

BECCLE

BERGEN CENTER FOR COMPETITION LAW AND ECONOMICS

Developments in Norwegian Competition Law

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Outline

- Anti competitive agreements
- Abuse of dominance
- Mergers
- Policy
 - Grocery sector
 - Damages directive

Anti competitive agreements

- **The publishers case**

- Oslo City Court upheld the competition authorities' finding of an anti competitive agreement between book publishers
 - Distribution of books to the 'mass market'
 - Supermarkets, kiosks, petrol stations
- Rema decided to let its own distribution company - Interpress – be the sole distributor of books to Rema's outlets.
- The publishers responded with an agreement to boycott Interpress, which also meant that they gave their jointly owned distributor – Bladcentralen – an exclusive right to distribute books to the 'mass-market'.
- The court agreed with the NCA that this is an object restriction
- Fines were reduced
 - NCA had exaggerated the severity of the infringement
 - Which is almost becoming a trend in Norway

ASCHEHOUG



CAPPELEN DAMM



2

bladcentralen



Reitangruppen



Anti competitive agreements

- EL-Proffen – The first decision of the “new” Competition Tribunal
- 5 companies had given a joint tender (or 5 identical tenders) for electrician services for schools in the Oslo area
- Straight forward object restriction
- Fine reduced due to lack of intent and NCA had wrongly used the value of the contract for all 4 years as starting point for the fine
 - The assessment of intent in the Competition Tribunal’s decision is interesting
 - The companies must know that their behavior tends to restrict competition according to the tribunal

Anti competitive agreements

- Both cases presented here includes quite sensible approaches to the concept of object restrictions
 - Based on recent case law from the EU Courts and the EFTA Courts
 - It appears that the EFTA Courts opinion in the taxi case in 2016, and the Supreme Court's judgment in the same case has led to more awareness on how to apply the concept
 - One small distinction though
 - All the cases mentioned here states that the restriction must be easily identifiable, which is not something I have seen in the case law of the ECJ.

Abuse of dominance

- Telenor
 - Telenor has appealed the decision to the Competition Tribunal
 - Competition tribunal has a “deadline” 21st June
 - Telenor fined 788 mil NOK for preventing or at least delaying the development of a third mobile network
 - The abuse was based on how Telenor priced Network Norway’s (NwN) access to Telenor’s network while NwN was building the third network
 - Telenor charged a fee per subscription and priced traffic quite low. This fee was not based on traffic and was hence not reduced as NwN managed to keep more of the traffic in their own network
 - This reduced Network Norway’s incentives to develop their own network according to the competition authorities
 - NCA found evidence of an intention to obstruct the development of a third network
 - The third network was actually constructed (perhaps a bit delayed)
 - At least argued that the price model enabled NwN’s to compete more aggressive in the end consumer market

Mergers

- St1 Norge AS - Statoil Fuel & Retail Marine AS
 - Overlapping sales of MGO from tanks to end consumers, brokers and wholesalers
 - Accepted on commitments
- Vipps AS – BankAxept AS/BankID Norge AS
 - Payment systems co-owned by Norwegian banks
 - Accepted on commitments to give non-owners access on non-discriminatory terms

Mergers

- Sector Alarm – Duty to notify a merger below thresholds
 - § 18 (3) of the comp. act provides the NCA with the competence to impose a duty to notify mergers below thresholds;
 - If the NCA finds **reasonable grounds to believe** that the merger **will affect competition**
 - A deadline of three months from the agreement or gain of control
 - It may also impose a duty to notify minority acquisitions
 - The act does not provide any conditions here
 - Used for the first time in this case, as far as I know
 - Complaint from the parties to the Competition Tribunal
 - The Competition Tribunal upheld the case
 - The merging parties argued that the NCA has to establish a risk of a substantial restriction of competition
 - Complaint Tribunal found that presenting a reasonable risk of a negative effect on competition was sufficient

Competition in the grocery market: The never ending story/discussion

This is probably how the Norwegian grocery market looks from the outside



Competition in the grocery market : The never ending story/discussion

- In addition to the import restrictions,
 - We have a few dominating suppliers for many product groups
 - A legal cartel for fruits and vegetables
 - High degree of vertical integration
 - High concentration on the retail market
- **And people still wonder why we have inefficient competition and high prices!**

Grocery sector

- Several proposals on how to increase competition:
 - Anti discrimination regulations
 - Probably not a good idea?
 - UTP regulation
 - Does it matter?
 - Strengthen the enforcement of the competition rules
 - Whatever that means

Other Policy developments

- Proposed deregulation of the taxi market
 - Fewer requirements to get license
 - No restriction of number of licensees
- Extension of the exemption for fixed prices on books
- Still no solution to the challenges of implementing the Damages Directive in to the EEA agreement

News from EFTA Surveillance Authority

- Widerøe
 - A Norwegian airline company
 - Widerøe may have abused its dominant position by refusing to supply essential components for a navigation system necessary to fly to a few small airports in northern Norway
- Telenor
 - possible margin squeeze - prices to wholesalers were higher than prices to end consumers
 - Telenor's minimum length of contract for the business market – 2 years – is also preliminary considered an abuse.
- E-Payment Services in Norway
 - ESA will investigate whether the members of the Norwegian banking community engaged in agreements, decisions or concerted practices aimed at blocking a new market entrant from providing a new e-payments service in Norway,

- Weekly pattern of gasoline prices has vanished
 - Now you can buy expensive gasoline everyday!