



Norwegian Competition Authority announces 2 year extraordinary information duty for transactions in specific markets



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In Norway, transactions below the turnover threshold (currently combined in excess of NOK 1 billion and each of at least two undertaking with turnover in excess of NOK 100 million) are exempt from notification duty. The NCA nevertheless has authority under the Competition Act to impose a notification duty even if the transaction is below the turnover threshold. This may be done, within a maximum of 3 months after final agreement is entered into or control is achieved, whatever occurs first, and if there are "reasonable grounds" to assume competition is affected or if "special circumstances" suggest that the NCA should review a transaction more carefully.

The Norwegian Competition Authority (NCA) recently announced the players and markets which has been imposed an extraordinary information duty for the next two years. These are markets which the NCA have identified as "watch out" markets, and which will be closely monitored by the NCA. The obligation entails that the companies concerned must inform the NCA about all mergers and acquisitions they are involved in, also where the transaction does not meet the standard notification thresholds.

The purpose of the disclosure obligation is to make the NCA aware of all acquisitions and other market concentrations in Norwegian markets where the competition is weak and / or concentrated, even transactions which would normally fall below the notification thresholds. By receiving such information, the NCA has the opportunity to further investigate these smaller transactions by requiring a full notification and if needed intervene as part of its normal merger control.

Notably, four markets, and their players, are seemingly no longer under such obligations as the companies within the groceries sector, suppliers of concrete, home security systems and accounting systems are no longer on the NCA's list. This does not mean that these markets are no longer of concern to the NCA, as it should be kept in mind that both the groceries sector and the home security system players have been under scrutiny from the NCA for the past years. In December 2020, the three Norwegian grocery retailers were notified of a potentially record high fine totalling to **21 billion Norwegian kroner** (approx. EUR 2 billion) for alleged collusion, whilst the two home security system companies have been imposed fines of **NOK 766 million and 467 million** (approx. EUR 74 million and 45 million) for customer sharing. In addition, and as a separate decision, the NCA will closely monitor the domestic air travel market, and the NCA recently imposed a duty to submit monthly P&L for carriers active on 12 specified domestic routes in Norway for a renewed period of 2 years.

A breach of the disclosure obligation may result in a fine of up to 1 per cent of the company's turnover, and the NCA has in recent years actively used this option. In August 2020 one company was imposed a fine of NOK 20 million (approx. EUR 1.8 million) for not disclosing the purchase of store premises, and in May the same year another company received notice that NCA is considering imposing a fine of NOK 15 million (approx. EUR 1.35 million) for not informing the NCA of an agreement for the lease of a fuel station.

The NCA has repeatedly stated that it views these types of violations seriously – especially where the authority loses the opportunity to investigate a transaction due to the statutory time limitations.

Generally, the obligation lasts for two years at the time, but may be prolonged. The legal basis is the Norwegian Competition Act section 24, which is the general legal basis for the NCA's information requests. The decision is specific to each company, and can vary in scope – some companies might be obligated to also disclose minority acquisitions.

For the period 1 January 2021 to 31 December 2022, disclosure requirements have been imposed on the following Norwegian markets and companies:

- Motor fuel retailing: Uno-X AS, Certas Energy Norway AS and Circle K Norge AS
- Electricity generation: Statkraft AS, BKK AS, Skagerak Energi AS and Agder Energi AS
- Waste management and recycling: Norsk Gjenvinning Norge AS
- Locksmith services: Nor Tekstil AS
- Garden centres: Plantasjen Norge AS
- Newspapers: Amedia AS, Polaris Media ASA and Schibsted ASA
- Broadband services: Telenor ASA

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