



Norwegian Competition Authority imposes extraordinary information duty for transaction on one new electric utility and prolongs the obligation for players in electricity generation, fuel, waste management and newspaper sector



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In Norway, transactions, acquisitions and agreements that provide decisive influence on other undertakings (referred to as mergers) reaching a specific turnover threshold, must be reported to the Norwegian Competition Authority. The NCA nevertheless has authority under the Competition Act to impose a notification duty even if the transaction does not meet the standard notification thresholds, including minority acquisitions (where no decisive influence is achieved), which is a frequently used tool by the NCA's in merger control.

The ordinary duty to notify applies where enterprises have an annual turnover of NOK 1 billion in Norway and more than two companies have an annual turnover of more than NOK 100 million. Pursuant to Section 24 of the Competition Act, the NCA may impose an extraordinary information duty in addition to these threshold values for certain players in "watch-out" markets where the Authority is concerned about the competitive situation. This has previously been used imposed on players within the grocery industry, the fuel market and for players who sell electric power, just to name a few.

The purpose of the extraordinary information duty is to make the NCA aware of all acquisitions and other concentrations in markets where the competition is already weak or concentrated. By receiving information about smaller acquisitions or transactions which the Authority would not otherwise have been aware of, the Authority has a greater opportunity to investigate outcome of such mergers and, if necessary, intervene in the merger as part of its ordinary merger control.

The NCA has recently announced that as of 1 January 2023, an extraordinary information duty is imposed on a new player (Hafslund Eco Vannkraft AS) in the market of electricity generation, and that the duty is retained for a number of players in the markets of electricity generation, fuel, waste, newspaper, laundry services and garden centres. On the other hand, Bergenshalvøens Kommunale Kraftselskap AS (BKK), the locksmith company Assa Abloy Norway AS and the broadband player Telenor ASA are currently removed from NCA's "watch-out" list.

Together with the other players that are subject to a continuing extraordinary information duty as of 1 January this year, Hafslund Eco will be obliged to notify the Norwegian Competition Authority of all acquisitions, mergers and other transactions, including minority acquisitions, until the end of 2024.

Breach of the extraordinary information duty may result in a fine of up to 1% of the company's turnover. The NCA is no stranger to imposing fines for breach of such obligations and has on two occasions over the past three years imposed fines of NOK 20 million and NOK 15 million, respectively to NorgesGruppen and St1 Norway. The decision against NorgesGruppen was however set aside by the Authority itself, shortly afterwards as a result of a changed view as to whether the acquisition of the property in question was actually covered by the information duty, while the decision against St1 Norway was upheld by the Competition Appeals Board. The case against St1 involved entering into a long-term lease which had the character of a transaction covered by the extraordinary information duty to which St1 was subject at the time the lease was concluded.

However, the competition authorities in our neighboring countries, Sweden and Denmark, do not have a corresponding possibility of imposing a general information duty on all mergers and acquisitions below the ordinary notification threshold within specific markets. The Swedish Competition Authority, like Norway, has the right to impose notification also for specific transactions below the threshold for notification obligations in Sweden. This practice is consistent with the European Commission's practice under Article 22 of the Merger Regulation and the prohibition of Illumina/Grail the merger in September 2022.

For the period 1 January 2023 to 31 December 2024, disclosure requirements have been imposed on the following Norwegian markets and companies:

- Motor fuel retailing: Uno-X Mobility AS, St1 Norge AS, Certas Energy Norway AS and Circle K Norge AS
- Electricity generation: Statkraft AS, Eviny AS, Skagerak Energi AS, Agder Energi AS and Agder Energi AS/Å Energi AS, as well as Hafslund Eco Vannkraft AS, which is subject to an obligation to provide information for the first time.
- Waste management and recycling: Norsk Gjenvinning Norge AS
- Newspapers: Amedia AS, Polaris Media ASA and Schibsted ASA
- Laundry services: Nor Tekstil AS
- Garden centres: Plantasjen Norge AS

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