

The International Comparative Legal Guide to: Merger Control 2010

A practical insight to cross-border merger control issues



Published by Global Legal Group with contributions from:

Allende & Brea

Ashurst LLP

Attorney Office "Udova Oxana"

Benzakour Law Firm

Brasil, Pereira Neto, Galdino, Macedo Advogados

Bullard, Falla & Ezcurra Abogados

Davis Polk & Wardwell LLP

DLA Piper

ELIG, Attorneys-at-Law

Elvinger, Hoss & Prussen

Esguerra Barrera Arriaga Asesores Jurídicos

Estudio Bergstein

Gide Loyrette Nouel: Warsaw

Homburger

Hunton & Williams

Jones Day

Jonsson & Hall Law Firm

Kallel & Associates

Lang Michener LLP

Lee & Ko

Liedekerke Wolters Waelbroeck Kirkpatrick

Matheson Ormsby Prentice

Michael Shine, Tamir & Co.

Morais Leitão, Galvão Teles, Soares da Silva & Associados

Nagashima Ohno & Tsunematsu

Nassar Abogados (Centro América) S.A.

Nielsen Nørager

Olivares & Cia., S.C.

Pirola Pennuto Zei & Associati

PRA Law Offices

Punuka Attorneys & Solicitors

Schoenherr

Setterwalls

SJ Berwin LLP

Tamme & Otsmann

Van Doorne

Vasil Kisić & Partners

Waselius & Wist

Webber Wentzel

White & Case LLP

Wiersholm, Mellbye & Bech, advokatfirma AS

Žurić i Partneri

Norway

Tone Ripel



Anette Halvorsen Aarset



Wiersholm, Mellbye & Bech, advokatfirma AS

1 Relevant Authorities and Legislation

1.1 Who is/are the relevant merger authority(ies)?

The Norwegian Competition Authority (hereinafter NCA) handles merger cases in the first instance. The NCA does not have any special “merger task force”. The department in charge of the affected industry sector will deal with the case.

The Ministry for Government Administration and Reform (hereinafter the Ministry) is the appeal body.

The King in Council may intervene against or clear a transaction if the case involves questions of principle or interests of major significance to society.

A decision by the Ministry or the King in Council may be brought before the ordinary courts. In practice this has never happened.

The EFTA Surveillance Authority or the EU Commission has exclusive competence to handle concentrations which exceed the turnover thresholds set out in the EC Merger Control Regulation (Council Regulation No 139/2004 as amended under the EEA Agreement). The “one-stop-shop” principle applies and prevents parallel application of the Norwegian Competition Act and the EC Merger Regulation. The EC Merger Control Regulation will not be further dealt with below.

1.2 What is the merger legislation?

The Competition Act of 5 March 2004 No 12 (hereinafter the Act), (mainly) Chapter 4, regulates concentrations. Sanctions are regulated in Chapter 7. An English translation of the Act can be found on www.konkurransetilsynet.no.

The Ministry’s Regulation No 673 of 28 April 2004 on the notification of concentrations etc. (hereinafter the Regulation) with later amendments, and the Ministry Regulation No 0292 of 9 March 2009 on partial exception from the rule on suspension of concentrations, provide more detailed provisions on notification requirements

The Norwegian EEA Competition Act of 5 March 2004 No 11 comprises certain provisions regarding merger control and the relationship to EFTA’s Surveillance Authority / the Commission.

The NCA has issued several guidelines relating to merger control. These can be found on www.konkurransetilsynet.no and are also available in English.

1.3 Is there any other relevant legislation for foreign mergers?

There is no special competition legislation related to foreign mergers and acquisitions.

1.4 Is there any other relevant legislation for mergers in particular sectors?

In a number of sectors, the legislator has adopted special regulations, both related directly to mergers and acquisitions (such as limitations on maximum ownership) and related to licences required to run the business in Norway. Such provisions apply, *inter alia*, in the following sectors: daily newspapers; TV and radio; financial institutions; and commercial banks and saving banks.

Companies listed on the Oslo Stock Exchange are subject to special information requirements in cases of mergers and acquisitions.

2 Transactions Caught by Merger Control Legislation

2.1 Which types of transaction are caught - in particular, how is the concept of “control” defined?

a) The following types of transactions are caught by the Act:

1. where two or more previously independent undertakings or parts of undertakings merge;
2. where one or more persons already controlling at least one undertaking; or one or more undertaking(s), acquire direct or indirect control on a lasting basis of the whole or parts of one or more other undertakings;
3. creation of a fully functioning joint venture; or
4. acquisition of a minority position (does not have to be notified).

b) The concept of control:

Control is constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:

- (a) ownership or the right to use all or part of the assets of an undertaking; or
- (b) rights or contracts which confer decisive influence on the composition, voting, or decisions of the organs of an undertaking.

Thus, the Act does not only appreciate the concept of legal control, but also the concept of *de facto* control.

Control is acquired by persons or undertakings which:

- (a) are holders of the rights or entitled to rights under the contracts concerned; or
- (b) while not being holders of such rights or entitled to rights under such contracts, have the power to exercise the rights deriving therefrom.

The preparatory works to the Act refer to both EC law and practice, and state that the concept of control under the Act is intended to have the same meaning as under the EC Merger Control Regulation. Hence, guidance to the definition of control may be found in the Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) OJ L 24 of 29.01.2004.

c) Full-functioning joint ventures:

The creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity constitutes a concentration under the Act.

The NCA states that guidance to the concept of full-functioning joint ventures may be found in the Commission Consolidated Jurisdictional Notice under the EC Merger Regulation.

2.2 Can the acquisition of a minority shareholding amount to a "merger"?

Acquisition of a minority shareholding does not as such amount to a "concentration" and is not subject to a mandatory filing obligation (which is triggered by the acquisition of control) as such. However, pursuant to the Act, the Competition Authority shall intervene against an acquisition of holdings in an undertaking even if the acquisition will not lead to control of that undertaking. Further, if an acquisition has been made through successive purchases, the Competition Authority may intervene against the transactions that have taken place within two years from the date of the most recent acquisition.

2.3 Are joint ventures subject to merger control?

Full-functioning joint ventures are subject to merger control, cf. question 2.1.

2.4 What are the jurisdictional thresholds for application of merger control?

There are no minimum turnover thresholds for application of the merger control provisions in the Act.

However, there is no notification requirement if the undertakings concerned have a combined annual turnover in Norway below NOK 50 million, and each of the parties to the concentration have an annual turnover in Norway below NOK 10 million.

The turnover of the whole group to which the undertakings concerned belong must be taken into account.

2.5 Does merger control apply in the absence of a substantive overlap?

It is not a legal requirement for the merger control rules to apply that the parties in a concentration have substantive overlap. The merger control is applicable also in the absence of increased market shares, and regardless of whether the concentration has any vertical effects.

2.6 In what circumstances is it likely that transactions between parties outside Norway ("foreign to foreign" transactions) would be caught by your merger control legislation?

The Act applies to terms of business, agreements and actions that are undertaken, have effect, or are liable to have effect within the Realm of Norway, cf. § section 5 below.

Hence, foreign-to-foreign transactions are caught by Norwegian merger control if the transaction is liable to have effect in Norway, irrespective of whether the parties have subsidiaries or a branch situated in Norway. A foreign-to-foreign transaction has to be notified to the NCA if the parties exceed the turnover thresholds in Norway simply by making sales on the Norwegian market above that threshold.

2.7 Please describe any mechanisms whereby the operation of the jurisdictional thresholds may be overridden by other provisions.

The EEA Competition Act, which entered into force on 1 July 2005, empowers the NCA to refer merger cases covered by its jurisdiction to the European Commission.

2.8 Where a merger takes place in stages, what principles are applied in order to identify whether the various stages constitute a single transaction or a series of transactions?

It is the acquisition of control that triggers an obligation to notify a concentration. Consequently, if an acquisition takes place in different stages, the main principle is that it is the acquisition of holdings leading to control that is subject to a filing obligation.

However, the NCA has also the power to intervene against an acquisition of holdings, even if the acquisition does not lead to control of the undertakings in question (minority shareholdings). If an acquisition has been made through successive purchases, the NCA may intervene against the transactions that have taken place within two years from the date of the most recent acquisition.

3 Notification and its Impact on the Transaction Timetable

3.1 Where the jurisdictional thresholds are met, is notification compulsory and is there a deadline for notification?

a) Standardised notification

Notification is mandatory if the turnover thresholds are exceeded; see question 2.3.

Hence, concentrations, cf. question 2.1, must be notified to the NCA by way of a *standardised notification*. There is no time limit for filing, but a stand-still obligation will apply until the NCA has cleared the concentration.

As mentioned above, the NCA may intervene against acquisitions of a minority shareholding, but there is no mandatory duty of notification for such acquisitions.

b) Complete notification

In cases where the NCA finds that a further examination of the concentration is necessary, it may order the parties to submit a *complete notification*. Such an order has to be imposed within 15 working days after the Norwegian Competition Authority received the standardised notification, otherwise the transaction is cleared. A duty to submit a complete notification triggers case-handling

deadlines and the stand-still obligation applies to the first 25 working days upon receipt of the notification (and may be further extended to the whole case-handling period).

The parties may submit a complete notification on a voluntary basis and not submit a standardised notification first.

3.2 Please describe any exceptions where, even though the jurisdictional thresholds are met, clearance is not required.

There are no such exemptions.

3.3 Where a merger technically requires notification and clearance, what are the risks of not filing? Are there any formal sanctions?

As set out above, there is no time limit for filing in Norway. However, a stand-still obligation applies.

Violation of the stand-still obligation may be subject to an administrative fine under Article 29 and penalty under Section 30 of the Competition Act. Up until today, the highest fine imposed amounted to NOK 150,000.

Criminal sanctions have not yet been used. Administrative fines have been issued in a number of cases.

3.4 Is it possible to carve out local completion of a merger to avoid delaying global completion?

As set out above, a stand-still obligation applies until the NCA has cleared the concentration. Thus, completion of the concentration in Norway will be a violation of the Act if such completion brings about structural changes that have effect or are liable to have effect in Norway.

3.5 At what stage in the transaction timetable can the notification be filed?

There is no earliest point in time when the concentration may be notified to the NCA. Thus, the notification may be filed at any stage in the transaction timetable provided that the transaction can be described accurately enough to fulfil the requirements of a standardised notification.

The NCA is required by law to publish a brief notice of all concentrations being notified on its webpage. Thus, in practice filing cannot take place before the parties to the concentration are ready to publish the information about the proposed transaction.

3.6 What is the timeframe for scrutiny of the merger by the merger authority? What are the main stages in the regulatory process? Can the timeframe be suspended by the authority?

a) The NCA

After the party has submitted a standardised notification, the NCA must issue an order to submit a complete notification no later than 15 working days after the NCA has received the notification or three months after a final acquisition agreement if no control is acquired (minority shareholding). If no order is issued within this time frame the concentration is deemed automatically cleared.

The NCA must no later than 25 working days after receipt of a complete notification (phase I of the investigation), notify the parties that intervention may take place by taking the case into

phase II. If no such notification is provided, the transaction is cleared.

The NCA must present a reasoned preliminary decision on intervention (similar to a statement of objections) no later than 70 working days after receipt of a complete notification. The preliminary decision shall be presented to the parties, who must reply within 15 working days. The NCA must decide whether to intervene within 15 working days of receipt of the reply of the parties.

If an offer of commitments to modify the concentration has been presented, the deadline for the NCA's decision to intervene may be extended by 25 working days at the NCA's discretion.

b) Appeal

A decision by the NCA to intervene against a concentration may be appealed within 15 working days. The appeal must be issued to the Ministry, but sent to the NCA. The NCA must forward the appeal to the Ministry no later than 15 working days after its receipt. The Ministry must decide upon an appeal no later than 60 working days upon receipt of the complaint.

c) Postponement of deadlines

Deadlines set above are suspended if any of the undertakings concerned fail to comply with written requests to provide information by a specific date. The parties shall be notified of the suspension of deadlines. The deadline continues to run once the NCA or the Ministry has received the information requested.

d) The King in Council

In cases involving questions of principle or interests of major significance to society, the King in Council may approve a concentration which has been subject to intervention from the NCA. Such approval may be conditional. If a decision by the Competition Authority is appealed, approval may not be granted until the handling of the appeal is completed.

In cases involving questions of principle or interests of major significance to society, the King in Council may intervene against a concentration which the NCA has cleared. Nevertheless, the King in Council may not intervene against concentrations or acquisitions of holdings more than 12 months after a final agreement was concluded or control was acquired.

3.7 Is there any prohibition on completing the transaction before clearance is received or any compulsory waiting period has ended? What are the risks in completing before clearance is received?

Since 1 July 2008, the Norwegian Competition Act 2004 has imposed an automatic stand-still obligation on all notifiable concentrations. The stand-still obligation will continue for three weeks following a standardised notification to the Competition Authority. If the Competition Authority requires that a completion notification should be provided, or such a notification is provided voluntarily, automatic suspension will continue for an additional five weeks. The NCA may also extend the stand-still obligation throughout the whole case-handling period.

Violation of the stand-still obligation may be subject to an administrative fine under Article 29 and penalty under Section 30 of the Competition Act. Up until today, the highest fine imposed amounted to NOK 150,000. At present, no penalties have been imposed.

The Norwegian Competition Authority has adopted a Regulation on partial exemption from the standstill obligation under Section 19 of the Norwegian Competition Act. The Regulation entered into force 1 April 2009. The partial exception applies to a public bid or a

series of transactions in securities admitted to trading on a regulated market such as the Oslo Stock Exchange and Oslo Axess and entails that such transactions can be partly implemented notwithstanding the general stand-still obligation under Section 19 first paragraph of the Norwegian Competition Act.

The adopted exemption makes it unnecessary to submit a formal application for an exemption, and allows the acquirer to take over the securities and to perform such obligations which the acquirer will have pursuant to securities law, provided that (i) the concentration is notified to the Competition Authority in accordance with Article 18 of the Competition Act immediately upon the acquisition of control, and (ii) that the acquirer does not exercise the voting rights attached to the securities in question. In this respect, the Regulation does in the essence mirror Article 7(2) of the Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the EC Merger Regulation). EU/EEC practice related to the said provision will therefore be relevant as guidance for the interpretation of the Norwegian regulation.

The requirement of an immediate submission of the notification will normally imply that the notification has to be submitted the day control is acquired or as soon as the transaction becomes public, if this takes place prior to the acquisition of control, for instance when the bid is publicly announced. However, if this is not possible, a notification has to be submitted as soon as it is possible, i.e. when practical and all factual information necessary for the notification is obtained.

The Regulation only allows the acquirer to take over the securities in question, and is not applicable to the exercise of voting rights. Thus, the acquirer is still prohibited from exercising any kind of control over the target company. Therefore, the Regulation only grants a partial exemption from the stand-still obligation. As for a series of transactions, the limitation with respect to the exercise of voting rights may also apply to securities already held by the acquirer if each of the transactions are considered as being interrelated with each other or where exercise of voting rights will result in the object of the stand-still obligation being undermined.

3.8 Where notification is required, is there a prescribed format?

The NCA has issued forms for both standardised and complete notification. The forms may be transformed into a normal word document and submitted as such. The notification may also be submitted electronically on www.altinn.no.

The NCA accepts standardised notifications to be submitted in the English language. Complete notifications must be submitted in Norwegian.

3.9 Is there a short form or accelerated procedure for any types of mergers?

No there is no short form notification or accelerated procedure.

3.10 Who is responsible for making the notification and are there any filing fees?

The party (or parties) acquiring control, the parties who create a joint venture, or the merging parties are responsible for submitting the notification.

There are no filing fees.

4 Substantive Assessment of the Merger and Outcome of the Process

4.1 What is the substantive test against which a merger will be assessed?

Norwegian merger control is based on a twofold test consisting of a substantial lessening of competition test (“SLC”) and an efficiency test. According to the Act, the NCA shall intervene against a concentration if it will “*create or strengthen a significant restriction on competition, contrary to the purpose of the Act*”. The purpose of the Act is to further competition and thereby contribute to the efficient utilisation of society’s resources. When applying the Act, special consideration shall also be given to the interests of consumers.

Thus, significant restriction of competition is not in itself enough to justify intervention by the NCA because the NCA cannot intervene against a transaction if it results in efficiency gains that outweigh the disadvantages of reduced competition. A concentration can thus be approved despite its negative effect on competition.

This twofold test applies to all types of concentrations, including vertical mergers, conglomerate mergers and structural joint ventures. It also applies to the acquisition of non-controlling shareholders.

Although the NCA finds that the two above-mentioned conditions for intervention are met, intervention may not take place if there is an exemption for well-functioning Nordic and European markets and the concentration does not adversely affect Norwegian customers.

It follows from the preparatory works to the Act that the twofold test as mentioned does not permit the NCA and the Ministry to take into account anything but competition and efficiency considerations. In contrast, the King’s power to intervene in cases affecting “public principles or interest of major significance”, may take broader public political interest into account. The exemption is not very practical.

4.2 What is the scope for the involvement of third parties (or complainants) in the regulatory scrutiny process?

As set out in question 3.5 above, the NCA is required by law to publish a brief notice of all concentrations being notified on its webpage. The purpose of this notice is to prompt third party comments. According to the guidelines published on the NCA’s webpage, comments to notified transactions must be submitted to the NCA within 12 working days upon the NCA’s receipt of the notification.

Third parties have a right of access to the file at any time of the case-handling process, and the NCA will normally handle such requests within 3 working days upon receipt of an application for access. Third parties do not, however, have the right to access either business secrets contained in such documents, or documents prepared for the NCA’s internal use.

Third parties can provide information or complain to the NCA on their own initiative. If the complainant has sufficiently direct interest in the outcome of the concentration, he may also be considered as a “party” under general administrative law, which triggers certain rights during the case-handling process.

Further, the NCA may order them to provide information. When handling a standardised notification, the NCA sometimes carry out an informal market test by telephone or e-mail. In cases where a complete notification is submitted, the NCA will normally send a formal request to selected third parties.

Third parties may not appeal a clearing decision.

4.3 What information gathering powers does the regulator enjoy in relation to the scrutiny of a merger?

Anyone must provide the competition authorities with the information these authorities require to perform their responsibilities under the Act. This comprises information from both the notifying parties and from third parties.

The information may be required in written or oral form within a specified time limit, by individual undertakings or groups of undertakings, and may be recorded and retained as audio recordings.

The competition authorities are entitled to require any type of information and access to sources of such information for examination on the same conditions as set forth in the first paragraph.

The information can be provided irrespective of the duty to maintain confidentiality otherwise imposed on tax assessment authorities, other authorities levying taxes or fees, and authorities responsible for supervising public regulation of commercial activities.

If an undertaking fails to supply the NCA with requested information or provides incomplete information, the NCA may impose an administrative fine of up to 1 percent of the annual turnover of the undertaking in the last financial year. Alternatively, such violations may result in criminal fines and imprisonment may be imposed on the private persons guilty of such offences. However, as of yet, this has never occurred.

4.4 During the regulatory process, what provision is there for the protection of commercially sensitive information?

As set out above, the NCA is obligated to publish certain data about the notifications it receives on its website. The information is normally published in Norwegian only. The notification is public information and thus available for any third party, with the exception of business secrets.

Third parties or other government agencies can at all stages of the process obtain access to the file, with the exception of business secrets / commercially sensitive information.

Notifying parties should submit a proposed public version of the notification, or clearly mark what information the notifying parties deem as business secrets, when filing a notification or submitting other documents to the NCA. Prior to granting third parties access, the NCA will normally also discuss with the parties to the transaction what information should be considered as business secrets. However, both with regard to the notification and any other documents related hereto, it is upon the NCA's discretion to decide whether the information in question qualifies as business secrets. The decision can be appealed to the Ministry.

5 The End of the Process: Remedies, Appeals and Enforcement

5.1 How does the regulatory process end?

a) Clearance

If the transaction is cleared, no formal decision of non-intervention is necessary. If no administrative decision of intervention is made before the case-handling time limit has expired, the case is cleared without further ado.

In cases where a standardised notification has been submitted, the NCA will normally never make a formal decision of clearing the transaction. The undertakings concerned will not hear anything from the NCA after the letter of confirmation of the notification

being received. Hence, when the 15 working-day period has expired the transaction is cleared without further ado.

If the case is cleared after a phase I or II investigation, the NCA is under no obligation to issue a formal clearance letter. The NCA will, however, normally issue a brief letter informing the parties that the NCA will not intervene, without any further reasoning.

b) Intervention

The NCA or the Ministry may intervene by way of a reasoned administrative decision. This may include prohibitions, orders, or conditional approvals, including:

- prohibiting a concentration or an acquisition, and providing for detailed terms and conditions that must be fulfilled to achieve the purpose of the prohibition;
- ordering a disposition of shares or holdings acquired as part of a concentration or an acquisition as set forth in the second paragraph; or
- requiring the parties in question to meet terms and conditions essential to alleviating restrictions to competition.

5.2 Where competition problems are identified, is it possible to negotiate "remedies" which are acceptable to the parties?

Yes, it is possible to propose both structural and behavioural remedies with the NCA.

Pursuant to the newly adopted Best Practice Guidelines, the NCA encourages the notifying parties to contact the NCA in relation to remedy as early as possible during the review process, and at the latest when submitting their reply to the reasoned preliminary decision on intervention.

Where remedy proposals are offered, the offer must also be included in a publicly available document.

The NCA also emphasises that in addition to the Competition Authority's own practice, the European Commission's Notice on Remedies can provide guidance on appropriate types of commitments. The remedies proposals should be as precise and complementary as possible. The European Commission's form RM relating to remedies can give guidance on the formulation of the commitments.

The Competition Authority will normally examine the effect of the remedy proposals on the market unless this is not considered appropriate in the particular case.

When the NCA accepts to clear a transaction subject to remedies, the remedies are normally documented in the NCA's decision of intervention, which takes the form of a conditional approval of the concentration.

5.3 At what stage in the process can the negotiation of remedies be commenced?

There is no set time frame related to proposals and discussions of remedies. However, as set out above, the NCA encourages the notifying parties to contact the NCA in relation to remedy as early as possible during the review process, and at the latest when submitting their reply to the reasoned preliminary decision on intervention.

5.4 If a divestment remedy is required, does the merger authority have a standard approach to the terms and conditions to be applied to the divestment?

The NCA will always set a time limit indicating when the divestments have to be made. Further, if needed, the Competition

Authority can appoint a trustee to assist in the implementation of a decision involving divestment of business.

5.5 Can the parties complete the merger before the remedies have been complied with?

Whether the parties may complete the merger before the remedies have been complied with will depend on how the conditions for intervention are formulated and the interpretation of the various conditions. This may vary from case to case.

5.6 How are any negotiated remedies enforced?

Remedies will be stated as conditions in the administrative decision clearing the transaction.

Infringement of such conditions is a criminal offence, and may result in administrative fines issued by the NCA or, in the alternative, a criminal charge with a fine for a company and/or fine or imprisonment for individuals.

5.7 Will a clearance decision cover ancillary restrictions?

Yes, the concept of “ancillary restraints” in Norwegian competition law is identical to the same concept developed by the European Commission in its case law. Thus, restrictions on competition that are directly related to a concentration or an acquisition, are not infringements of the prohibitions of the Act if they are necessary to the implementation of the concentration or acquisition, and if the concentration or acquisition, together with the ancillary restrictions, does not create or strengthen a significant restriction of competition contrary to the purpose of the Act. The Act does, however, not explicitly state whether the NCA’s decision of non-intervention, also implies clearance of ancillary restraints.

Guidance to the concept of ancillary restraints and to what extent the NCA will deal with this in its decisions can be found in the Commission Notice on restrictions directly related and necessary to concentrations OJ C 56, 05.03.2005, pages 24-31.

5.8 Can a decision on merger clearance be appealed?

The NCA’s decision to intervene in a transaction can be appealed to the Ministry by a notifying party or another party that is able to demonstrate the required legitimate interest.

An unconditional clearance of a merger may not be appealed by third parties to the Ministry nor to the King in Council. However, a conditional approval may be appealed to the Ministry or the King in Council by a party who has the required legitimate interest (typically the notifying party and the seller).

5.9 Is there a time limit for enforcement of merger control legislation?

The Act sets absolute deadlines for the NCA’s case handling and for the King’s intervention in merger cases, see question 3.6. The Act also contains deadlines for the Ministry’s case handling in appeal cases, but it follows from the preparatory works that expiry of these deadlines will not imply that the transaction becomes immune from intervention.

6 Miscellaneous

6.1 To what extent does the merger authority in Norway liaise with those in other jurisdictions?

There is a co-operation agreement between the competition authorities in Denmark, Iceland, Norway and Sweden allowing the exchange of certain confidential information in competition matters between the relevant competition authorities.

There have been cases where a notification to the NCA has resulted in contact from other Nordic jurisdictions, related to possible obligations to notify in the other jurisdiction.

Further, the NCA co-operates with the EFTA’s Surveillance Authority and the Commission in connection with development and enforcement of the EU/EEA competition rules and participates in meetings in the Advisory Committee.

The NCA does also, on the international level, participate on the Competition Committee of the OECD and is a member of the International Competition Network.

6.2 Please identify the date as at which your answers are up to date.

This chapter is up to date as of October 2009.

**Tone Ripel**

Wiersholm, Mellbye & Bech, advokatfirma AS
P.O.Box 1400 Vika
0115 Oslo
Norway

Tel: +47 210 210 00
Fax: +47 210 210 01
Email: tri@wiersholm.no
URL: www.wiersholm.no

Tone Ripel, senior lawyer, has for more than 13 years worked with competition law issues, both national law and EU/EEA law. She started her career in the Norwegian Competition Authority, before she joined Wiersholm's EU and Competition Department in 1999. She has handled a number of cases before the Norwegian Competition Authorities. Her practice covers merger cases with Norwegian, EU and multinational notifications. She has advised in cartel investigations and private litigation. Over the last years she has also worked with large private investigations related to Foreign Corruption Practices Act (FCPA), Norwegian criminal law, and competition law. She is today the head of Wiersholm's investigation unit.

**Anette Halvorsen Aarset**

Wiersholm, Mellbye & Bech, advokatfirma AS
P.O.Box 1400 Vika
0115 Oslo
Norway

Tel: +47 210 210 00
Fax: +47 210 210 01
Email: ahaa@wiersholm.no
URL: www.wiersholm.no

Anette Halvorsen Aarset has a wide range of experience in EU and EEA law. Principal areas of practice include EU/EEA and national competition law with mergers, acquisitions, joint ventures, other kinds of collaboration as main areas in addition to distribution, pricing policies and cartel cases. She has assisted in several cases for the Norwegian Competition Authority and the competition authorities in Brussels. Her area of practice also comprises the media sector.



Wiersholm is an internationally oriented firm of lawyers, dedicated to covering the needs of the business community for strategic advice on business law, operational legal assistance and legal proceedings. Its activities are based on top legal competence combined with efficiency and an understanding of how business works. The team based approach enables effective use of the firm's lawyers' experience of the legal system, public administration and Norwegian and foreign commerce. A large portion of the firm's work is related to international business operations. Wiersholm's lawyers have extensive international experience and several of them have legal training from the US, UK and other EU countries.

Given the high volume of M&A, merger control work dominates the practice, including effective work on multi-jurisdictional matters including notifications to the Commission. The lawyers are also widely experienced in representing clients in disputes involving alleged breaches of the Norwegian Competition Act / EEA / EU. Private litigation in the competition area is an increasingly important part of the practice.