ROYAL NORWEGIAN MINISTRY OF
TRADE, INDUSTRY AND FISHERIES

European Commission
Directorate-General for Competition
B-1049 Brussel, Belgium

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Norway's Response to the Commission's Consultation on Regulation 1/2003

Introduction

The Government and the Ministry of Trade, Industry and Fisheries bear the overall responsibility for competition policy in Norway, whereas the Norwegian Competition Authority enforces the law in individual cases. We are responding to the call for evidence, by commenting early policy options aimed at addressing the risk of fragmented enforcement of competition law due to stricter national rules on unilateral conduct. We outline the Norwegian rules on unilateral conduct, explain the need for tools to address competition issues in national markets, and share our views on the proposed policy options. For comments on other parts of the consultation, we refer to the separate contribution provided by the Norwegian Competition Authority.

Regulation of Unilateral Conduct in Norway

The objective of the Norwegian Competition Act is to promote competition and thereby ensure efficient use of society's resources, with special consideration given to consumer welfare, cf. section 1.[1] Pursuant to section 14, the Government may adopt general regulations covering all undertakings in a specific market or industry, to intervene against anti-competitive conduct contrary to the objective of the Act. The regulation must be necessary to promote competition, i.e. the harm to competition cannot be corrected with less restrictive measures. These conditions safeguard legal certainty and entail that the threshold for adopting a regulation is very high. Draft regulations are also subject to public hearings. Intentional or negligent non-compliance with a regulation may be sanctioned with an administrative fine, cf. section 29 of the Act. Regulations issued pursuant to section 14 must also comply with regulation 1/2003 article 3.[2]

[1] The consumer welfare standard in EU/EEA law applies to anti-competitive agreements, abuse of dominant position and in merger control.
[2] This provision has been implemented into the EEA agreement through protocol 4 chapter 2 article 3 of the Agreement Between the EFTA States on the Establishment of A Surveillance Authority and a Court Of Justice, and into Norwegian law though section 7 of the EEA Competition Act.

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The authority to enact general regulations has been delegated to the Ministry. So far, only three regulations have been adopted pursuant to section 14 since 2004.

In 2002 the NCA adopted a prohibition against Scandinavian Airlines' (SAS) use of frequent flyer programs in domestic aviation, as it reduced competition by increasing network advantages and switching costs and lessening price transparency.[3] The decision was replaced with a general prohibition against frequent flyer programs in domestic aviation in 2007. By expanding the prohibition, the Government removed the competitive advantage of non-dominant undertakings under the earlier decision, levelling the playing field. The regulation was repealed in 2013, due to changed market conditions. Evaluations have concluded that the regulation strengthened competition in the market.

A regulation ensuring equal access to online property sales ads was adopted in 2009 and is still in effect.[4] The background for the regulation was that providers of online platforms for property sales refused access for actors other than licensed estate agents and brokers, excluding other undertakings from advertising on their platform. A regulation was necessary as the NCA were not able to find explicit evidence of anti-competitive agreements or refusals to supply in cases regarding the practice.

The regulation on the prohibition of negative easements restricting the establishment of grocery businesses was adopted in 2023 and is still in effect.[5] It was introduced after a survey by the NCA uncovered 372 cases of restrictive easements established by all of the four largest grocery chains to prevent buyers of property from establishing grocery-related activities on the acquired properties. A regulation rather than an individual decision was necessary since the practice was industry-wide and it would be unreasonably resource intensive for the NCA to assess each easement. The prohibition aimed at reducing the barriers to entry in the highly concentrated Norwegian groceries market by making access to suitable commercial property easier.

A Government appointed expert committee is currently evaluating the Competition Act and will submit its report on 1 December 2025. It is within the committee's mandate to consider the need for legislative amendments to section 14.

Why Members States Need a Tool to Address Unilateral Conduct

Although efficient enforcement of the EU/EEA competition rules is the most important instrument for promoting competition, there are instances where the prohibitions in TFEU article 101 or 102, the EEA agreement article 53 or 54 or their national equivalents do not remedy competition concerns arising from anti-competitive practices or market conditions. If

[3] Regulation of 20 June 2007 no. 684, available here (in Norwegian): https://lovdata.no/dokument/SFO/forskrift/2007-06-20-684/KAPITTEL_1#KAPITTEL_1
[4] Regulation of 9 September 2009 no. 1169, available here (in Norwegian): https://lovdata.no/dokument/SF/forskrift/2009-09-09-1169
[5] Regulation of 11 December 2023 no. 2037, available here (in Norwegian): https://lovdata.no/pro/#document/SF/forskrift/2023-12-11-2037?from=NL/lov/2004-03-05-12/%C2%A714

the conduct is not an agreement between undertakings or the involved undertaking is not dominant, stricter national regulations can stop harmful business practices and level the playing field. This may ease market entry for undertakings from other EU/EEA member states and thereby contribute to a more efficient and integrated internal market.

We note that both the Commission and individual member states have enacted regulations to correct market failures or prevent anti-competitive conduct and foreclosure. The Commission has enacted the Digital Market Act and Digital Services Act, whilst several member states, including Norway, have granted their national competition authorities the power to impose remedies on individual undertakings following market investigations.[6] General regulations may also be used to address anti-competitive practices or market conditions identified in market investigations, as the NCA can conclude an investigation by requesting the Ministry to adopt a regulation pursuant to section 14.

Our view on the suggested policy options

While we do share the Commission's concern that substantial regulatory discrepancy between the member states can pose challenges for the single market, we believe that significant restrictions on member states ability to introduce national regulation of unilateral conduct, may have adverse effects outweighing the benefits. Such regulations can be a useful and proportionate way to promote competition by addressing regional and/or temporary barriers to competition. Therefore, Norway does not support the Commission's preliminary suggestion to discontinue the current system (policy option 2).

In our view, it would be more efficient to examine the possibility of adapting the existing coordination and information exchange mechanisms between competition authorities, to include stricter national regulations on unilateral conduct (policy option 1). This would meet the member states need for a tool to address specific competition issues, while also ensuring consistent enforcement of EU/EEA competition law across the internal market.

Yours sincerely

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This document is signed electronically and has therefore no handwritten signature.

[6] The amendments to the Norwegian Competition Act introducing a market investigation tool entered into force on 1 July 2025.