

Competition Act

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Act of 5 March 2004 No. 12 on competition between undertakings and control with concentrations

(including amendments in Act of 17 December 2004 No. 100).

Chapter 1 Introduction ➡

Section 1 Purpose of the Act ➡

The purpose of the Act is to further competition and thereby contribute to the efficient utilization of society's resources.

When applying this Act, special consideration shall be given to the interests of consumers.

Section 2 Definition of undertaking ➡

In this Act, an undertaking means any private or public entity that exercises commercial activities.

Section 3 General exemptions from the Act ➡

The Act does not apply to terms and conditions relating to work or employment.

The King may by regulation exempt certain markets or industries from all or part of this Act. The King in Council shall in regulation provide for the exemptions from Sections 10 and 11 that are necessary to implement agriculture and fisheries policies.

Section 4 Relation to other acts ➡

If a matter governed by the Act is also governed by regulatory and control provisions of other acts, the King may issue specific rules delineating the various authorities' areas of responsibilities.

Section 5 Territorial scope of the Act ➡

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.

The King may by regulation decide that the Act shall govern terms of business, agreements, and actions that have effect, or are liable to have effect, exclusively beyond the Realm of Norway.

The King may by regulation decide to what extent the Act shall apply to Svalbard.

Section 6 Duration of decisions ➡

Normally, decisions made pursuant to this Act, shall have effect for a specified term. The term of a decision shall normally not exceed five years, and may never exceed ten years. The term of effect should be stated in the decision.

The rule of the first paragraph does not prevent decisions from being renewed.

Section 7 Transfer of confidential information to the competition authorities of foreign states and to international organizations ➡

Regardless of statutory required confidentiality, the Competition Authority may, in fulfilment of Norway's agreements with foreign states or international organizations, provide foreign states and international organizations with any information that is necessary to further the competition rules of either Norway or the state or organization concerned.

When disclosing information in accordance with the first paragraph, the Competition Authority shall make it a condition that the information may only be passed on with the consent of the Competition Authority, and only for the purpose covered by such consent.

The King may issue a regulation on the transfer of information according to the first and second paragraphs.

Chapter 2 Organization and responsibilities of the competition authorities ➡

Section 8 Organization of the competition authorities ➡

The competition authorities are the King, the Ministry, and the Competition Authority.

The Competition Authority may not be instructed as to decisions in individual cases. The King may order the Competition Authority to deal with a case. The Ministry may reverse decisions by the Competition Authority if they are invalid, even if the decision has not been appealed. Section 35 of the Public Administration Act does not govern the Ministry's reversal of the Competition Authority's decisions under this Act.

The King may issue more detailed provisions as to the organization and activities of the Competition Authority.

Section 9 Responsibilities of the Competition Authority ➡

The Competition Authority shall supervise competition in the various markets, among other things by:

- a. ensuring adherence to the prohibitions and orders of this Act;
- b. intervening where necessary against concentrations;

- c. implementing measures to promote market transparency;
- d. enforcing Articles 53 and 54 of the EEA Agreement; and
- e. calling attention to any restrictive effects on competition of public measures and, where appropriate, submitting proposals aimed at furthering competition and facilitating market access by new competitors. If the Competition Authority so requires, a response from the public body responsible for the measure must be made within the deadline specified by the Competition Authority. The response must include inter alia a discussion of how the competition concerns will be dealt with.

The Competition Authority is obliged to provide guidance to undertakings as to the interpretation of this Act, its scope and its application in individual cases.

Chapter 3 Prohibited restrictions of competition ➡

Section 10 Agreements between undertakings that restrict competition ➡

The following shall be prohibited: all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition, and in particular those which:

- a. directly or indirectly fix purchase or selling prices or any trading conditions;
- b. limit or control production, markets, technical development, or investment;
- c. share markets or sources of supply;
- d. apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- e. make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Any agreements or decisions prohibited pursuant to this Section shall be automatically void.

The provisions of the first paragraph are inapplicable in the case of agreements, decisions by associations of undertakings, or concerted practices which contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which do not:

- a. impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- b. afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

The King may by regulation issue detailed rules as to what is covered by the third paragraph (block exemptions). The Competition Authority may decide that a block exemption is not applicable in relation to specific undertakings to the extent that agreements, decisions or concerted practices have effects that are not in conformity with the third paragraph.

Section 11 Abuse of dominant position ➡

Any abuse by one or more undertakings of a dominant position is prohibited.

Such abuse may, in particular, consist in:

- a. directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- b. limiting production, markets or technical development to the prejudice of consumers;
- c. applying dissimilar conditions to equivalent transactions with other trading parties; thereby placing them at a competitive disadvantage;
- d. making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Section 12 Order to bring an infringement to an end, etc. ➡

The Competition Authority may order undertakings or associations of undertakings that are in violation of the prohibitions of Section 10 or Section 11 to bring the infringement to an end. The order may include any measure necessary to bring the infringement to an end. Structural measures may only be ordered if there are no equally effective behavioural measures or if a behavioural measure will be of greater burden to the undertaking.

Orders under the first paragraph may be issued even if the Competition Authority imposes administrative fines on the undertaking pursuant to Section 29 or reports the infringement to the public prosecuting authorities.

The Competition Authority must provide its reasoning when rejecting a request to issue an order under the first paragraph. Rejections may be appealed to the Ministry.

The Competition Authority may order interim measures under the first paragraph, provided that:

- a. there are reasonable grounds to assume that Section 10 or Section 11 has been infringed; and
- b. there are risks of lasting and irreparable damage to competition.

Such order may not be issued if the addressee of the order would suffer damage or inconvenience clearly disproportionate to the interests protected by the order. Interim measures shall be issued for a limited term, but may be prolonged if the risk to competition

continues.

Section 13 Examination of cases involving questions of principle or interests of major significance to society ➡

In cases involving questions of principle or interests of major significance to society, the King in Council may approve conduct that contravenes the prohibition set forth in Section 10 or Section 11, issue orders under Section 12, and reverse decisions of the Competition Authority made under Section 12. Approval of conduct that contravenes Section 10 or Section 11 shall have no effect on infringements of the Act or decisions made pursuant to the Act prior to the issuance of such approval.

Section 14 Measures to promote competition ➡

If necessary to promote competition in the markets, the King may by regulation intervene against terms of business, agreements or actions that restrict or are liable to restrict competition contrary to the purpose of the Act.

Section 15 Relation to the EEA Agreement ➡

The rules in Sections 10 and 11 and in regulations issued pursuant to Section 14 are subject to the limitations set out in Section 7 of the EEA Competition Act.

Chapter 4 Control with concentrations, etc. ➡

Section 16 Intervention against concentrations, etc. ➡

The Competition Authority shall intervene against a concentration if the Competition Authority finds that it will create or strengthen a significant restriction of competition, contrary to the purpose of the Act.

The Competition Authority shall, on the same conditions as set forth in the first paragraph, intervene against an acquisition of holdings in an undertaking even if the acquisition will not lead to control of that undertaking. 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.

Intervention under the first and second paragraphs may include prohibitions, orders, or conditional approvals, including:

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

Intervention under the first and second paragraphs may not take place if there is a well functioning Nordic or European market and the concentration or acquisition under the second paragraph does not adversely affect Norwegian customers.

The Competition Authority may appoint a trustee to assist in implementing decisions emanating under the first and second paragraphs. The trustee will receive remuneration from, and may enter into agreements on behalf of, the addressees of the Competition Authority's decision. The King may by regulation provide for more detailed provisions as to such trustees.

Restrictions on competition that are directly related to a concentration or an acquisition as set forth in the second paragraph, are not infringements of Section 10 or Section 11 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.

Section 17 Definition of concentration ➡

A concentration shall be deemed to arise where:

- a. two or more previously independent undertakings or parts of undertakings merge; or
- b.
 - one or more persons already controlling at least one undertaking; or
 - one or more undertakings;

acquire direct or indirect control on a lasting basis of the whole or parts of one or more other undertakings.

The creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity, shall constitute a concentration within the meaning of the first paragraph (b).

For the purposes of this Act, control shall be 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;
- b. rights or contracts which confer decisive influence on the composition, voting, or decisions of the organs of an undertaking.

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 King may issue a regulation regarding the scope of the first paragraph.

Section 18 Notification of concentrations, etc. ➡

The parties to a merger as defined in Section 17, first paragraph (a), or those who jointly or separately acquire lasting control as defined in Section 17, first paragraph (b) must inform the Competition Authority of the concentration, by way of a standardized notification, no later than when a final merger agreement has been concluded or control has been acquired.

Such standardized notification must include:

- a. names and addresses of the parties to the merger or the party or parties who acquire control;
- b. information on the nature of the concentration;
- c. descriptions of the undertakings concerned and of undertakings in the same corporate group;
- d. description of markets in Norway, or which Norway is a part of, in which the undertakings concerned and undertakings in the same corporate group obtain combined market shares exceeding 20 percent as a result of the concentration;
- e. names of the five most important competitors, customers, and suppliers in each of the markets described in (d); and
- f. annual reports and annual accounts of the undertakings concerned and of undertakings in the same corporate group, unless they are publicly available.

In cases of acquisition of control information is only to be provided on undertakings in the same corporate group as the undertaking(s) acquiring control.

The Competition Authority may order the submission of a complete notification. Such an order may be issued no later than 15 working days after the Competition Authority has received notification as set forth in the first paragraph or three months after a final acquisition agreement according to Section 16, second paragraph.

Voluntary notification of concentrations and acquisitions according to Section 16, second paragraph, may be made to the Competition Authority for clarification as to whether intervention under Section 16 will be considered. Voluntary notifications must satisfy the requirements for complete notifications.

The King may by regulation provide for more detailed rules concerning notification under the first through fourth paragraphs, including limiting the applicability of the obligation to provide standardized notification as set forth in the first paragraph, determining requirements as to the contents of standard notification and complete notification, and making rules as to publicizing notifications.

In individual cases, the Competition Authority may ease the requirements for standardized notification pursuant to this Section.

Section 19 Prohibition against implementation ➡

Concentrations governed by the rules in Section 18, third or fourth paragraphs, may not be implemented as long as the Competition Authority is processing the case under Section 20, second paragraph, first sentence. As to concentrations for which the parties are ordered to provide notification under Section 18, third paragraph, the prohibition against implementation is effective when the parties receive the order to submit notification. In the case of concentrations for which there has been voluntarily notification under Section 18, fourth paragraph, the prohibition against implementation is effective when the complete notification is provided.

The Competition Authority may, on its own initiative, make exemptions from the prohibition against implementation under the first paragraph in individual cases. The Competition Authority may by regulation also exempt categories of undertakings.

The Competition Authority may issue an interim order prohibiting implementation or order alternative measures, provided:

- a. there are reasonable grounds for assuming that the concentration or acquisition according to Section 16, second paragraph may create or strengthen a significant restriction of competition; and
- b. a temporary prohibition is necessary to ensure the effectiveness of any potential intervention under Section 16.

Section 20 Decision to intervene ➡

Decisions to intervene under Section 16 are made by the Competition Authority based on complete notifications under Section 18, third or fourth paragraphs.

No later than 25 working days after receipt of a complete notification, the Competition Authority must notify the parties that intervention may take place. If no such notification is provided, the Competition Authority may not intervene under Section 16.

No later than 70 working days after receipt of a complete notification, the Competition Authority must present a reasoned preliminary decision on intervention. The preliminary decision shall be presented to the parties, who must reply within 15 working days. The Competition Authority 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 Competition Authority's decision may be extended to 25 working days at the request of the parties. If the parties offer modifying commitments, that offer must also be included in a publicly available document.

A decision to intervene may be appealed within 15 working days. The Competition Authority must forward an 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 after receiving it. Further, the rules regarding appeals in Chapter VI of the Public Administration Act pertain insofar as they are relevant.

Deadlines set forth in the second, third, and fourth paragraphs that apply to processing by the Competition Authority or the Ministry, are suspended should 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 Competition Authority or the Ministry has received the information requested.

Section 21 Examination of cases involving questions of principle or interests of major significance to society ➡

In cases involving questions of principle or interests of major significance to society, the King in Council may approve a concentration or an acquisition of shares that the Competition Authority has intervened against under Section 16. Such approval may be conditional. The provisions of Section 16, third paragraph, apply in a corresponding manner. 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 make decisions under Sections 16, 18, and 19 provided that the conditions of Section 16, first or second paragraph are fulfilled. The deadlines set forth in Sections 18 and 20 do not pertain to decisions made under this paragraph. Nevertheless, the King in Council may not intervene against concentrations or acquisitions of holdings more than 12 months after a final agreement is concluded or control is acquired.

Section 21a Relation to the EEA Competition Act ➡

The rules in this Chapter are subject to the limitations set out in Section 7a of the EEA Competition Act and regulations issued pursuant to that Act.

Chapter 5 Price information and publication ➡

Section 22 Publication ➡

The Competition Authority and the Ministry shall make their decisions publicly available. In publicizing information, the parties' names and the main content of the decision shall be stated. Information which is confidential under Section 13, first paragraph (2), of the Public Administration Act may only be made publicly available if necessary to the publicizing of the main contents of the decision.

Section 23 Price information, etc. ➡

If necessary to promote competition, the Competition Authority may order undertakings to label, display, or by other means provide information regarding price, business terms and conditions, and quality for sales of goods and services. The King may issue regulations providing the same.

Chapter 6 Processing of investigations and inspections ➡

Section 24 Duty to provide information and examination ➡

Anyone must provide the competition authorities with the information these authorities require to perform their responsibilities under the Act or to meet Norway's obligations under agreements with foreign states or international organizations. Such 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.

Information required under the first and second paragraphs 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.

The first and second paragraphs apply even if a decision to secure evidence under Section 25 has been made.

The King may by regulation issue specific rules as to the duty to provide information and as to examinations.

Section 25 Securing evidence ➡

In seeking evidence, the Competition Authority may, when there are reasonable grounds to assume that the Act or decisions under the Act have been infringed, or when necessary to meet Norway's obligations under agreements with foreign states or international organizations,

- a. demand access to premises, land, means of transport, and other places of keeping where evidence of infringement may be found;
- b. demand access to homes if there are special reasons to assume that evidence may be kept there;
- c. confiscate items that may have significance as evidence for further examination; and
- d. seal business premises, books, or business documents for the duration of the investigation and as long as deemed necessary.

Applications for authorisation to secure evidence must be submitted by the Competition Authority to the court in the jurisdiction where it is most practical to do so. The court reaches its decision before the securing of evidence can commence. The person or undertaking that is the subject of the application is not to be notified of the application or decision. An appeal of the decision has no postponing effect. Sections 200, 201 first paragraph, Sections 117 to 120, cf. Sections 204, 207, 208, 209, 213, and Chapter 26 of the Criminal Procedure Act and Section 15, second paragraph, of the Public Administration Act pertain insofar as they are relevant.

The Competition Authority may demand police assistance to implement the securing of evidence.

Where there is no time to await court authorisation, the Competition Authority may demand

that the police seal off areas where evidence may be located until the court's decision is available.

The King may by regulation issue specific rules as to securing evidence and treatment of surplus information gathered.

Section 26 Relation to the Access to Information Act ➡

The Access to Information Act does not apply to cases concerning infringements of Sections 10, 11, 18 first paragraph, 19 first paragraph, or decisions made pursuant to this Act as long as the case has not been brought to its conclusion. A case is not regarded as brought to its conclusion if it has been reported to the public prosecuting authorities.

Section 27 Access to documents with the competition authorities ➡

Undertakings and individuals under investigation by the Competition Authority for violation of the Competition Act, are to be allowed access to case documents upon request, provided such access results in no harm or risk to the investigation or to third parties. Section 19 of the Public Administration Act applies correspondingly. If a request for access is denied, the issue may be brought before a court for decision. If an investigation encompasses several undertakings or individuals, the right to access does not apply to documents pertaining only to other undertakings or individuals.

Anyone with legal interest may demand access to documents with the competition authorities in cases that have been concluded regarding infringements of Section 10, Section 11, or orders pursuant to Section 12. For this right to access to include information subject to statutory required confidentiality, access must not appear unreasonable to those to whom the information pertains. Upon requests for access to information subject to confidentiality according to this provision, those for whom the confidential material pertains must be so notified and given a deadline for submitting their view on the matter. Rejections of requests for access may be appealed to the Ministry. The rules set forth in Chapter VI of the Public Administration Act apply accordingly.

Chapter 7 Sanctions ➡

Section 28 Periodic penalty payments ➡

To ensure that individual decisions made pursuant to this Act and orders under Section 24 are complied with, the Competition Authority may impose on the subject of the decision, periodic penalty payments to the State until the situation has been rectified.

The Competition Authority decides when such penalty payments begin to accrue. The Competition Authority can partially or completely waive its demand for periodic penalty payments.

The King may by regulation provide detailed rules as to the imposition of periodic penalty payments.

Section 29 Administrative fines ➡

An undertaking or an association of undertakings may be subject to administrative fines if

the undertaking or the association of undertakings or someone acting on its behalf, intentionally or negligently:

- a. infringes Sections 10, 11, 18 (first paragraph), or 19 (first paragraph);
- b. infringes decisions made pursuant to Sections 12, 16, 19 (third paragraph), or 23;
- c. fails to comply with orders pursuant to Section 24 or Section 25;
- d. provides incorrect or incomplete information to the competition authorities;
- e. breaks seals made pursuant to Section 25,
- f. infringes a regulation given pursuant to Section 14 or Section 23; or
- g. contributes to infringements of letters a through f.

No fines apply to infringements of orders pursuant to Section 18, third paragraph.

The Competition Authority issues administrative fines. In determining the amount of a fine, particular attention should be paid to the turnover of the undertaking, the gravity and duration of the infringement, and leniency pursuant to Section 31.

Decisions as to administrative fines may not be appealed. Administrative fines fall due for payment two months after the decision is made. Decisions on administrative fines are bases for distraint. If the undertaking brings action against the State to contest the decision, the basis for enforcement is suspended. The court may try all aspects of the matter. The Civil Litigation Act pertains insofar as it is relevant.

Fines cannot be imposed after ten years for infringements of Section 10 or Section 11 of this Act. The statutory limitation period for other infringements is five years. Such time limits are suspended once the Competition Authority takes steps to secure evidence under Section 25 of the Act or informs an undertaking that it is suspected of infringing the Act or decisions made pursuant to the Act.

The King may by regulation provide more specific rules as to determining administrative fines.

Section 30 Penal provisions ➡

Fines or imprisonment of up to three years may be imposed on anyone who intentionally or through gross negligence:

- a. infringes Sections 10, 18 (first paragraph), or 19 (first paragraph);
- b. infringes decisions made pursuant to Sections 12, 16, or 19 (third paragraph);
- c. fails to comply with orders pursuant to Section 24 or Section 25;
- d. provides incorrect or incomplete information to the competition authorities;

- e. breaks seals made pursuant to Section 25; or
- f. infringes a regulation adopted pursuant to Section 14.

If an infringement of Section 10 is made under severely aggravating circumstances, imprisonment of up to six years may be imposed. When deciding whether severely aggravating circumstances exist, factors such as whether there was an attempt to conceal the infringement, whether significant monetary damage occurred, whether considerable financial advantages were obtained, and the severity of the infringement in general, must be considered.

Contributory infringements as set forth in the first and second paragraphs are similarly punishable.

Section 31 Leniency ➡

In determining the amount of administrative fines under Section 29 or criminal fines to undertakings under Section 30 for infringements of Section 10, consideration shall be given as to whether the undertaking has assisted the competition authorities in the detection of its own infringements or those of others.

The King may by regulation provide more detailed rules on leniency when determining the amount of fines.

Chapter 8 Entry into force, etc. ➡

Section 32 Entry into force ➡

This Act enters into force from the date decided by the King.

From the same time the Act of 11 June 1993 No. 65 on Competition in Commercial Activity is repealed.

Section 33 Transitional provisions ➡

Regulations, rules and directives pursuant to the Act of 11 June 1993 No. 65 on Competition in Commercial Activity still apply to the extent that they are relevant, until the King repeals or amends them pursuant to this Act or by special provision.

Individual decisions pursuant to the Act of 11 June 1993 No. 65 on Competition in Commercial Activity 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.

Administrative fines and criminal sanctions pursuant to this Act only apply to infringements committed after its entry into force.

The King may issue such transitional provisions as are necessary.

Section 34 Amendments to other Acts ➡

When this Act enters into force the following amendments shall be made to other Acts:

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