concerned authorities and trade and industry can offer consumers better conditions;
- increasing awareness to enable consumers to become more self-sufficient; and
- assisting consumers with filing complaints.

### Sectoral Regulation

Norway had deregulated its electricity sector with the *Energy Act* of June 1990, which came into force on January 01, 1991. The concerned regulatory body is the Norwegian Water Resources and Energy Administration.

### Concluding Observations and Future Scenario

The Competition Act of 2004 provided the basis for a more ambitious Competition Policy in Norway.

Following the implementation of the competition law, the Competition Authority has worked systematically to strengthen its capability for investigative work and to put the fight against competition crime on the agenda, and to establish confidence in the leniency programme. The results of these initiatives materialised in 2010 and 2011.

As of 1st of January 2012 a new organisational structure is in place. The organisation now consists of three separate market departments. These market departments will receive specialised support from the legal department, the chief economist's team as well as the investigations department. The communications department has been strengthened to better achieve ambitions related to visibility and

advocacy, and a director has been appointed with a special responsibility to coordinate external relations. The new organisational structure with a clear division of responsibility and authority combined highly skilled and motivated employees, and a substantial international commitment and contribution provides a good basis for achieving the future strategic goals of the Competition Authority.

#### Box 2: Fine Imposed on Norgesgruppen

The Norwegian Competition Authority has decided to impose a fine of NOK 25million on Norgesgruppen for breach of the standstill obligation in connection with Norgesgruppen's acquisition of large parts of Ica Maxi.

The Competition Authority concluded that Norgesgruppen broke the competition law's standstill obligation by taking over and continuing the grocery business before the Competition Authority had cleared the transaction. Norgesgruppen was aware that this could be a violation of the standstill obligation, but nevertheless chose to put into effect the transaction.

The Competition Authority informed Norgesgruppen that they could be obligated to notify the transaction. The Authority also required Norgesgruppen to notify the acquisition to the Authority. Norgesgruppen notified the transaction, but nevertheless implemented it before the Authority had completed its review

As a result, Norgesgruppen accepted the fine of NOK 25million for breach of the standstill obligation in connection with Norgesgruppen's acquisition of large parts of Ica Maxi.

Source: <http://www.konkurransetilsynet.no> (Oct 2014)

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