

Template pursuant to Section 3 (a) of the ICN Framework on Competition Agency Procedures

The Norwegian Competition Authority, Norway

The following template is submitted by **the Norwegian Competition Authority** pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”). For this template, we follow the definitions from [the ICN CAP's website](#).

I. Introduction

The Norwegian Competition Authority (NCA)'s aim is to ensure well-functioning markets for the benefit of consumers and society at large. More information can be found on our website:

<https://konkurransetilsynet.no/>.

Our mission is to help ensure efficient use of the society’s resources by promoting competition, for the benefit of consumers and businesses in various national markets. Our primary objective is that undertakings operating in Norwegian markets comply with the competition rules, as competition is a way of achieving well-functioning markets.

The NCA's main task is to enforce [the Norwegian Competition Act](#). The NCA works with three main areas of competition law: unlawful cooperation (Section 10), abuse of a dominant position (Section 11) and control of mergers and acquisitions (Section 16). Failure to enforce the law in these three areas could weaken competition to the detriment of consumers and society at large, in that it may cause higher prices, less choice, poorer quality and a reduced rate of innovation.

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate. Please update your Template reflecting significant changes as they relate to the CAP, as needed.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

The NCA does not discriminate in the investigation and enforcement of the Competition Act based on the nationality of the parties. Under Norwegian competition law, the nationality, residence or origin of a Person is irrelevant to the question of whether the law applies to a Person. Relevance is concluded based on effects, both direct and indirect, on national markets. The NCA complies to Norwegian [equality and anti-discrimination law](#) as well as non-discrimination treaties of international organizations where Norway is a member.

Non-discrimination is strengthened by the fact that the Competition Act is harmonized with EU competition legislation, which contributes to a more equal treatment of Persons within Europe, independent of national practices.

c) Transparency and Predictability

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

Laws and regulations are published on lovdata.no, a national site providing access to a collection of online legal resources (also searchable based on EU-standards: <https://lovdata.no/eli/>).

In addition to laws and regulations, guidelines, decisions, hearing statements, annual reports and links to relevant international sites are publicly available [on our website](#). Transparency and predictability are important factors in order to achieve an effective enforcement. We practice predictability and transparency among others by presence in public debates, media contact, guidance and other dialogue with relevant actors. According to [Section 9 of the Competition Act](#), the NCA is obliged to provide guidance to undertakings as to the interpretation of this Act, its scope and its application in individual cases. Also, according to the [Public Administration Act, Section 11](#), authorities are bound to provide guidance.

The NCA's internal guidelines ensure compliance with the [Freedom of Information Act](#). Interested third parties may request access to documents in the NCA's possession pursuant to the Freedom of Information Act. In general, members of the general public have a right to access documents in the possession of public authorities in order to facilitate openness and transparency. Access to confidential information and the internal documents of the NCA is not granted. In antitrust cases, the Freedom of Information act is only applicable when an investigation is closed.

d) Investigative Process

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide*

reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.

The NCA complies with the [Public Administration Act](#), ensuring the rights of parties.

Merger cases are primarily initiated by the parties. In case the NCA considers ordering a merger notification that is below threshold level for obliged notification, the NCA notifies the parties and asks for a response before this decision, following the Public Administration Act. The NCA has published guidelines on merger case handling, aiming at a transparent procedure, treating parties equally.

Access to the file is an important principle in Norwegian administrative law with the aim of ensuring procedural fairness and the effective exercise of the rights of defense. Restricted access to documents is regulated by the [Public Administration Act, Section 19](#). Parties in competition law proceedings are generally granted access to non-confidential versions of documents on the NCA's file. In merger cases, access will be given upon request at every stage of the procedure following the notification of a merger. In [section 26 of the Competition Act](#), there is an exempt from the [Freedom of Information Act](#) concerning investigations of possible infringements, in order to protect an ongoing investigation. Undertakings subject to antitrust investigations, only have the right to access documents in the NCA's file to the extent such access can be granted without causing harm or risks to the investigation or any third party. Consequently, the parties in antitrust investigations will not necessarily be given access to documents on the file at every stage of the procedure, as is the case in merger proceedings. Parties, however, shall be informed about investigations, as long as this does not harm the investigation. The NCA needs a court petition before carrying out a dawn raid. In cases that do not start with dawn raids, the NCA informs parties as soon as this does not lead to loss of proof.

Parties can under certain circumstances be granted access to confidential information about other undertakings. A precondition is that such access is necessary to ensure a due process. Strict conditions will in any event apply. The information remains classified as confidential and cannot be used for other purposes. The number of persons who will be authorised to access the information will be limited. Unauthorised use of the information is subject to criminal sanctions.

Parties are not granted access to the internal documents of the NCA.

The NCA also promotes its leniency program, stimulating parties to contact the NCA regarding a possible infringement of the Competition Act before the NCA might start an investigation itself. The NCA may, upon request, provide a preliminary assessment of the basis and conditions for omitting personal prosecution.

e) *Timing of Investigations and Enforcement Proceedings*

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

For merger cases, deadlines are stated in [Section 20 of the Competition Act](#). No later than 25 working days after notification has been received (Phase 1), the NCA must notify the parties that it may intervene. As soon as possible and no later than 70 working days after notification was received, the NCA must accept modifying commitments proposed by the parties or issue a reasoned preliminary decision to prohibit the transaction. If the parties propose modifying commitments, the NCA's review process can be extended.

More details can be found on [our website](#). Approximately 95 percent of merger cases are closed within Phase 1.

For other investigations, there are no legal deadlines. However, the NCA strives to handle cases as efficient as possible, taking into account in prioritization that the necessary resources should be available during the different stages of the case handling. Based on a regular evaluation of resource allocation as well as available competency, the NCA may initiate changes in internal guidelines, lending personnel from other units etc.

According to [Section 11a of the Public Administration Act](#), cases should be handled without delay, and at least a provisional reply should be given where an answer cannot be given within due time. However, in order to ensure large direct and/or indirect effects on markets, the NCA also prioritizes cases that are more complex, and handling these cases naturally is more time-consuming than the less complex cases.

f) Confidentiality

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

The NCA has a strict security policy protecting confidential information. Protecting information is crucial for protecting competition and our core tasks. [Competition Act section 27](#) ensures confidentiality of the identity of somebody giving tip-offs, as well as declarations of guilt in leniency applications and settlement procedures. Otherwise, confidentiality is ensured by the [Public Administration Act Section 13](#) (duty of secrecy). The section covers both sensitive personal information and business secrets. To constitute a business secret, the information at issue must pertain to a commercial activity and be of business sensitive nature in the sense that disclosure could cause harm to the undertaking that the information concerns. Consequences of failure to fulfill the duty of secrecy are specified in [Section 207 - 211 of the General Civil Penal Code](#). Employees, suppliers and other parties receiving access to information, sign a non-disclosure agreement with references to these law sections.

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

Section 1.8 of the [policy for public service staff](#) refers to the [general ethical guidelines for employees in the public sector](#). Other relevant laws are the [Public Administration Act](#) (Chapter II, concerning disqualification), the [State Employees Act](#) and the [Securities' Act](#). The NCA's internal ethical guidelines draw up a more detailed code of practice based on these laws. Our guidelines include our practice and the staff's duties on considering disqualification, as well as preventing sharing of information with persons that potentially have a conflict of interests. Prevention of conflicts of interests and protecting information accordingly is also part of our internal policies concerning security, recruitment and purchasing. Conflicts

of interests might spring up in many different ways, in many unforeseen occasions, and the NCA hence aims to strengthen a general awareness already from an employee's first day at work.

h) Notice and Opportunity to Defend

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.*
- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

The [Competition Act](#) and its regulations as well as the [Public Administration Act](#), state procedures that give Persons the opportunity, including the time and the NCA's reasoning, to prepare an adequate defence.

[Section 26 of the Competition Act](#) entitles Persons subject to an Enforcement Proceeding to be given access to case documents, conditioning that this does not harm the investigation or a third party.

i) Representation by Counsel and Privilege

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

Norway's [Act on Criminal Procedure](#) ensures the rights and duties of the Participant and Persons. Treatment of legally privileged information (LPP) is a part of this legislation (sections 119 and 204). The NCA's dawn raids procedures comply with these privileges. Under Norwegian law, the rule concerning exclusion of LPP-material follows from Section 25(3) of the Competition Act, which refers to the regulation prohibiting the use of information confided to lawyers as evidence and the prohibition of seizure concerning such material. The [Competition Act](#) states that the provisions of the Criminal Procedure Act "will pertain insofar as they are relevant."

The NCA is positive to meeting parties and those representing them on their request. The NCA's external guideline on merger case handling provides guidance for parties in which stages these meetings will be natural. In other investigations, the regularity of these meetings is more case dependent. The main goal

for these meetings is to give the Person the opportunity to elaborate on its statements, and not for the Participant to share new information.

On a broader base, human rights in Norwegian law practice are strengthened by the [Act of Human Rights](#). This act ensures Norway's compliance with the Convention for the Protection of Human Rights and Fundamental Freedoms.

j) Decisions in Writing

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

Norway's [Penal Code](#) demands every penalty being based on legislation.

All formal steps in case handling, both those produced by the parties and those produced by the NCA, are in written form. This includes, for the parties, merger notifications, proposals of commitments and complaints. It is stated in the Competition Act that deadlines in merger cases are not officially running before the NCA has received a proposed public version of the notification in addition. This is also the case when parties propose remedies. NCA's documents in writing include notifications of decisions (statement of objection) and final decisions, and the NCA produces different versions of these documents according to each party's right to access to documents as well as public versions. Also according to the Public Administration Act, all decisions should be in writing. According to [Section 22 of the Competition Act](#), all decisions should be made public.

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

The opportunity to seek review is regulated by [Section 20a](#), [Section 29](#) and [chapter 8 of the Competition Act](#). Decisions may be appealed to an independent [appeal body for competition cases](#) (the Norwegian Competition Tribunal). Parties may also take the decisions by this appeal body to superior court and eventually Supreme Court.

The EFTA Surveillance Authority (ESA) controls that national authorities in EFTA-states comply with EEA-duties to the same degree as EU-member states comply with EU-legislation.