



New deadline for the clearance of merger notifications and new composition of the Appeals Board for Competition Cases



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On April 14, the parliament passed a new exemption law, which enters into force on April 17. The Act provides further exceptions to the Competition Act - this time for the procedural rules. The new exemption rules extend deadlines for the clearance of merger notifications and reduces the number of members in Appeals Board for Competition Cases. The new law is will be in force until 31 October 2020.

In summary, the changes entail:

Extension of deadline(s) with 15 days for clearance of merger notifications

All deadlines for merger clearance are extended by 15 working days. In addition, the Ministry may, in the form of regulations, decide on further deadline extensions.

In principle, in our view, it may raise questions about the need for such time extensions. The amendment is based on a presumption that there is reason to believe that "*the Competition Authority in connection with the covid-19 pandemic may need to extend the case processing deadlines for assessing interventions against business combinations*". However, the Competition Authority, in its response to the consultation, has not itself stated that the Authority needs this extension. In our experience, the Norwegian Competition Authority has also been very effective in handling transactions or applications for exceptions to the stand still obligation.

If the new extended deadlines were to be used, the practical main problem with it is precisely that the parties to a transaction under COVID-19 must be assumed to have even greater need than under normal conditions in order to implement the business combination as quickly as possible. There are clear trends and it is to be expected that the COVID-19 situation will cause the conditions and values of a company to change rapidly, and acquisitions or mergers of businesses may be the only solution to prevent bankruptcy. Against this background, as we see, it must be a condition that assessments of applications for exemptions from the stand still obligation is not interpreted too strictly, so that full or partial exemptions from the stand still is granted if needed.

New composition of the Appeals Board for Competition Cases- possibility for treatment with one member

The Appeals Board for Competition Cases's leader is given the opportunity to delegate the decision authority to one member of the Board (from normally three) to carry out the Appeals Board's tasks, provided that there is no obstacle to due process. The parties to the case and the Competition Authority shall have the opportunity to comment before a decision is made.

The new Exemption Act, in line with clear recommendations in the consultation round, stresses that the competence to deviate from the composition of the board shall not include cases concerning breaches of sections 10 and 11 of the Competition Act (similar to 101 and 102 TFEU) or complaints about interventions against acquisitions or interventions against minority acquisitions. Thus, in practice, there are primarily complaints about refusals of access requests that can be delegated to a single member of the board.

The question can be raised about the real need, and / or whether a better alternative that is not excluded so far would be to appoint more deputy members to the board.