

## New standstill provision and no longer any deadline for filing

**The Norwegian Parliament has passed certain amendments to the Competition Act related to the control of concentrations. The amendments will enter into force on 1 July 2008.**

### PROHIBITION AGAINST IMPLEMENTATION PRIOR TO CLEARANCE (“STANDSTILL”)

The amendments to the standstill provision will result in a general prohibition on the implementation of concentrations that fall within the scope of the Competition Act until the Competition Authority has concluded its case handling. This will exclude what until now has been possible, i.e. to implement the concentration during the first stage of the merger control procedure prior to the Competition Authority potentially ordering a complete notification to be submitted by the parties.

The amendment will apply to all concentrations that are cleared after 1 July 2008. This means that a concentration notified in June, which will be subject to clearance (or an order for complete notification) during July, may legally be closed before 1 July even if clearance has not been obtained. However, if it has not been cleared before this date, one will have to wait until it has been cleared.

### NO LONGER A DEADLINE FOR FILING

The strict Norwegian rule that requires filing immediately on the signing of an agreement, coupled with the very low thresholds in Norway, has provided difficulties in many international transactions. Since the standstill provision will now cover all concentrations under the Competition Act, the duty to notify the transaction no later than when a final merger agreement has been concluded, or control has been acquired, will now become redundant and will subsequently be removed.

Again, the cut-off date will be 1 July 2008. Agreements entered into (or control acquired) prior to this date will be subject to the current regime with an obligation to notify immediately.

### MORE INFORMATION REQUIRED FOR A STANDARDIZED NOTIFICATION

Presently, the parties to a concentration only have to identify the five most significant customers, suppliers and competitors in markets where there is a horizontal overlap and where they have a combined market share exceeding 20 per cent. After 1 July 2008, such information will have to be supplied for all markets with horizontal overlap regardless of market shares.

### EXTENDED CASE HANDLING PERIOD WHEN PARTIES PROPOSE REMEDIES

To meet the competition issues raised by the Competition Authority, parties may offer remedies. The current regime in Section 20 states that an extended time limit of 25 working days may be granted in

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such cases if the parties request this. The amendment to Section 25 grants the Competition Authority power to unilaterally issue such an extension of the time limit for their case handling, regardless of the wishes of the parties.

### SIMPLIFYING POLITICAL INTERFERENCE IN MERGER CASES

Under Section 21 of the Competition Act, the King in the Council of State (i.e. the Government), may grant clearance to a concentration despite it not receiving a clearing decision from the Norwegian Competition Authority, (e.g. if agricultural policy interests are believed to outweigh the competition policy interests involved).

The result of the amendment is that the Government need no longer wait for the Ministry of Government Administration and Reform to handle a complaint regarding the Competition Authority's decision. The new rule will grant the Government the opportunity to clear the transaction immediately following a decision to intervene by the Competition Authority.

Subsequently, the amendment will save time and resources for undertakings which are part of a concentration that involves interests of such significance that they outweigh the detrimental effects to competition. It remains to be seen whether this will make it easier for the Government to allow other political interests to take priority over competition policy interests.

### HOW MAY THOMMESSEN ASSIST YOU?

Thommessen can, among other things, provide assistance with the following competition law aspects of concentrations:

- Advise whether the transaction falls under the Competition Act and is therefore subject to an obligation notification.
- Analyze the Competition Law risks related to a concentration. We can also assess the probability of a transaction being prohibited or being cleared under the condition of commitments. We can also provide advice about the extent to which alternative transaction structures might affect the Competition Authorities' assessment of the transaction
- Provide advice on how the competition law aspects of the transaction will affect its progress, e.g. date of closing
- Assist in the preparation of notifications to the Competition Authority and subsequent contact with the Authority and other public authorities

In addition to assisting the parties to a concentration, we may we also act on behalf of third parties.

### THE THOMMESSEN COMPETITION LAW DEPARTMENT

Thommessen has significant expertise regarding competition law issues in general and has extensive experience assisting in M&A cases in Norway and abroad. We represent clients from a variety of industries and are familiar with their wide spectrum of needs.

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