

# Formal vs informal enforcement of competition law

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# Overview

- Background
- Why informal enforcement?
- Case examples
- Challenges with informal enforcement
- Some final reflections

# Background

- Informal enforcement of Section 10 and 11 of the Norwegian Competition Act
  - These provisions correspond to Art 101 and 102 TFEU and Art 53 and 54 EEA
- Informal enforcement regarding restrictive effects on competition of public measures

# Why informal enforcement?

- No legal instrument to make commitments binding in the past
  - Amendment of the Norwegian Competition Act in 2014
- Practical considerations
- Advocacy vs informal enforcement
  - Information activities
  - Change of behaviour

# Some case examples

# AC Nielsen

- AC Nielsen and the leading supermarket chains in Norway
- The NCA investigated the exchange of information in the daily consumer goods markets
  - Concerned that the level of detail of the information exchanged restricted competition
- The parties agreed to change their behaviour in a manner which removed the NCA's concerns
  - The NCA closed the case after these amendments (2007)

# Microsoft

- A framework and co-operation agreement between Microsoft and a number of Norwegian counties regarding PCs used in schools
  - Complaint: Alleged that the rebates granted under the agreement and the licensing terms of Microsoft produced exclusionary effects and amounted to an abuse of a dominant position
- The NCA carried out an investigation
- Microsoft renegotiated its agreement with the counties
  - The NCA closed the case after these amendments (2007)

# Norwegian Football Association

- The joint selling of media rights to Norwegian football raised competition concerns
  - The NCA was concerned that the sale of all media rights exclusively to one player for a significant period of time would be anti-competitive
- Dialogue between the NCA and the Norwegian Football Association
- Following this dialogue the Football Association decided to organise its sale of the football rights in a manner which made it possible for different players and platforms to acquire different parts of these rights



# Avinor

- At Oslo Airport one undertaking owned and operated all kiosks and restaurants
- The NCA engaged in a dialogue with Avinor, the owner of the airport
- The NCA emphasized that several, independent service providers would enhance competition and be beneficial to consumers
- After a recent expansion of the airport, Avinor has now made sure that several undertakings can provide services to airport users

# Some challenges

- Sufficiently serious violations of the law need appropriate sanctions in order to have necessary deterrent and preventive effects
- A detailed investigation may be necessary to be able to ensure an outcome that is beneficial for competition and for consumers
- Asymmetry of information
- Informal “commitments/settlements” are not enforceable
- An NCA may want to avoid becoming a mediator or arbitrator in a private conflict

# The Norwegian Competition Act

- Commitments can be made legally binding today, Section 12(3)
  - Commitments become enforceable
  - A new full investigation under Section 10 (Art 101 TFEU) is not required in case of non-compliance
- Settlements decisions in cartel cases, Section 29 a

# Final reflections

- Self-assessment is an important feature in the European enforcement system
  - The former notification system has been abolished
  - The competition authorities – focus their resources on the most important cases and the most serious violations of the law
- Deterrent and preventive effects important
- The NCA’s “new tools”
  - More formal than informal enforcement

Thank you for the attention.