

Act No. 65 of 11 June 1993 relating to Competition in Commercial Activity

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Chapter 1. Introductory provisions ➔

Section 1-1

The purpose of the Act

The purpose of the Act is to achieve efficient utilization of society's resources by providing the necessary conditions for effective competition.

Section 1-2

Definitions

a) By "commercial activity" in this Act is meant any kind of economic activity, permanent or occasional. By "undertaking" is meant any individual or enterprise that engages in commercial activities.

b) By "group of companies" in this Act is meant an ownership structure whereby a company owns so many stocks or shares in another company that it represents a majority of the votes. The former company is regarded as the parent company and the latter as a subsidiary. A company is also regarded as belonging to a group of companies when a parent company along with a subsidiary, or when one or more subsidiaries together, own as many stocks or shares as mentioned in the first sentence.

c) By "price" in this Act is meant any kind of payment, regardless of whether other terms such as remuneration, fee, emolument, freightage, rate, rent or the like are used.

d) By "goods" in this Act is meant real estate and movables, including ships, aircraft, gas, electricity and other energy carriers.

e) By "services" in this Act is meant all services, including rights, which are not goods.

Section 1-3

The substantive scope of the Act

The Act applies to any kind of commercial activity, regardless of the kind of goods or services the activity concerns, and irrespective of whether it is private or carried out by central or local government authorities.

The Act does not apply to wage or working conditions in the service of others.

Section 1-4

Relationship to decisions by the Storting

and other Acts

Provisions issued pursuant to this Act must not conflict with decisions passed by the Storting.

Where a matter that comes under this Act also comes under provisions concerning regulation and supervision in other Acts, the King may issue specific provisions for the mutual limitation of jurisdiction of the authorities involved.

Section 1-5

The territorial extent of the Act

The Act applies to terms of business, agreements, and actions which have effect, or are liable to have effect, in the Realm of Norway.

Insofar as they only have effect, or are liable to have effect, outside the Realm, terms of business, agreements, and actions are not covered by the Act unless the King so decides.

The extent of the Act may be broadened by agreement with a foreign State or an international organization.

Such an agreement may also restrict the extent of the Act in a limited field.

The King shall decide whether and to what extent provisions issued in, or pursuant to, this Act shall apply to Svalbard.

Section 1-6

The duration of decisions pursuant to the Act

In general decisions pursuant to this Act shall have effect for a specified period. The effective period for each decision shall normally not exceed five years, and never be longer than ten years. Decisions may be renewed.

Section 1-7

The relationship between the prohibitions of Sections 3-1 to 3-4 of the Competition Act and collaboration exempted under Article 53.3 of the EEA Agreement

The prohibitions of Sections 3-1 to 3-4 do not encompass agreements between undertakings, decisions by associations of undertakings or concerted practices which have been granted individual exemption under Article 53.3 of the EEA Agreement, or which come under rules concerning categories of agreements under Article 53.3 of the EEA Agreement.

Section 1-8

The handing over to foreign competition authorities of information subject to secrecy

In order to fulfil Norway's contractual obligations towards a foreign State or international organization, the Competition Authority may regardless of the statutory duty of secrecy furnish the competition authorities of foreign States with such information as is necessary to promote the competition rules of Norway or of the State or organization concerned.

Where information is handed over in accordance with the first paragraph, the Competition Authority shall make it a condition that the information may only be passed on to other parties with the consent of the Competition Authority, and only for the purpose covered by such consent.

The King may lay down regulations concerning the handing over of information under the first and second paragraph.

Chapter 2. The organization and duties of the Competition Authorities



Section 2-1

The organization of the competition authorities

The competition authorities are the King, the Ministry and the Norwegian Competition Authority (hereafter referred to as the Competition Authority).

The Competition Authority is responsible for day-to-day supervision in accordance with this Act. The King may issue specific provisions concerning the organization and activities of the Competition Authority, including determining that public or private bodies or individuals shall assist the Authority.

The day-to-day management of the Competition Authority shall be the responsibility of the Director General of the Authority.

Section 2-2

The duties of the competition authorities

The competition authorities shall supervise competition in the various markets. Among other things they shall:

a) Check that the prohibitions and requirements of the Act are adhered to and grant

exemptions where the purpose of the Act calls for this.

b) Intervene where necessary against anti-competitive behaviour and acquisition of enterprises.

c) Implement measures to increase the markets' transparency.

d) Call attention to the restraining effects on competition of public measures, where appropriate by submitting proposals aimed at increasing competition and facilitating entry for new competitors.

e) When required, assist other authorities in monitoring adherence to other rules where infringements may have harmful effects on market and competition conditions.

Chapter 3. Prohibition of, and intervention against, restraints on competition. Exceptions and exemptions ➔

Section 3-1

Prohibition of collaboration and influence on prices, markups and discounts

Two or more undertakings must not, in connection with the sale of goods or services by agreement or concerted practices, or by any other conduct liable to influence competition, fix or seek to influence prices, markups or discounts except for normal cash discounts. By "normal cash discounts" is meant discounts in connection with cash payment or payment within 30 days. A rate of over 3 per cent shall in no case be regarded as a normal cash discount.

Likewise, one or more suppliers must not fix or seek to influence prices, discounts or markups for the recipients' sale of goods or services.

The prohibitions in the first and second paragraphs also encompass guidelines with contents that are contrary to these paragraphs. The prohibitions encompass both binding and recommended agreements or arrangements.

The prohibitions in the second and third paragraphs shall not prevent the individual supplier from stating recommended prices for the recipients' sale of goods or services. In all such communications the supplier must explicitly define such prices as recommended.

Undertakings must not influence suppliers with respect to the calculation of recommended prices.

Section 3-2

Prohibition of collaboration and influence

on tenders

Two or more undertakings must not, in connection with the sale of goods or services by agreement, concerted practices or by other conduct liable to influence competition, fix or seek to influence prices, calculations of volume or other terms connected with tenders,

allocation of tenders, or direct or seek to induce any undertaking to abstain from submitting a tender.

The prohibition in the first paragraph also encompasses guidelines with contents that are contrary to the first paragraph. The prohibition encompasses both binding and recommended agreements or arrangements.

Section 3-3

Prohibition of collaboration on, or use of

influence to achieve, market sharing

Two or more undertakings must not, in connection with the sale of goods or services by agreement, concerted practices or by any other conduct liable to influence competition, fix or seek by using influence to achieve market sharing in the form of area division, customer division, quota distribution, specialization or limitation of quantity.

The prohibition in the first paragraph also encompasses guidelines with contents that are contrary to the first paragraph. The prohibition encompasses both binding and recommended agreements or arrangements.

The provisions of this Section shall not prevent an individual supplier from agreeing market sharing with, or determining market sharing for, his recipients.

Section 3-4

Prohibition of associated undertakings determining or encouraging restraints

Associations of undertakings must not themselves determine or encourage restraints mentioned in Sections 3-1 to 3-3 or restraints that conflict with decisions under Sections 3-9 to 3-11.

The prohibition in the first paragraph applies correspondingly to board members, employees' representatives and employees in such associations.

Section 3-5

Exceptions in connection with joint projects

The prohibitions in Sections 3-1, 3-2 and 3-4 shall not prevent two or more undertakings collaborating on individual projects and submitting a joint tender or offer for joint supply of goods or services.

This exception applies only where it is made clear in the offer what the collaboration involves and who the collaborating parties are.

Section 3-6

Exceptions for collaboration between owner and company and companies with common owners

The prohibitions in Sections 3-1, 3-3 and 3-4 shall not prevent collaboration or restraints between owner and company where the owner has more than 50 per cent of stocks, shares or corresponding equity stakes giving voting rights. This exception also applies to collaboration and restraints between companies in the same group of companies.

Section 3-7

Exceptions for patent and design licence agreements

The prohibitions in Sections 3-1, 3-3 and 3-4 shall not apply to restraints on competition that are determined between licensor and licensee by an agreement stipulating the licensee's right to utilization of a registered patent or design.

Section 3-8

Exceptions for collaboration on sales of agricultural, forestry and fisheries products

The prohibitions in Sections 3-1, 3-3 and 3-4 shall not prevent collaboration or restraints in connection with the sale or supply of Norwegian agricultural, forestry or fisheries products from producers or producers' organizations in agriculture, forestry or fisheries.

Section 3-9

Exemptions from the prohibitions of the Act

The Competition Authority may, through individual decisions or regulations, grant exemption from the prohibitions in Sections 3-1 to 3-4 provided that:

- a) restraints on competition mean that competition in the market concerned will be increased,
- b) increased efficiency must be expected to more than compensate for the loss due to restriction of competition,
- c) restraints on competition have little significance for competition, or
- d) there are special grounds for doing so.

Conditions may be imposed for exemption.

Exemption may be revoked if the conditions for exemption are not fulfilled or the prerequisite for exemption is no longer present.

Section 3-10

Intervention against anti-competitive behaviour

The Competition Authority may intervene by individual decision or regulations against terms of business, agreements and actions where the Authority finds that these have the purpose or effect of restricting, or are liable to restrict, competition contrary to the purpose of Section 1-1 of the Act.

The first paragraph encompasses for example terms of business, agreements and actions that can:

- a) maintain or strengthen a dominant position in a market with the help of anti-competitive methods, or
- b) restrict clients' choices, make production, distribution or sales more expensive, bar competitors, refuse dealing with or deny membership of associations of undertakings.

By refusal to deal is also meant that an undertaking is only willing to engage in trading activities on specific terms.

Decisions concerning intervention may involve imposing a prohibition or order, as well as granting conditional permission. The decision may also involve regulation of undertakings' prices. This also applies in the event of market failure as a result of natural monopoly, public controls or other factors.

Decisions intended for municipal or county-municipal bodies shall be made by the King.

Section 3-11

Intervention against acquisition of enterprises

The Competition Authority may intervene against acquisition of enterprises where the Authority finds that the acquisition in question will create, or strengthen, a significant restriction of competition contrary to the purpose of Section 1-1.

By acquisition is also meant mergers, acquisition of stocks or shares and partial acquisition of enterprises.

Decisions concerning intervention may involve imposing a prohibition or order, as well as granting conditional permission. Among other things the Competition Authority may:

- a) prohibit acquisition of the enterprise and issue such provisions as are necessary for achievement of the purpose of the prohibition,
- b) require disposal of stocks or shares acquired as a stage in the acquisition of the enterprise, or
- c) stipulate such conditions as are necessary to counteract the acquisition of the enterprise restricting competition contrary to the purpose of efficient utilization of resources; cf. Section 1-1.

The Competition Authority may adopt a temporary prohibition against the acquisition of an enterprise or adopt other measures where there are reasonable grounds for assuming that the acquisition could create, or strengthen, a significant restriction of competition and the Competition Authority considers such action necessary in order to be able to implement a subsequent decision concerning intervention under this Section.

Before intervention can be carried out under the first paragraph, the Competition Authority must have attempted to arrive at an amicable solution with the undertaking or undertakings.

The Competition Authority may intervene against acquisition of enterprises within six months after such an agreement on acquisition has been concluded. Where special grounds so indicate, the Authority may intervene within one year of the same date.

Undertakings that wish to ascertain whether intervention is to be expected may notify the final agreement on acquisition to the Competition Authority. Should the Authority, within three months of receiving such notification, not advise that intervention may take place, it cannot decide to intervene under the terms of this Section. Should the Authority advise that intervention will take place, the time limits in the sixth paragraph will apply in the normal manner to the Authority's further procedure.

The time limits that are imposed in this Section are of no significance for procedure concerning complaints. The Competition Authority may issue specific provisions concerning notification arrangements in the seventh paragraph.

Chapter 4. Price-labelling and information to the public ➔

Section 4-1

Price-labelling etc.

Undertakings that sell goods retail to consumers shall, as far as practically possible, provide information on prices so that they can be easily seen by customers. The same applies to the sale of services to consumers.

Through individual decisions or regulations the Competition Authority may issue specific provisions for the implementation of the duty to provide price information under the first paragraph, and similarly it may make exceptions from this duty.

In order to facilitate customers' assessment of the prices and quality of goods and services, the Competition Authority may also require undertakings to implement measures in addition to those resulting from the requirements of the first paragraph. Decisions concerning information measures may for example involve a duty to carry out labelling, to hang up notices or to provide other information on prices, business terms, quality and other properties. The decision may also entail imposing requirements for sorting and provisions for measurement and weight and information on price per unit of measurement (unit prices) for goods that are offered for sale.

Section 4-2

Information to the public concerning restraints on competition

In order to carry out its duties in accordance with this Act, the competition authorities may, irrespective of the rules concerning confidentiality in Section 13 first paragraph item 2 of the Public Administration Act, publicize information on terms of business and collaboration that have the purpose or effect of restricting competition. The undertaking's legitimate interest in maintaining its business secrets must be taken into account. Information to the public under the provisions of the first sentence shall nevertheless not apply to information concerning technical devices or procedures.

Chapter 5. Effects in relation to civil law ➡

Section 5-1

Invalidity

Agreements that conflict with prohibitions under this Act are invalid between the parties.

Such invalidity only applies to the extent that prohibitions in this Act are infringed, unless under Section 36 of the Contracts Act it would be unreasonable to make the rest of the agreement valid.

Chapter 6. The duty to provide information and sanctions ➡

Section 6-1

The duty to provide information and investigation

All are required to give the competition authorities the information demanded by these authorities in order to perform their tasks in accordance with the Act, including the investigation of any possible infringement of this Act or decisions pursuant to this Act, or the investigation of other price and competition conditions, and in order to fulfil Norway's contractual obligations towards a foreign State or international organization. It may be required that such information be given in written or oral form within a specified time limit both by individuals, undertakings and by groups of undertakings.

On the same conditions as mentioned in the first paragraph, the competition authorities may, for the purpose of investigation, demand that all types of business documents, minutes of meetings and other written material, and information stored by means of computers or other technical aids, shall be handed over to them.

The competition authorities shall be given access to computers or other technical aids in order to gain access to information that is available through the use of such aids.

Information required in accordance with the first paragraph may be given irrespective of the duty of secrecy which otherwise is imposed on the tax assessment authorities, other tax authorities and authorities which have a duty to supervise public regulation of commercial activity. Nor shall such a duty of secrecy prevent documents in the possession of such authorities from being handed over for investigation.

The duty to provide information and submit to investigation applies even if a decision to secure evidence as stated in Section 6-2 has been made.

The King may issue specific provisions concerning the duty to provide information and investigation.

Section 6-2

Securing of evidence

When there are reasonable grounds for assuming that this Act or decisions pursuant to this Act have been infringed, the Competition Authority may demand access to real property, fittings and other movables in order to look for evidence. The competition authorities may confiscate such evidence for closer investigation if necessary.

An application for permission to secure evidence must be submitted by the Competition Authority to the court of examination and summary jurisdiction. The case shall be brought before the court of examination and summary jurisdiction at the place where it is most practical to do so. The court shall reach a summary decision. The decision shall be reached without the person who is affected by the decision having the right to make a statement, and without his being informed of the decision before the securing of evidence is implemented. An appeal against the decision shall have no postponing effect on its implementation. Sections 200, 201 first paragraph, Sections 117-120 cf. Sections 204, 207, 208, 209, 213 and Chapter 26 of the Criminal Procedure Act shall apply correspondingly.

The Competition Authority may require assistance by the police to implement the decision concerning securing of evidence.

Where there is no time to await the decision of the court, the Competition Authority may demand that the police close off those areas where the evidence may be located, until the court's decision is given.

The King may issue specific provisions for the securing of evidence and treatment of surplus information.

Section 6-3

Examination of documents

In relation to the Competition Authority no one has right of access to information, documents or other evidence in cases concerning infringement of this Act or decisions pursuant to this Act obtained in accordance with Sections 6-1 or 6-2. When the Competition Authority has issued a writ giving an option of relinquishment of gain under Section 6-5, the provisions of the Public Administration Act concerning the right of the parties to acquaint themselves with the documents in the case shall apply.

Section 6-4

Coercive fine

In order to ensure that individual decisions pursuant to this Act are complied with, the Competition Authority may determine that the undertaking against which the decision is directed shall pay a continuous fine to the State until the situation has been rectified.

The fine shall not take effect until the time limit for appeal has passed. If the decision is appealed against, no fine shall take effect until the appeal is decided.

The decision to impose a fine is a basis for attachment. The Competition Authority may waive an accrued coercive fine.

Section 6-5

Relinquishment of gain

Where a gain has been achieved by infringement of this Act or decisions pursuant to this Act, the undertaking which has made such a gain may be required wholly or partly to relinquish it. This shall also apply when the undertaking which makes the gain is different from the offender. Where it is impossible to establish the size of the gain, the amount shall be determined approximately.

Where the undertaking is a company that is part of a group of companies, the company's parent company and the parent company of the group of companies to which the company belongs shall bear a secondary liability for the amount.

The Competition Authority may issue a writ giving an option of relinquishment of gain in accordance with this Section. The decision to issue such a writ shall not be regarded as an individual decision pursuant to the Public Administration Act. The writ shall have a time limit for acceptance of up to two months. Acceptance of the option is a basis for attachment. If the option is not accepted the Competition Authority may, within three months of the expiry of the time limit for acceptance, bring action against the undertaking in the judicial district where the undertaking may be sued. The case shall be dealt with in accordance with the Act relating to Judicial Procedure in Civil Cases. Mediation in the conciliation board is not necessary.

The right to claim relinquishment of gain is statute-barred after ten years. Further, the provisions of the Act No. 18 of 18 May 1979 relating to the Limitation of Claims shall be applied to the extent that they are appropriate.

Where the infringement is dealt with by the prosecuting authority or the court pursuant to the Act No. 25 of 22 May 1981 relating to Legal Procedure in Criminal Cases, the claim for relinquishment of gain may be included as a claim for confiscation under Section 34 of the Penal Code.

Section 6-6

Penal provisions

Any person shall be liable to fines or to imprisonment for up to three years who intentionally or negligently:

- a) infringes Sections 3-1, 3-2, 3-3, 3-4 or 4-1 first paragraph,
- b) infringes decisions pursuant to Sections 3-10, 3-11 or 4-1 second or third paragraph,
- c) fails to comply with orders pursuant to Sections 6-1 or 6-2,
- d) gives incorrect or incomplete information to the competition authorities, or
- e) contributes to infringement as stated in litrae a to d.

Under aggravating circumstances imprisonment for up to six years may be imposed. When deciding whether aggravating circumstances exist, emphasis shall be placed among other things on the danger of substantial damage or inconvenience, the gain expected from the infringement, the extent and duration of the infringement, the degree of guilt demonstrated, whether an attempt was made to conceal the infringement by using falsified accounts or similar documents, and whether the offender has previously been convicted of any infringement of legislation concerning economic regulation.

Section 6-7

Res judicata

Where an option has been accepted or judgement has been passed that is legally binding under Section 6-5, no action may be brought under Section 6-6 for the same infringement. Similarly no action may be brought under Section 6-5 where a legally binding decision exists under Section 6-6 or Section 34 of the Penal Code.

Chapter 7. Entry into force and transitional provisions, repeal and amendment of other acts ➔

Section 7-1

Entry into force

The Act shall enter into force from the date decided by the King.

Section 7-2

Transitional provisions

Administrative regulations, rules and directives pursuant to Acts that have been repealed under Section 7-3 No. 2 and No. 3 shall still apply to the extent that they are appropriate, until the King repeals or amends them pursuant to this Act, pursuant to the Act relating to Price Policy or by special provision.

Individual decisions pursuant to the Act No. 4 of 26 June 1953 relating to Control of Prices, Profits and Restraints on Competition and the Act No. 3 of 9 July 1948 relating to Maintenance of Price and Rationing Regulations etc. shall be maintained in the period stipulated in the decisions until they are amended or repealed pursuant to this Act or by special provision of the King.

In addition the King may issue such transitional provisions as are necessary.

Section 7-3

Repeal and amendment of other Acts

When this Act enters into force, the following Acts shall be repealed or amended:
