

The logo for BAHR, consisting of the letters 'BAHR' in a bold, white, sans-serif font. The letters are widely spaced and have a modern, clean design. The background is a dark, grayscale photograph of a modern building with large glass windows and a walkway leading to a waterfront area with a railing and some trees in the distance.

BAHR

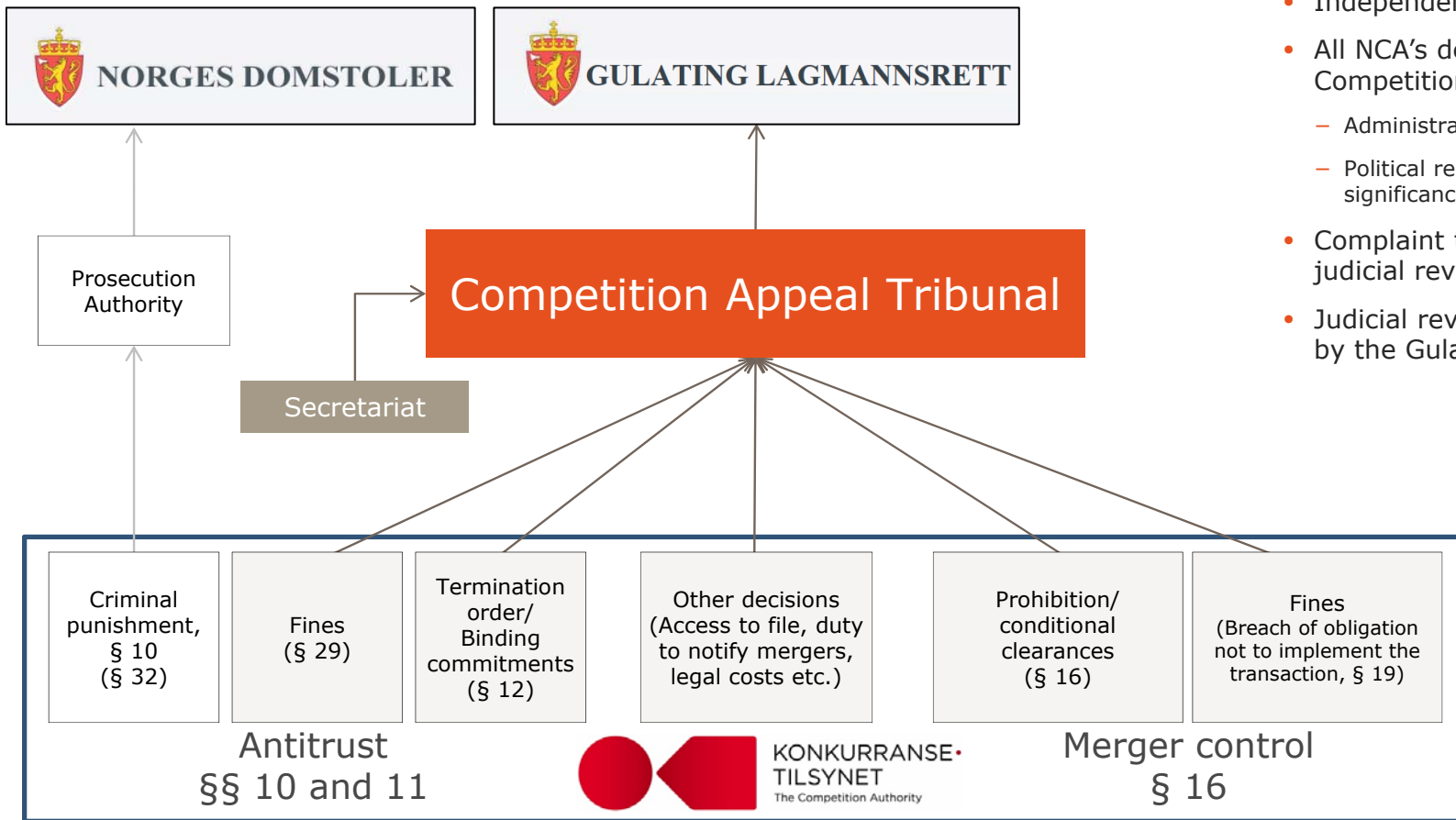
National report Norway

Nordic Academic Network in Competition Law Conference

OSLO, 17 NOVEMBER 2017

Legislation:

New Competition Appeal Tribunal from 1 April 2017



- Independent Appeal Tribunal
- All NCA's decisions subject to review by the Competition Appeal Tribunal
 - Administrative law review
 - Political review repealed ("interests of major significance to society")
- Complaint to the Tribunal a precondition for judicial review
- Judicial review of Appeal Tribunal's decision by the Gulating Court of Appeal

Antitrust:

Two Supreme Court judgments – advisory opinions from the EFTA Court in both cases

Ski Follo Taxi:
Joint tendering = object restriction

- 22 December 2016: EFTA Court Advisory Opinion
- 22 June 2017: Supreme Court judgment
- Agreement between competitors that can participate in the tender individually is always an object restriction
- Object restriction even if the joint tendering/cooperation was conducted publicly
- The joint tendering not an ancillary restriction

Holship / Norsk transportarbeidforbund:
KLP/Albany-exception not applicable

- 19 April 2016: EFTA Court Advisory Opinion
- 16 December 2016: Supreme Court judgment
- EFTA Court: The exception from the EEA competition rules that applies to collective agreements did not cover the assessment of a priority of engagement rule
- The Supreme Court determines the case based on the freedom of establishment. However, the majority finds no reason to disregard the EFTA Court's Opinion

Antitrust:

Three NCA “object” decisions – no abuse decision since 2005

§10 (= Article 101 TFEU)

- V2016-7: Jonny Birkeland Transport et al:
 - Combined fine of MNOK 6.5 for joint tendering
 - Joint tendering = object restriction
- V2017-18: Publishers case
 - Four publishers given a combined fine of MNOK 31.2 for collective boycott
 - Collective boycott = object restriction
- V2017-21: El Proffen and others
 - Combined fine of MNOK 18.5 for coordinated tendering by chain members
 - Coordinated tendering = object restriction

§11 (= Article 102 TFEU)

- 23 November 2016: SO to Telenor (MNOK 906) for abuse of dominance
 - Alleged abuse of dominance in the Norwegian mobile market from 2010-2014
 - First dominance case since 2005
 - On-going separate investigation by the EFTA Surveillance Authority relating to other alleged abuses in the same market

Antitrust:

Still no criminal sanctions under the 2004 Act

- Calculation of fines pursuant to the new Regulation on calculation of fines 2013

	Gravity	Duration	Addition*	Aggravating / Mitigating	Leniency	Other
V2017-21 El-proffen m.fl. <i>Coordinated tendering</i>	15 %	1*	15 %	//	//	*The NCA found that the duration was of less significance and does not quantify the duration. Based on the calculated fine a duration of 1 is assumed. The fine was above 10 % of the annual turnover of three parties, and was reduced to 10 %. The fine for the facilitator El-proffen was set discretionary.
V2017-18 Publishers case <i>Collective boycott</i>	19 %	0,5	19 %	+ 100%: Schibsted (high turnover)	//	//
V2016-7 Johnny Birkeland / Lindum <i>Joint tendering</i>	17 %	1*	17 %	//	//	* The collaboration was public prior to the contractor entering into the contract. Consequently, the NCA found that the duration was of less significance and does not state a specific number. Based on the calculated fine and other parameters a duration of 1 is assumed.
V2015-28 Arro / Caverion <i>Bid rigging</i>	19 %	1	19 %	+ 100%: Caverion (high turnover) - 5%: Pettersen (added value)	- 40 %: Caverion	//
V2015-25 ES-Kjeden <i>Coordinated pricing</i>	15 %	4,5	15 %	//	//	The calculated fine was above 10 % of ES-chain's turnover, and was reduced to 10 % of ES-chain's total turnover. The fine was further reduced by 98 % due to lack of ability to pay.

Antitrust:

Private enforcement: Few follow-on claims in Norway

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Official Statement

Iveco says trucks-cartel litigation spreads to Norway, Italy

7 Nov 17 | 22:20 GMT

In Brief

MLex Summary: Iveco is facing damages litigation related to its role in a trucks cartel in Italy, Israel, Ireland, Germany, the Netherlands, Norway and the UK, the company said in a statement to investors. Iveco was fined 494 million euros in 2016 by the European Commission for fixing the prices of vehicles.

The excerpt follows:

European Commission settlement: Iveco, the Company's wholly owned subsidiary, and its competitors were subject to an investigation by the European Commission (the "Commission") into certain business practices in the European Union in relation to medium and heavy trucks.

In the first quarter of 2016, CNH Industrial recorded a non-recurring non-tax deductible charge of €450 million (\$502 million) in relation to the investigation and related matters. On July 19, 2016, the Commission announced a settlement with Iveco under which the Commission imposed a fine of €495 million (equivalent to \$543 million at payment date). As a result of this settlement, CNH Industrial recorded an additional non-tax deductible charge of €45 million (\$49 million) in the second quarter of 2016. The fine was paid on October 20, 2016. Following this settlement, CNH Industrial has been named as defendant in current private litigation commenced in Italy, Israel, Ireland, Germany, the Netherlands, Norway and the United Kingdom that remains at an early stage, and CNH Industrial expects to face further claims in various jurisdictions, the extent and outcome of which cannot be predicted at this time.

Erstatningskrav på 991 millioner ble avvist

Basto Fosen har krevd 991 millioner kroner i erstatning fra Color Line etter at ESA i 2011 betela Color Line for brudd på EØS-avtalen. Både Oslo tingrett og Borgarting lagmannsrett mener kravet fra Basto Fosen kom for sent.



Borgarting lagmannsrett mener erstatningskravet mot Color Line kom for sent.
FOTO: KANAL PRINNO / NTB



Reder Ole T. Bjørnevik varsler gigantsøksmål mot Color Line.

Næringsliv

Krever 1,3 mrd. fra Color Line

DN.no
Publisert: 19.02.2014 – 05:58 Oppdatert: 19.02.2014 – 07:54

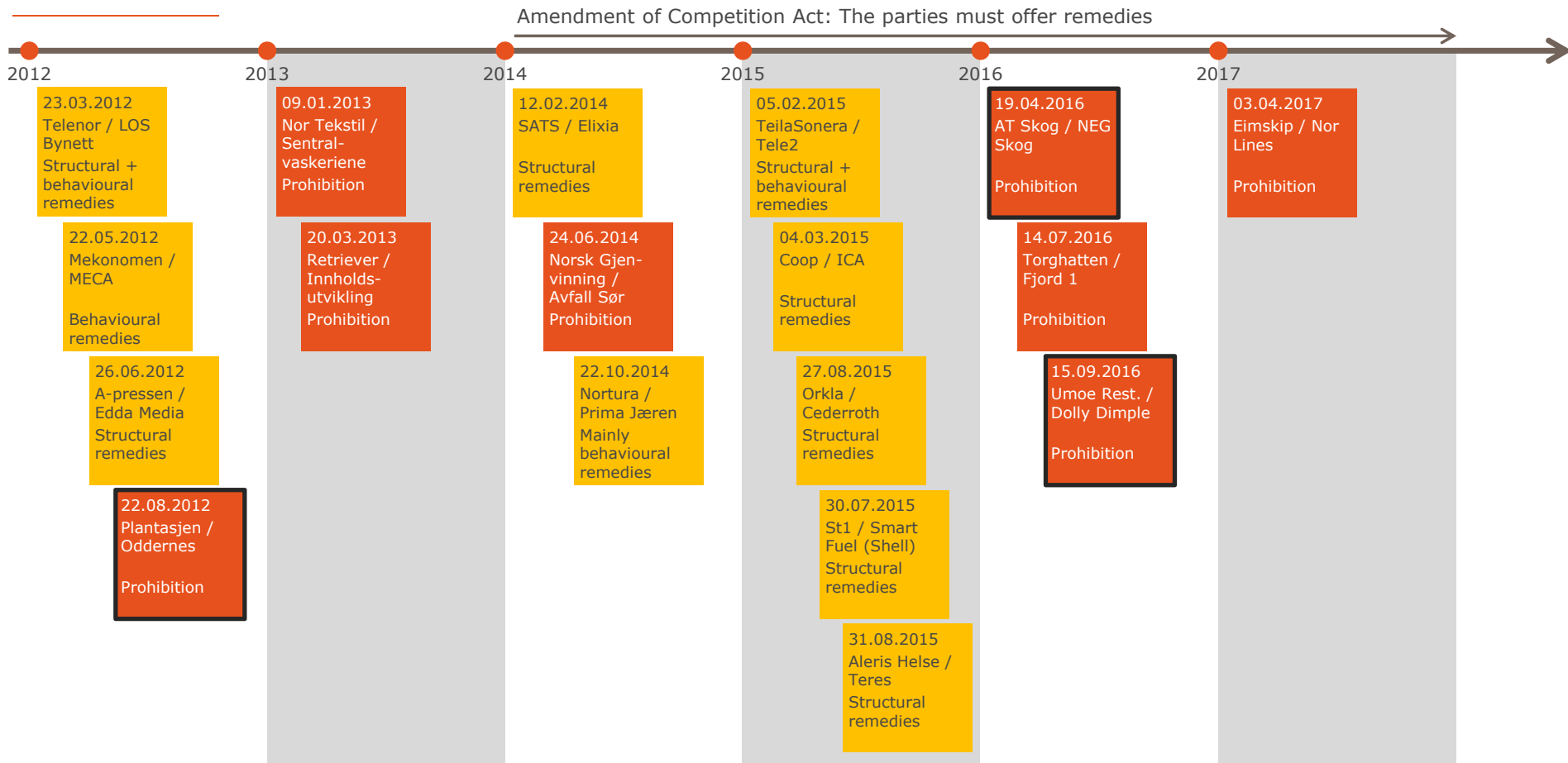
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Ole T. Bjørnevik og hans selskap Nye Kystlink saksøker Olav Nils Sundes Color Line for 1,3 milliarder kroner.

Bjørnevik mener Color Line påførte rederiet store tap ved å bryte konkurranselovgevingen.

Merger control:

Active merger control enforcement by the NCA

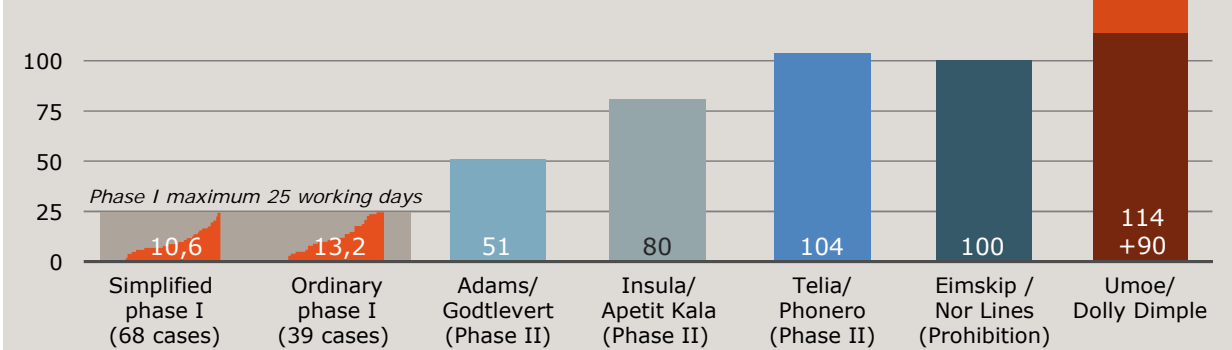


Merger control:

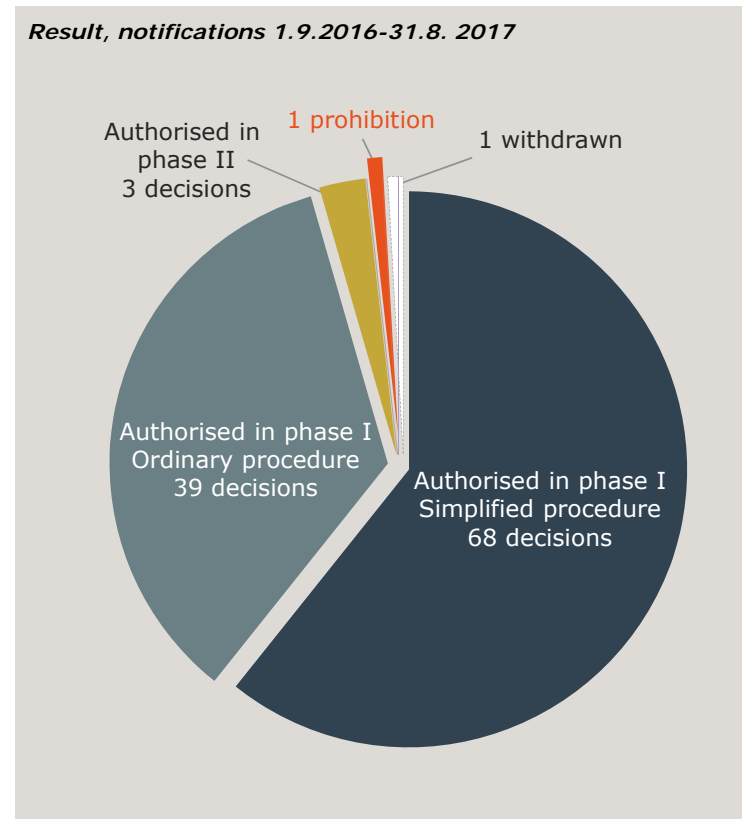
Merger statistics: 1 September 2016 – 31 August 2017

- 112 notifications in the time period (as opposed to 81 notifications previous 12-month period)
 - 60 % follow the simplified procedure
 - No injunction to notify under the thresholds
- Above 95 % of the cases are authorised in phase I
 - 107 out of 112 cases
 - Three phase II cases authorised in phase II
- Still an effective process for «simple» notifications
 - Average review time for all notifications and closed cases in the period: 13.6 working days
 - Simplified notification: 10.6 working days, a drop from 12.8 in the last 12-month period
 - 15 cases (14 %) closed during five working days from notification

Behandlingstid, meldinger levert 1.9.2016-31.8. 2017 (+ Umoe/Dolly Dimple)



Source: KT.no, OEP.no, BA-HR



Source: KT.no, OEP.no, BA-HR

Merger control:

Focus on closeness of competition in markets with differentiated products

Three Phase II clearances

- **A2017-1: Telia / Phonero**
 - Telecom merger between Telia (MNO) and Phonero (MVNO)
 - Closed after SO (104 working days)
 - Authorised in phase II due to negative price pressure as a result of efficiencies
- **A-2017-2: Adams Matkasse / Godtlevvert.no**
 - Home delivery of groceries
 - Closed in phase II (51 working days)
 - Closeness of competition: Need to look also at the other participants in adjacent markets
- **A-2017-4: Insula / Apetit Kala and Maritim Food**
 - Seafood supplies to grocery chains
 - Closed in phase II (80 working days)
 - Not yet public

Two prohibitions

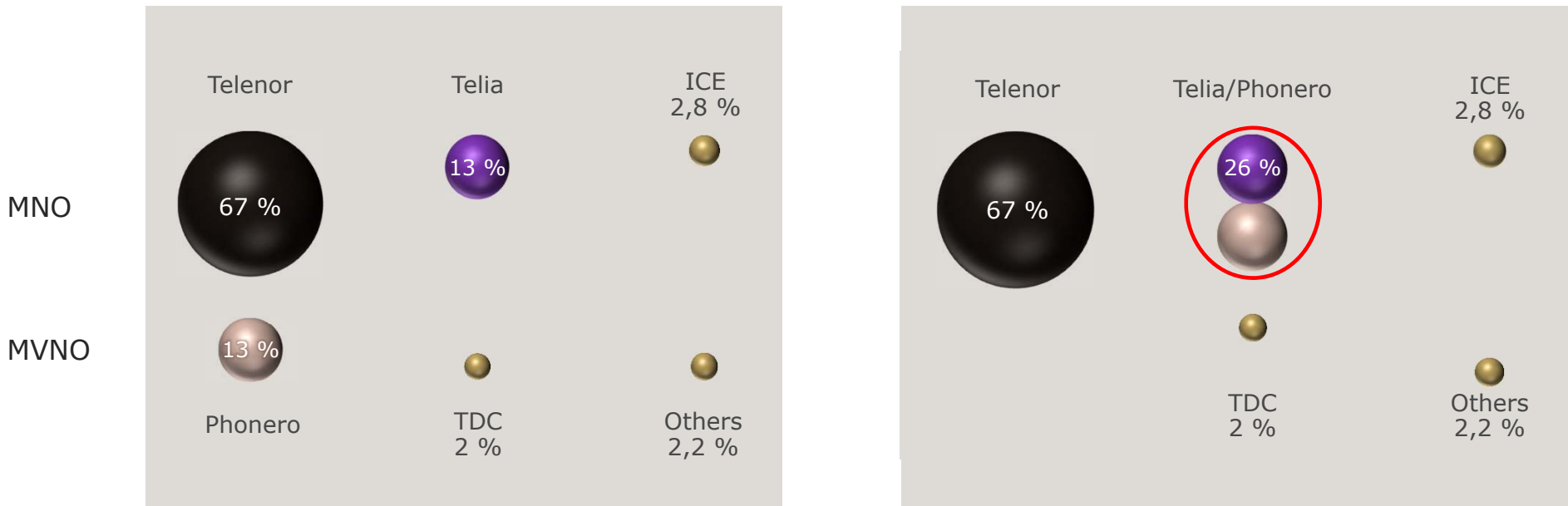
- **V2016-6: Umoe Restaurants (Peppes Pizza) / Dolly Dimples**
 - Upheld by the Ministry of Trade
 - Ministry: NCA not required to define relevant market when dealing with differentiated products – focus on the closeness of competition (quantitative analysis)
 - National and local dimension of effects on competition
- **V2017-19: Eimship Norway / Nor Lines (maritime transport of frozen fish)**
 - Geographical market defined as the relevant transport corridor
 - Focus on closeness of competition (qualitative analysis)

A2017-1 Telia / Phonero: Successful efficiency defence – Cost synergies gave negative price pressure



Pre Merger

Post Merger



Merger control:

Administrative review of NCA's non-approval of buyer



The process

- 30 July 2015: V2015-29: St1's acquisition of Shell's Norwegian retail fuel operations («Smart Fuel») conditionally approved by the NCA
 - Structural remedies: hold separate, no up-front buyer
- 23 June 2016: V2016-4: NCA does not approve Blue Energy Holding as buyer
- 14 July 2016: Both parties appeal to the Ministry
- The Ministry's initial assessment: Agree with the NCA
- 31 January 2017: The parties offer «revised» commitments
- 19 May 2017: NCAs assessment of remedies
 - Still not «independent» nor «suitable»
- 13 July 2017: The NFD approves Blue Energy subject to further/adjusted commitments

The Ministry's jurisdiction

- § 20a: The Ministry may only annul or uphold conditional clearances
 - «If the appeal concerns decisions pursuant to Section 16, second paragraph, the Ministry may only annul or uphold the decision of the Competition Authority»
- § 16(2): NCA may conditionally approve concentrations
 - «If the Competition Authority finds that commitments offered by the notifying parties will mitigate the anticompetitive effects that the concentration may cause, the Competition Authority shall issue a decision on intervention permitting the concentration on these terms. The Competition Authority may attach conditions to its decision to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Competition Authority.»
- The Ministry: § 16(2) does not include NCA's decisions not to approve a buyer
 - § 16(2): Only conditional clearances decisions
 - Administrative review of other decisions will follow general principles of administrative law