

Non-official translation of the Norwegian Competition Act

Responsible for this translation: Ministry of Trade, Industry and Fisheries

Act of 5 March 2004 No. 12 on competition between undertakings and control of concentrations (including amendments in Act of 14 June 2013 No. 35)

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 fulfillment 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 Sections 10, 11 or a regulation according to Section 14 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.

If the undertaking concerned offers commitments in a case that could result in a decision according to Section 12 first paragraph, the Competition Authority may close the case by a decision making those commitments binding to the undertaking. The Competition Authority may issue decisions according to the first sentence prior to a complete assessment of whether the conditions in the first paragraph are met. In its decision the Competition Authority must provide an evaluation of the undertakings behaviour. Furthermore it must evaluate and justify why the offered commitments are appropriate and necessary to meet the concerns expressed by the Competition Authority. The decision shall determine that the Competition Authority will not proceed with the case after the first paragraph or Section 29 if the offered commitments are implemented. Based on proposals from the undertakings concerned the Competition Authority may appoint a trustee to assist in the implementation of decisions according to the first sentence. The King may by regulation provide for more detailed provisions as to such trustees. In appeals of decisions under this paragraph, the Ministry may revoke or confirm the Competition Authorities decision.

The Competition Authority may, upon request or on its own initiative reverse a decision under third paragraph if

- a) facts which were material to the decision change,
- b) the undertakings concerned acts in violation of the decision, or
- c) the decision is based on incomplete, inaccurate, or misleading information provided by the undertakings concerned.

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

- a. there are reasonable grounds to assume that Sections 10, 11 or a regulation according to Section 14 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, and issue orders and reverse decision of the Competition Authority made under Section 12 first paragraph. 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 of concentrations, etc.

Section 16 – Intervention against concentrations, etc.

The Competition Authority shall prohibit concentrations that will create or strengthen a significant restriction of competition contrary to the purpose of the Act. The prohibition may include supplementary provisions that are necessary for the purpose of the prohibition to be achieved.

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.

If a concentration is implemented, a prohibition under the first paragraph may include ordering a disposition of shares or holdings acquired as a part of the concentration, or other appropriate measures so as to restore the situation prevailing prior to the implementation of the concentration.

The Competition Authority may appoint a trustee to assist in implementing a decision under the first paragraph. Based on proposals from the undertakings concerned the Competition Authority may appoint a trustee to assist in the implementation of decisions under the second paragraph. 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.

To the extent that the creation of a joint venture constituting a concentration pursuant to Section 17 has as its object or effect the coordination of the competitive behaviour of undertakings that remains independent, such coordination shall be appraised in accordance with Section 10 in order to determine whether to intervene against the concentration.

Section 16 a Intervention against minority acquisitions

The Competition Authority shall prohibit an acquisition of holdings in an undertaking even if the acquisition will not lead to control of that undertaking, if the acquisition will create or strengthen a significant restriction of competition contrary to the purpose of the Act. 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.

Section 16 second to fifth paragraph applies accordingly to intervention under first paragraph.

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 there from.

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 notify the Competition Authority of the concentration.

The obligation to provide notification of a concentration as set forth in the first paragraph does not apply

- a) if the undertakings concerned have a combined annual turnover in Norway below 1 billion kroner, or
- b) only one of the undertakings concerned have an annual turnover in Norway that exceeds 100 million kroner.

The Authority may order a notification from an undertaking that is not obliged to notify the concentration after the second paragraph, provided that there are reasonable grounds to assume that the competition will be affected by the concentration. Such an order may not be issued later than three months after the final agreement is entered or control is obtained, whichever comes first.

If a concentration consists of the acquisition of parts of one or more undertakings, whether or not constituted as legal entities, only the turnover relating to the parts which are the subject of the concentration shall be taken into account with regard to the seller or sellers. However, two or more transactions within the meaning of the first sentence of this paragraphs, which take place within a two-year period between the same persons or undertakings shall be treated as one and the same concentration, effecting from the date of the last transaction.

The Competition Authority may order the submission of a notification for acquisition of shares as mentioned in Section 16 a. Such an order may be issued no later three months after a final acquisition agreement.

Concentrations which are exempted from the obligation to notify under the second paragraph, and acquisition of shares as mentioned in Section 16 a, can be notified to the Competition Authority on a voluntary basis to clarify whether intervention will be considered.

A notification according to the first, third, fifth and sixth paragraphs will be regarded as complete when the conditions in Section 18 b are satisfied.

A concentration which are covered by the rules of control of concentrations in article 57 in the EEA-agreement, is exempted from the general obligation to provide notification of a concentration under paragraph one.

Section 18a - The content of a notification

The notification in accordance to Section 18, first paragraph, must include

- a) contact information of the parties to the merger, or the party or those parties acquiring control,
- b) a description of the merger,
- c) a description of the undertakings concerned and undertakings belonging to the same group of companies as the undertakings concerned,
- d) names of the five most important competitors, customers and suppliers in markets in Norway or which Norway is a part of, where the undertakings concerned and undertakings belonging to the same group of companies as the undertakings concerned have overlapping activity,
- e) a description of horizontally connected markets if two or more of the parties are active on the same market and the combined market share is more than 15 percent, and markets where two or more parties are vertically connected and their market shares is more than 25 percent on each of the connected markets, which shall include a description of the market structure in the affected markets, a description of the most important competitors, customers and suppliers of the involved parties in the affected markets, and a description of any barriers to entry in the affected markets,
- f) a description of any efficiency gains,
- g) information regarding whether the concentration is subject to review by other competition authorities,
- h) the most recent version of the agreement bringing about the concentration, including annexes, and
- i) the most recent annual report and financial statement of the parties involved.

When the concentration is a joint venture, the notification shall also include information regarding whether the parent companies remain active in the same market as the joint venture or in an upstream or downstream or neighbouring market.

The Competition Authority may make exemptions to the requirements listed in the first paragraph.

The King in council may make regulations for further requirements for notifications according to the first paragraph, including provisions regarding simplified notification which derogates from the requirements in the first paragraph.

Section 18b – Information under a duty of secrecy

Anyone who in the review process of a concentration, or an acquisition of a minority shareholding, sends information in accordance with Section § 18 and Section 24 first paragraph, or in a proposed remedy in accordance with Section 16 second paragraph, which is under a duty of secrecy by law, shall clearly identify or mark such information and state reasons as to why the information is under a duty of secrecy. The sender shall also provide a proposal for a public version. If the requirements in the first sentence are not fulfilled, the competition authorities can assume that the sender does not have objections to the information being made public.

The King in council may make regulations on public versions and on the obligation to state reasons as described in the first paragraph.

Section 19 – Standstill obligation

Concentrations governed by the rules in Section 18 first paragraph, may not be implemented before the Competition Authority has closed the case. The same applies if the Competition Authority has ordered a notification in accordance with Section 18 third or fifth paragraph, a notification is submitted according to Section 18 sixth paragraph, or the obligation to notify follows from regulations made in accordance with Section 18 ninth paragraph.

The competition authority can on application from the notifying parties make exemptions from the standstill obligation under the first paragraph in individual cases. The Competition Authority may by regulation also exempt categories of undertakings.

Section 20 – Decision

Decisions under sections 16 and 16a are made by the Competition Authority based on notifications under section 18, first, third, fifth or sixth paragraphs, or based on notifications under regulation pursuant to ninth paragraph.

No later than 25 working days from the date on which the notification is received, the Competition Authority shall notify the parties that intervention may take place. In the notification, the Competition Authority must demonstrate that there are reasonable grounds to assume that the concentration or acquisition as mentioned in section 16a will create or strengthen a significant restriction of competition, contrary to the purpose of the Act. If no such notification is provided, the Competition Authority may not intervene under sections 16 or 16a.

If the undertakings concerned offer modifying commitments within 20 working days from the date on which the notification is received, the Competition Authority's time limit set out in second paragraph is extended by 10 working days. If modifying commitments are offered within the time limit, the Competition Authority may within 35 working days make a decision to intervene allowing the concentration in accordance with the conditions offered. Such a decision may be made without advance notification.

The Competition Authority shall as soon as possible and no later than 70 working days from the date on which the notification is received, make a decision to uphold the modifying commitments offered by the undertakings concerned or present a reasoned preliminary decision on intervention. If the parties offer modifying commitments later than 55 days from the date on which the notification is received, the Competition Authority's time limit is extended correspondingly. The preliminary decision shall be presented to the parties, who shall reply within 15 working days. The Competition Authority shall decide whether to intervene within 15 working days from the date on which the reply of the parties is received. If an offer of modifying commitments has been lodged after the Competition Authority has presented a reasoned preliminary decision, the Competition Authority's time limit to make a decision may be extended by 15 working days.

Modifying commitments are not considered offered until a public version of the offer is submitted. Time limits set out in second, third and fourth paragraphs that apply to the Competition Authority's proceedings, will not begin to run until the Competition Authority has received a public version of the documents.

Time limits set out in second and fourth paragraphs that apply to the Competition Authority's proceedings are suspended should any of the

undertakings concerned fail to comply with written requests to provide information by a specific date. The request is not considered complied with until the Competition Authority has received a public version of the documents. The parties shall be notified of the suspension of the time limits. The time limits continue to run from the date on which the Competition Authority has received the information requested.

If the Competition Authority finds that there are no grounds for intervention under sections 16 or 16a, the undertakings concerned shall be notified in writing that the case will be dismissed. In cases where the Competition Authority has notified the parties that intervention pursuant to second paragraph may take place, the reasons why there are no grounds for intervention shall briefly be stated in the notification. The Competition Authority shall close its proceedings as soon as possible.

The King may by regulation prescribe further rules on public versions of documents as mentioned in fifth and sixth paragraphs.

§ 20a. (*appeal and annulment*)

Decisions to intervene mentioned in section 20, first paragraph, may be appealed within 15 working days. The Competition Authority shall forward the appeal to the Ministry within 15 working days from the date on which it was received. The Ministry shall make a decision within 60 days from the date on which the appeal was received. The provisions on suspension of the time limits in section 20, sixth paragraph, apply correspondingly to the Ministry's time limits. If the appeal concerns decisions pursuant to Section 16, second paragraph, the Ministry may only annul or uphold the decision of the Competition Authority. Further, the provisions regarding appeals in Chapter VI of the Public Administration Act apply insofar as they are relevant.

If the Ministry annuls a decision pursuant to section 16, second paragraph, on the grounds that the concentration will not create or strengthen a significant restriction of competition, the case is decided. In case of annulment on other grounds, the Competition Authority may adopt a new decision pursuant to section 20, first paragraph. The provisions set out in section 20, second and third paragraphs, do not apply. The Competition Authority shall as soon as possible and within 45 working days from the decision was annulled make a decision on intervention allowing the concentration in accordance with the conditions offered by the undertakings concerned or present a reasoned preliminary decision on intervention. If the undertakings concerned offers modifying commitments later than 35 working days from the day on which the decision was annulled, the Competition Authority's time limits extends correspondingly. The provisions set out in section 20, fourth to seventh paragraphs, apply insofar as they are relevant.

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 and Section 16 a. Such approval may be conditional.

In cases involving questions of principle or interests of major significance to society, the King in Council may make decisions under Sections 16, 16 a 18, and 19 provided that the conditions of the first paragraph of Section 16 or the first paragraph of Section 16 a are fulfilled. The deadlines set forth in Sections 18, 20 and 20 a 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.

Original documents may be seized if the original in itself is judged to have particular value as evidence, if the value as evidence is reduced by copying, or if the document is judged to be a particularly central piece of evidence for the violation of provisions in this Act. When the Competition Authority does seize documents under this Section, the controllee shall be given a copy of the documents, if that can happen without harm or risk to the investigation.

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 decides by way of decision prior to the commencement of the securing of evidence. The Court's decision shall identify the purpose of the control, and which infringement and which market is being investigated by the Authority. 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 controllee shall receive a copy of all electronic material which has been seized. When the Competition Authority initiates the investigation of the electronic material, the controllee, or its representative, has the right to be present to clarify whether the material contains evidence which is privileged under Sections 117 to 120 of the Criminal Procedure Act. If the controllee and the Competition Authority does not agree as to which information is privileged under Sections 117 to 120 of the Criminal Procedure Act, this matter shall be settled by the District Court.

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 Freedom of Information Act and access to documents in concluded infringement cases

As long as the case is not closed, the Freedom of Information Act does not apply in cases regarding infringement of Sections 10, 11, 18 first paragraph, 19 first paragraph or decisions made

pursuant to this Act. The same applies to documents which are received by the Competition Authority in as part of an application for leniency, even after the case has been closed. A case is not closed if the Competition Authority requests prosecution, or the Prosecutor finds that public prosecution is required by strong general interests.

Undertakings or persons subject to investigation by the Competition Authority for the infringement of the Competition Act, shall upon request be given access to the documents of the case, insofar as that can happen without causing harm or risk to the investigation, or any third party. Section 19 of the Public Administration Act applies similarly. If the request is denied, the matter may be brought before the Court to be decided by way of a ruling. If the investigation covers multiple undertakings or individuals, the access to document does not apply to documents solely regarding other undertakings or individuals.

Section 27 – Confidentiality regarding the identity of sources and declarations in connection to leniency applications

Anyone who carries out service or employment for the Competition Authority have an obligation to maintain secrecy of the identity of undertakings or persons which give tips about infringements of Sections 10 or 11. This obligation also applies to the parties and their representatives in the case. A request for an order to bring an infringement to an end pursuant to Section 12 is not covered by the obligation of confidentiality.

Anyone who carries out service or employment for the Competition Authority have an obligation to maintain secrecy of information that stems from a declaration of an undertakings knowledge of an infringement of Section 10, and the undertakings participation in the infringement, and which is specially prepared with an object of obtaining leniency from fines.

Sections 13 to 13 e of the Public Administration Act applies insofar as they are relevant.

27a – Access to information subjected to a duty of confidentiality

A party or a party's representative that obtains knowledge of information that stems from leniency applications as mentioned in Section 27 second paragraph has an obligation to maintain this information confidential, and is only allowed to use it when this is necessary to protect the party's interest in the case.

Anyone with legal interest in cases that have been concluded regarding infringements of Section 10, Section 11, or orders pursuant to Section 12, is also to be allowed access to information subject to confidentiality required by statute, unless such access will appear unreasonable to those to whom the information pertains. The right to access to a file does not apply to information subjected to a duty of confidentiality pursuant to Section 27. Upon requests for access to information subject to confidentiality according to this paragraph, those to 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 and periodic penalty payments

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, 16 aor 23;
- c. fails to comply with orders pursuant to Sections 18 (third or fifth paragraph), 24 or 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 Sections 14, 18 (ninth paragraph) or 23; or
- g. contributes to infringements of letters a through f.

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 Sections 30 and 31.

Decisions as to administrative fines may not be appealed. Administrative fines fall due for payment two months after the decision is received. Decisions on administrative fines are bases for distraint. Legal action must be initiated/instituted within 6 months from the party's received the decision. Reinstatement may be given pursuant to the Dispute Act Sections 16-12 to 16-14. 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 Dispute Act applies in general 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 – Immunity from administrative fines for infringements of Section 10

Immunity will be granted from any fine which would otherwise have been imposed for an infringement of Section 10 to the first undertaking in connection to a particular case (which fulfils the following conditions)/provided:

- a) The undertaking submits on its own initiative all evidence in its possession as described in the second paragraph. The evidence must be sufficient to:
 - i. obtain a decision of an inspection to secure evidence pursuant to Section 25 in connection to an alleged infringement of Section 10. The Competition Authority must not have sufficient evidence to get such a decision on its own when the undertaking submits its evidence, or

- ii. prove an infringement of Section 10. The Competition Authority must not have sufficient evidence to prove an infringement when the undertaking submits its evidence.
- b) The undertaking cooperates genuinely, fully and on a continuous basis on its own initiative with the Competition Authority until the conclusion of the case.
- c) The undertaking ends its involvement in the infringement on its own initiative, unless the Competition Authority request otherwise.
- d) The undertaking has not coerced other undertakings to participate in the infringement.

Submission of evidence according to the first paragraph (a) can be done

- a) by submitting the evidence together with the leniency application,
- b) by describing the nature and content of the evidence, and submit all evidence within a deadline set by the Competition Authority, or
- c) by giving the undertaking a marker protecting the leniency applicant's place in the queue for a period to be specified by the Competition Authority on a case-by-case basis in order to allow for the gathering of evidence. The prioritized right to leniency will only be valid for the period decided by the Authority.

Section 31 – Reduction of a fine that would otherwise have been imposed for an infringement of Section 10

An undertaking which does not fulfil the conditions for full immunity under Section 30, shall be granted a reduction of a fine that would otherwise have been imposed if the undertaking

- a) submits evidence which significantly strengthen the Competition Authority's possibility of proving an infringement of Section 10, and
- b) ends its involvement in the infringement no later than when the evidence is submitted pursuant to (a).

The first undertaking which in a particular case fulfils the conditions in this provision will be given a reduction of 30 to 50 % of a fine that otherwise would be imposed. The second undertaking which in the same case fulfils the conditions in this provision will be given a reduction of 20-30 % of a fine that otherwise would be imposed. Other undertakings which in the same case fulfils the conditions in this provision will be given a reduction of up to 20 % of a fine that otherwise would be imposed.

In order to determine the level of reduction pursuant to the second paragraph, regard shall be given to how early the evidence was submitted, the strength of the submitted evidence, and to what extent the undertaking has been cooperating with the Competition Authority.

The King may by regulation provide more detailed rules on leniency pursuant to Sections 30 and 31.

Section 32 - 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 under Section 12 (first or fourth paragraphs), Sections 16, or 16a;
- c. fails to comply with orders under Section 24 or Section 25;
- d. provides incorrect or incomplete information to the competition authorities;
- e. breaks seals made under 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.

Undertakings will not be prosecuted under this paragraph, or the Penal Act Section 48 a for infringements of the Competition Act.

Section 33 Conditional prosecution

Infringements that may lead to criminal sanctions pursuant to section 32 are only subject to public prosecution if there is an application for a prosecution of the Competition Authority available or it is justified by strong public interests. The King may by regulation prescribe further rules on prosecution according to first sentence.

Section 34 Limitation

The Limitation Act, hereunder Section 9 and Section 11, applies to any claim arising under this Act.

Even if the limitation period has passed, claims as mentioned in the first Paragraph may be raise by legal action. Such legal action must be initiated whithin 1 year after a final decision or judgement in the case.

Chapter 8 – Entry into force, etc.

Section 35 – 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 36 – 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 37 – Amendments to other Acts

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