

NewsFlash

Competition law



AMENDMENTS TO NORWEGIAN MERGER CONTROL RULES

The Norwegian Competition Act will be amended as of 1 July 2008. The amendments entering into force on this date mainly concern merger control, in particular the repeal of the filing deadline, introduction of automatic suspension and new content requirements for notifications. The very low thresholds for notification in Norway are not affected by the amendments.

The amendments that will affect the most transactions are: (i) repeal of the deadline for merger filing in Norway; (ii) automatic suspension of all concentrations that are subject to merger filing in Norway; and (iii) more detailed content requirements for the standardised notification.

Repeal of merger filing deadline

A so-called "standardised notification" must be sent to the Norwegian Competition Authority for all mergers, acquisitions and other concentrations that involve companies with a turnover in Norway exceeding certain thresholds. The thresholds were raised as of 1 January 2007, but are still very low. [Read our newsletter on the revised notification thresholds here.](#)

Under current rules, merger filing in Norway must take place no later than the conclusion of a binding transaction agreement.

After the amendments, there will be no deadline for filing. The reason for this change is that the current deadline will become obsolete since automatic suspension of all concentrations is introduced (see below). Since the parties will be prohibited from implementing the transaction before it is cleared, it is not necessary to set a deadline for the merger filing. It is in the parties' interest to file as soon as practically possible in order to avoid delay to the implementation of the transaction.

Automatic suspension

There will now be automatic suspension of all concentrations that are subject to filing according to Norwegian merger control rules. The current rules do not contain such a suspension during the initial phase. From the day the Competition Authority receives a standardised notification of a concentration, it has a

deadline of 15 working days to initiate more detailed investigations of the case by requiring the parties to submit a so-called "complete notification". The amendment will prevent the parties from implementing the transaction until the expiry of these 15 working days. The suspension will be automatically extended for another 25 working days if the submission of a complete notification is ordered.

The purpose of automatic suspension from day one is to avoid the situation where the practical implementation of a possible decision by the Competition Authority to prohibit the concentration or to clear it subject to conditions (that is, divestments or other types of remedies) is prevented or made difficult by previous actions that cannot be reversed. Violations of the implementation prohibition can lead to fines of up to 10 percent of the parties' annual turnover.

Automatic suspension from the outset means that it will be even more important than before that the parties to a transaction address the issue of possible merger notification in Norway as early as possible. In some cases the parties may wish to submit the Norwegian merger notification prior to signing the final transaction documents in order to avoid delay to the implementation of the transaction due to the automatic suspension requirement.

More detailed standardised notification

The amendment to the standardised notification requirements means that the parties will have to state their five most important competitors, customers and suppliers for each overlapping market, even if the overlap is marginal.

Currently, it is only necessary to provide information about relevant markets where the merging parties have overlapping activities if their combined market share exceeds 20 percent as a result of the transaction. Many

transactions will involve a certain overlap between the parties' businesses, depending on how the markets are defined. Even today an assessment must be made of potential overlaps, but the 20 percent threshold in many cases has made it possible to confirm without very detailed investigations that a potential overlap will in any case not exceed this threshold.

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