

# COMPETITION ENFORCEMENT AGENCIES

## HANDBOOK 2019

Published in association with:

Atsumi & Sakai

Bowmans

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ELIG Gürkaynak Attorneys-at-Law

Lapidot, Melchior, Abramovich & Co

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SRS Advogados

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# Competition Enforcement Agencies Handbook 2019

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A Global Competition Review Special Report

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## CONTENTS

Albania.....	1	El Salvador.....	88
Algeria.....	5	Estonia.....	91
Argentina.....	8	European Union.....	94
Armenia.....	11	Andrzej Kmiecik and Andreas Reindl Van Bael & Bellis	
Australia.....	17	Faroe Islands.....	109
Austria.....	21	Fiji.....	110
Azerbaijan.....	24	Finland.....	111
Barbados.....	26	France.....	114
Belarus.....	28	Gambia.....	119
Belgium.....	29	Germany.....	121
Bosnia and Herzegovina.....	32	Greece.....	127
Botswana.....	34	Honduras.....	128
Brazil.....	38	Hong Kong.....	129
Bulgaria.....	42	Hungary.....	132
Canada.....	46	Iceland.....	138
Channel Islands.....	47	India.....	142
Chile.....	50	Indonesia.....	146
China.....	54	Ireland.....	149
Colombia.....	57	Israel.....	153
COMESA.....	63	D Ziv Abramovich Lapidot, Melchior, Abramovich & Co	
Costa Rica.....	66	Italy.....	162
Croatia.....	67	Jamaica.....	165
Cyprus.....	70	Japan.....	167
Czech Republic.....	73	Setsuko Yufu, Tatsuo Yamashima, Saori Hanada and Masayuki Matsuura Atsumi & Sakai	
Denmark.....	77	Jordan.....	176
Ecuador.....	80	Kazakhstan.....	178
EFTA.....	84	Kenya.....	179
Egypt.....	87	Korea.....	182

Kosovo.....	186	Serbia.....	280
Latvia.....	187	Seychelles.....	284
Lithuania.....	192	Singapore.....	287
Luxembourg.....	195	Slovakia.....	290
Macedonia.....	196	Slovenia.....	295
Malaysia.....	199	South Africa.....	298
Malta.....	201	<i>Maryanne Angumuthoo and Shakti Wood</i>	
Mauritius.....	203	Bowmans	
Mexico.....	207	Spain.....	306
Moldova.....	212	Sri Lanka.....	310
Mongolia.....	215	Swaziland.....	312
Montenegro.....	216	Sweden.....	315
Morocco.....	219	Switzerland.....	320
Namibia.....	220	Taiwan.....	325
Netherlands.....	221	Tanzania.....	328
New Zealand.....	224	Thailand.....	329
Nicaragua.....	228	Turkey.....	330
Norway.....	229	<i>Gönenç Gürkaynak and K Korhan Yıldırım</i>	
Panama.....	233	ELIG Gürkaynak Attorneys-at-Law	
Papua New Guinea.....	235	Ukraine.....	343
Peru.....	236	United Kingdom.....	348
Philippines.....	241	<i>Becket McGrath and Christine Graham</i>	
Poland.....	242	Cooley	
Portugal.....	248	United States.....	359
<i>Gonçalo Anastácio and Luís Seifert Guincho</i>		<i>David Meyer and Mary Kaiser</i>	
SRS Advogados		Morrison & Foerster LLP	
Romania.....	256	Uruguay.....	373
Russia.....	261	Uzbekistan.....	375
Saudi Arabia.....	279	Venezuela.....	376
		Vietnam.....	377
		Yemen.....	378
		Zambia.....	379

*Global Competition Review's* 2019 edition of the *Competition Enforcement Agencies Handbook* provides full contact details for competition agencies in over 100 jurisdictions, together with charts showing their structure and a Q&A explaining their funding and powers. The information has been provided by the agencies themselves and by a panel of specialist local contributors.

The *Competition Enforcement Agencies Handbook* is part of the *Global Competition Review* subscription service, which also includes online community and case news, enforcer interviews and rankings, bar surveys, data tools and more.

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## Questions and answers

**How long is the head of agency's term of office?**

The director general's term of office is six years.

**When is he or she due for reappointment?**

The position of director general is due for reappointment in 2022.

**Which posts within the organisation are political appointments?**

None. The director general is appointed by the King in Council, but it is not a political appointment.

**What is the agency's annual budget?**

The annual budget for the Norwegian Competition Authority (NCA) in 2019 is 110 million kroner (of which approximately 10 per cent is remitted to the Norwegian Public Service Pension Fund).

**How many staff are employed by the agency?**

As of 1 January 2019, there are 105 employees at the agency, including employees on leave and employees hired on temporary basis. The number for 2018 was 86.6 full-time equivalent.

**To whom does the head of the agency report?**

The director general reports to the Ministry of Trade, Industry and Fisheries (the Ministry).

**Do any industry-specific regulators have competition powers?**

Yes.

**If so, how do these relate to your role?**

The NCA cooperates formally with the Norwegian Communications Authority, the Norwegian Water Resources and Energy Directorate, and the Financial Supervisory Authority of Norway. These authorities are to some degree responsible for competition matters within their respective sectors. In addition, the NCA cooperates formally with the Norwegian Media Authority.

**May politicians overrule or disregard authority's decisions? If they have ever exercised this right, describe the most recent example.**

In Norway, the NCA's independence in individual cases is secured by law. Even though the NCA can be ordered to deal with a case by the Ministry, it cannot be instructed as to decisions in individual cases. As

a measure to enhance the NCA's independence, an independent Competition Complaints Board was established in 2017. The board is now the appellate body for all decisions by the NCA in mergers as well as cartel and abuse of dominance cases. Previously, the Ministry was the appellate body for merger decisions. In 2005, the merger between Prior Norge BA and Norgården AS was permitted with respect to agricultural policy.

**Does the law allow non-competition aims to be considered when your agency takes decisions?**

The Competition Act only allows competition aims to be considered when taking decisions. The purpose of the Competition Act is to further competition and thereby contribute to the efficient use of society's resources. When applying the Competition Act, special consideration shall be given to the interests of consumers.

**Which body hears appeals against the agency's decisions? Is there any form of judicial review beyond that mentioned above? If so, which body conducts this? Has any competition decision by the agency been overturned?**

As of April 2017, decisions of the NCA may be appealed to the new Competition Complaints Board. This new board handles appeals on fines in, inter alia, cartel and abuse of dominance cases as well as merger decisions by the NCA. Parties may appeal to Court of Second Instance. The last time a merger decision was overturned, at that time by the Ministry, was in 2006. Since 2007, six out of 32 merger decisions were appealed against, but none were overturned. Since 2008, eight cartel decisions and one decision about abuse of dominance were appealed, and six were not. Three of the appeals are still being handled as of January 2019. The other ones that have been appealed were not overturned as such, but fines have been reduced in some cases.

**Has the authority ever blocked a proposed merger? If yes, please provide the most recent instances.**

The NCA has blocked 15 mergers since the Competition Act of 2004 took effect. In 2017, one merger was blocked: *Eimskip Norway AS/Nor Lines AS*, whereas three mergers were blocked in 2016, concerning markets of timber, ferries and pizza eateries.

**Has the authority ever imposed conditions on a proposed merger? If yes, please provide the most recent instances.**

Since the enforcement of the 2004 Competition Act, the NCA has intervened in 25 mergers, which were allowed with remedies. In 2016 and 2017, none of the proposed remedies were accepted, thus, the mergers where the parties offered remedies were blocked. In 2018, two mergers were allowed with remedies. In the market of payment solutions, Vipps AS was allowed to merge with BankAxept AS and Bank ID Norge AS on the condition of committing access to BankID and BankAxept to other players. Concerning sales of marine oil, the NCA accepted St1 Norge AS merging with Statoil Fuel & Retail Marine AS, on the condition of changing agreements and selling specific businesses in three regions.

**Has the authority conducted a Phase II investigation in any of its merger filings? If yes, please provide the most recent instances.**

In 2018, the NCA received 111 merger notifications. Excluding the merger cases that were approved on conditions, three cases were in Phase II. In one case, the merger notification was withdrawn. In two cases, Phase II investigations were pending as of January 2019.

**Has the authority ever pursued a company based outside your jurisdiction for a cartel offence? If yes, please provide the most recent instances.**

No, the NCA has not pursued any company based outside the NCA's jurisdiction for a cartel offence.

**Do you operate an immunity and leniency programme? Whom should potential applicants contact? What discounts are available to companies that cooperate with cartel investigations?**

Yes, regulations adopted pursuant to the Competition Act provide for a transparent leniency programme. The regulations are based on the ECN Model Leniency Programme. Potential applicants should contact the NCA using contact details found on our website.

**Is there a criminal enforcement track? If so, who is responsible for it? Does the authority conduct criminal investigations and prosecutions for cartel activity? If not, is there another authority in the country that does?**

Yes. The main responsibility for enforcing Norwegian competition regulations, including investigating and responding to offences, is placed with the NCA. The

NCA can impose civil reactions for violations (for example, an administrative fine for the company or companies involved). However, Norwegian competition law also has its own penal section. The Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime has the responsibility for carrying out criminal investigations, including competition crime. Normally, cases referred by the NCA to the Public Prosecution Authority will be of a very severe nature. Penalties under the penal section of the competition law range from fines (to both companies and persons) to up to six years' imprisonment.

**Are there any plans to reform the competition law?**

Only amendments of minor importance. It has been a goal to harmonise national competition law with EU law as much as possible, and Norway will follow processes initiated by the EU Commission.

**When did the last review of the law occur?**

The Competition Act was revised in April 2016, effective from 1 July 2016. According to the revised Competition Act, a new Competition Complaints Board was established spring 2017. The revision also includes a settlement procedure for cartel cases, which is similar to the EU European Economic Area rules. Another change is a replacement from a total welfare standard to a consumer welfare standard in the merger analysis.

**Do you have a separate economics team? If so, please give details.**

Yes, the NCA has a separate economics team led by chief economist Kurt Brekke.

**Has the authority conducted a dawn raid?**

In 2018, the NCA conducted dawn raids at nine companies, in two separate cases.

**Has the authority imposed penalties on officers or directors of companies for offences committed by the company? If yes, please provide the most recent instances.**

No, it would be up to the police to impose penalties on officers or directors of companies for offences committed by the company. However, the NCA may apply for public prosecution. In line with a rule of conditional prosecution, infringements that may lead to criminal sanctions are only subject to public prosecution if the NCA has applied for public prosecution or this is justified by strong public interests.

## NORWAY

What are the pre-merger notification thresholds, if any, for the buyer and seller involved in a merger?

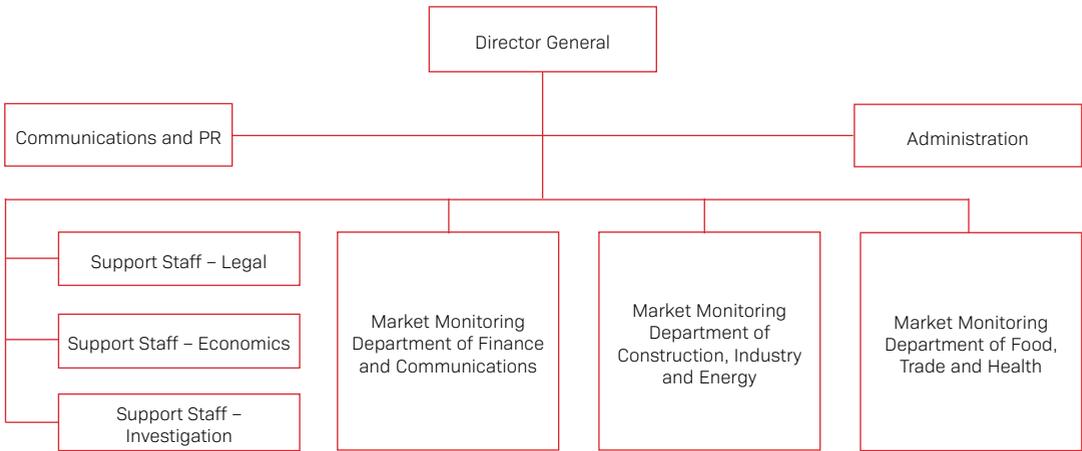
Concentrations where the undertakings concerned have a combined annual turnover in Norway exceeding 1 billion kroner shall be notified to the NCA. However, if only one of the undertakings concerned has an annual turnover in Norway exceeding 100 million kroner, notification is required.

Are there any restrictions on investments that involve less than a majority stake in the business?

According to the new merger regulations, the NCA shall intervene against a concentration if the NCA finds that it will have a significant impediment on effective competition. Regarding restrictions on minority shareholdings, section 16(a) says: '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, provided the acquisition is 'contrary to the purpose of the Act'.

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## Organisation chart



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