



Vertical Agreements

The regulation of distribution practices
in 34 jurisdictions worldwide

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- 1** What are the legal sources that set out the antitrust law applicable to vertical restraints?

The current Norwegian Competition Act entered into force 1 May 2004, replacing the former Competition Act of 1993 and introducing several changes with respect to both antitrust and merger control. With regard to antitrust the main change was to harmonise Norwegian domestic rules with those of the EU and EEA. The Act is available in English on the website of the Norwegian Competition Authority (NCA) (www.kt.no).

Section 10(1) of the Act prohibits agreements between undertakings that are restrictive of competition, subject to the applicability of the exemption clause in section 10(3). Section 10 mirrors article 81 of the EC Treaty and article 53 of the EEA Agreement. The *travaux préparatoires* of the Act state that section 10 shall be interpreted and applied in accordance with the case law of the European Court of Justice and the EFTA Court, and with the case law of the European Commission and the guidelines of the EFTA Surveillance Authority (ESA).

If the conduct affects trade between the EEA states, article 53 of the EEA Agreement applies in parallel with section 10 of the Act. Pursuant to section 7 of the Norwegian EEA Competition Act No. 11 of 5 March 2004, the Competition Authority and the Norwegian courts shall apply article 53 of the EEA Agreement in addition to section 10 if the conduct in question may affect trade between the EEA states. This act is also published on the NCA's website.

The Ministry of Administration and Government Reform has adopted several block exemption regulations that exempt certain categories of vertical restraints from the prohibition contained in section 10(1):

- Regulation No. 1,196 of 17 August 2004 on the application of section 10(3) of the Competition Act to categories of vertical agreements and concerted practices (the Norwegian Vertical Restraints Block Exemption Regulation);
- Regulation No. 1,197 of 17 August 2004 on the application of section 10(3) of the Act to categories of vertical agreements and concerted practices in the motor vehicle sector (the Norwegian Motor Vehicle Block Exemption);
- Regulation No. 402 of 4 May 2005 on the application of section 10(3) of the Act to categories of vertical agreements and concerted practices in the insurance sector; and
- Regulation No. 922 of 6 July 2006 on the application of section 10(3) of the Act to categories of technology transfer agreements.

In addition, certain forms of vertical restraints in the book publishing and distribution sector are exempted by Regulation No. 367 of 29 April 2005 on exemption from section 10 of the Com-

petition Act as regards cooperation in the book sector.

The block exemptions are accessible (in Norwegian only) on the NCA's website.

The NCA has not issued any specific guidelines on the assessment of vertical restraints. However, the NCA's website provides information on the general interpretation of section 10 and refers there to ESA's Guidelines on Vertical Restraints (www.eftasurv.int/fieldsOfWork/fieldcompetition/otherpublications/) as a source for guidance. These guidelines are based on the Commission Guidelines on Vertical Restraints and describe ESA's principles for the assessment of article 53 of the EEA Agreement. The NCA has referred to these guidelines in its case law on vertical restraints.

- 2** List and describe the types of vertical restraints that are subject to antitrust law. Are those terms defined and how? Is the concept of vertical restraint itself defined in the antitrust law?

The same types of vertical restraints are subject to Norwegian antitrust law as EC/EEA antitrust law. The concept of vertical restraints is defined in the Norwegian Vertical Restraints Block Exemption Regulation in exactly the same way as in the corresponding EC/EEA block exemption regulation (see question 1). Hence, Norwegian law defines as 'vertical restraints' all restraints that are agreed, or the result of a concerted practice, between two or more undertakings that operate for the purposes of the agreement at different levels of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain goods or services.

- 3** Are there particular rules or laws applicable to the assessment of vertical restraints in specific sectors of industry? If so, please identify the sectors and the relevant sources.

Particular rules are applicable in the motor vehicle sector, the insurance sector and the book sector. These regulations are listed under question 1.

- 4** Is the only objective pursued by the law on vertical restraints economic, or does it also seek to protect other interests?

According to its article 1(1), the overall purpose of the Competition Act is to 'further competition and thereby contribute to the efficient utilisation of society's resources'.

Article 1(2) states that 'when applying this Act, special consideration shall be given to the interests of consumers'. However, case law from the Ministry of Government Administration and Reform indicate that this qualification will have limited impact in practice.

Article 3 of the Act vests the King in Council (ie, the government) with the power to exempt, by means of regulations, specific markets or sectors, wholly or in part, from the scope of the Act, facilitating considerations other than economic efficiency and consumer welfare to be taken into account. Such regulations have been adopted with regard to certain agreements relating to agriculture and fishery, private practice healthcare and the book business sector, but only the latter contains provisions relating to vertical restraints.

Moreover, article 13 empowers the King in Council (ie, the government), in ‘cases involving public principles or interests of major significance’, to permit conduct that is prohibited by section 10. This provision has not yet been applied in practice in relation to vertical restraints and is expected to be applied only in exceptional cases.

- 5** What entity or agency is responsible for enforcing prohibitions on anti-competitive vertical restraints? Do governments or ministers have a role?

The competition authorities are the King in Council (ie, the government), the Ministry of Government Administration and Reform, and the NCA. The Act is enforced on a day-to-day basis by the NCA. The NCA may not be instructed as to decisions in individual cases. The Ministry is the appellate body for certain of the NCA’s decisions and may also reverse decisions by the NCA if they are invalid, even if the decision has not been appealed. The King in Council may order the NCA to deal with a case and may also take decisions or enact regulations to accommodate other interests than competition policy.

- 6** What is the relevant test for determining whether a vertical restraint will be subject to antitrust law in your jurisdiction?

Article 5 the Competition Act provides that the Act applies to terms of business, agreements and actions that are undertaken, have effect, or are liable to have effect within Norway.

- 7** To what extent does antitrust law apply to vertical restraints in agreements concluded by public or state-owned entities?

The Competition Act applies to competition between ‘undertakings’. According to section 2 an undertaking means any private or public entity that exercises commercial activities. The *travaux préparatoires* emphasise that the concept of an ‘undertaking’ in the Competition Act has the same meaning as within EU or EEA competition law.

Therefore, the Competition Act applies to vertical restraints in agreements concluded by public or state-owned entities to the extent that they qualify as ‘undertakings’ as defined in EU/EEA law.

- 8** Are there any general exceptions from antitrust law for certain types of vertical restraints? If so, please describe.

The application of section 10 is subject to the agreement or practice having an appreciable effect on competition (the *de minimis* exception). There are no specific Norwegian legislative or interpretative texts on the content of this exception, but the NCA states on its website that it will seek guidance in ESA’s Notice on agreements of minor importance that do not appreciably restrict competition under article 53(1) of the EEA Agreement (*de minimis*), which mirrors the corresponding commission notice pertaining to article 81(1) of the EC Treaty.

- 9** When assessing vertical restraints under antitrust law (or when considering the application of exceptions from antitrust law) does the relevant agency take into account that some agreements may form part of a larger, interrelated, network of agreements or is each agreement assessed in isolation?

The application under section 10 requires a case-by-case analysis and network effects will be taken into account in a similar manner as in relation to article 81(1) of the EC Treaty and article 53(1) of the EEA Agreement.

- 10** In what circumstances does antitrust law apply to agency agreements in which an undertaking agrees to perform certain services on a supplier’s behalf in consideration of a commission payment?

Whether section 10 applies to such agreements is assessed in the same manner as in relation to article 81(1) of the EC Treaty and article 53(1) of the EEA Agreement.

- 11** Is antitrust law applied differently when the agreement containing the vertical restraint also contains provisions granting intellectual property rights (IPRs)?

Whether section 10 applies to such agreements is assessed in the same manner as in relation to article 81(1) of the EC Treaty and article 53(1) of the EEA Agreement.

- 12** In what circumstances does antitrust law apply to agreements between a parent and a related company?

Whether section 10 applies to such agreements is assessed in the same manner as in relation to article 81(1) of the EC Treaty and article 53(1) of the EEA Agreement.

- 13** Can the legality under antitrust law of a given vertical restraint change over time?

The legality of a given vertical restraint under Norwegian antitrust law can change over time in the same manner as under EU or EEA law. For example, an increase of the market positions of the parties (or a decrease of the market position of their competitors) might bring an agreement out of the *de minimis* exception or the safe harbour of, for example, the Norwegian Vertical Restraints Block Exemption, or affect the eligibility of the agreement for an individual exemption under section 10(3). Therefore, such changes might render a previously legal agreement illegal and trigger the NCA to initiate investigations.

- 14** Briefly explain the analytical framework that applies when assessing vertical restraints under antitrust law.

The analytical framework that applies when assessing vertical restraints under Norwegian antitrust law is identical to that applied in relation to EU/EEA law, and the Guidelines on Vertical Restraints published by the European Commission and the EFTA Surveillance Authority, respectively, are a relevant source of law also in relation to section 10 of the Competition Act and the Norwegian Vertical Restraints Block Exemption. Therefore, the same restrictions will generally be considered as ‘hard-core’ and per se unlawful in Norwegian antitrust law as in EU or EEA law.

- 15** Is there a block exemption or safe harbour that provides certainty to companies as to the legality of vertical restraints in certain conditions? If so, please explain how this block exemption or safe harbour functions.

As explained in question 1, certain Norwegian block exemption regulations have been adopted under the Act. These regulations provide a safe harbour for agreements falling within their scope. With the exception of the book sector group exemption all these regulations mirror corresponding EU/EEA block exemptions and function in the same manner.

- 16** What are the consequences of an infringement of antitrust law for the validity, or enforceability by one of the parties, of a contract containing prohibited vertical restraints?

Section 10(2) of the Competition Act mirrors article 81(2) of the EC Treaty and article 53(2) of the EEA Agreement, and hence lays down the principle of invalidity of agreements to the extent that they fall foul of the prohibition in section 10(1) and do not qualify for an exemption under section 10(3). The extent of the invalidity will need to be assessed on a case-by-case basis.

- 17** How is the restricting of the buyer's ability to determine its resale price assessed under antitrust law?

Purely recommended resale prices communicated by a supplier will normally be permitted. Maximum resale prices are automatically exempted by the Norwegian Vertical Restraints Block Exemption if the supplier's market share does not exceed 30 per cent and may qualify for an individual exemption also where the market share threshold is exceeded. In all other situations an attempt by a seller to restrict or influence a buyer's ability to determine its resale prices will easily be caught by the prohibition against restrictive agreements in section 10(1) of the Competition Act and will require a careful individual assessment under the exemption clause in section 10(3) of the Competition Act. As in EU or EEA law, the setting by a supplier of minimum resale prices is considered a 'hard-core' restriction that will almost always be caught by the prohibition without any prospect of benefiting from the exemption.

- 18** Have there been any developments in your jurisdiction in light of the landmark 2007 judgment by the US Supreme Court in *Leegin Creative Leather Products Inc v PSKS Inc*? If not, is any response or development anticipated?

The NCA arranged a seminar about *Leegin Creative Leather Products, Inc v PSKS* in late 2007 but the judgment does not appear to have been reflected in any changes in the NCA's policy or decisions in individual cases. It can be mentioned, however, that the NCA in Decision A2007-43 declined to investigate the allegation from certain pet shops that Royal Canin Norge AS had cut off their supplies because the shops did not observe recommended resale prices. The NCA found that there was not sufficient evidence to support this allegation and closed the case for reasons of administrative priority.

- 19** How is the restriction of the territory into which a buyer may resell contract products assessed under antitrust law? In what circumstances (if any) may a supplier require a buyer of its products not to resell the products in certain territories?

While there are not many Norwegian cases concerning this, it is generally held that imposing restrictions on a buyer's ability

to sell the products wherever it wants will almost always fall within section 10(1) of the Competition Act and that such restrictions will often not qualify for an exemption under section 10(3). However, provided that the applicable conditions are met, section 4(b) of the Norwegian Vertical Restraints Group Exemption (like article 4(b) of its EC/EEA counterpart) permits that a supplier with a market share not exceeding 30 per cent prohibits its distributors from actively selling into an exclusive territory reserved to the supplier or allocated by the supplier to another distributor. Restrictions on active sales in the context of an exclusive distributorship network may qualify for individual exemption in application of section 10(3) also where the supplier's market share exceeds the 30 per cent threshold.

- 20** Explain how restricting the customers to whom a buyer may resell contract products is assessed under antitrust law. In what circumstances (if any) may a supplier require a buyer of its products not to resell the products to certain customers?

Unless objectively justified by the nature of the products (e.g. dangerous goods) customer restrictions will almost always fall within section 10(1) of the Competition Act. However, certain exemptions exist. Provided that the applicable conditions are met section 4(b) of the Norwegian Vertical Restraints Group Exemption exempts the same restrictions of this kind as article 4(b) of its EC/EEA counterpart, provided that the supplier's market share does not exceed 30 per cent, including (without limitation) the ability of a seller to reserve an exclusive customer group to itself or to other distributors and prohibit the distributor from actively selling to that customer group, and provisions intended to preserve the integrity of a selective distribution system. Depending on the circumstances, such restrictions may also qualify for individual exemption in application of section 10(3) where the supplier's market share exceeds the 30 per cent threshold.

- 21** How is the restricting of the uses to which a buyer (or a subsequent buyer) puts the contract products assessed under antitrust law?

Such restrictions are normally caught by the prohibition in section 10(1) unless objectively justified by the nature of the products, such as restrictions on use imposed on buyers of a dangerous product.

- 22** Briefly explain how agreements establishing 'selective' distribution systems are assessed under antitrust law.

Selective distribution systems are assessed in the same manner under Norwegian antitrust law as under the EU/EEA rules. Hence, selective distribution systems based on objectively necessary criteria of a qualitative nature do not fall within section 10(2) of the Competition Act. If the system is based on other criteria section 10(1) may apply and the system must be assessed on the merits to verify whether it produces anti-competitive effects and, in the affirmative, whether it qualifies for an exemption under section 10(3).

- 23** How is the restriction of the buyer's ability to obtain the supplier's products from alternative sources assessed under antitrust law?

Such restrictions imposed by a supplier having a market share of no more than 30 per cent will benefit from the Norwegian Vertical Restraints Block Exemption provided that their duration does not exceed five years. If the supplier's market share

exceeds 30 per cent or the duration of the restriction exceeds five years the restriction may fall within the prohibition against restrictive agreements in section 10(1) of the Competition Act but can – depending on the facts – benefit from the exemption in section 10(3).

- 24** Explain how restricting the buyer's ability to stock products competing with those supplied by the supplier under the agreement is assessed under antitrust law.

Such restrictions are assessed in the same manner as those addressed in question 23.

- 25** How is the requiring of the buyer to purchase from the supplier a certain amount, or minimum percentage, of its requirements, of the contract products assessed under antitrust law?

Such restrictions are assessed in the same manner under Norwegian law as under the EU and EEA rules. Hence, if the obligation directly or indirectly causes the buyer to purchase more than 80 per cent of its requirements from the seller the restriction will be analysed in the same manner as those addressed in question 23. If the buyer has an obligation to purchase a smaller percentage the restriction will be block exempted if the supplier's market share does not exceed 30 per cent and may benefit from an individual exemption in application of section 10(3) above that threshold. The likelihood that the restriction will produce anti-competitive effects increases with the market share of the seller, but if there is an objective justification for agreeing on such a restriction a high market share does not necessarily preclude the possibility of an individual exemption.

- 26** Explain how restricting the supplier's ability to supply to other buyers, or sell directly to consumers, is assessed under antitrust law.

Such restrictions may fall outside the prohibition if they are objectively justified but will in other cases easily be caught by section 10(1) if they produce anti-competitive effects. If that is the case the restrictions will benefit from the Norwegian Vertical Block Exemption if the market share threshold of the supplier (or, if the supplier is obliged to supply to only one customer in Norway, the market share of the buyer) does not exceed 30 per cent. Where these market share thresholds are exceeded an individual assessment under section 10(3) of the Competition Act is necessary.

- 27** To what extent are franchise agreements incorporating licences of intellectual property rights, relating to trademarks or signs and know-how for the use and distribution of products, assessed differently from 'simple' distribution agreements under antitrust law?

The assessment of such agreements is carried out in the same manner under Norwegian law as under the EU/EEA rules. While such agreements will generally be classified as vertical agreements and subject to an assessment similar to that conducted in relation to other vertical agreements, it can generally be expected that the more important the transfer of know-how from the franchisor to the franchisee, the more easily the vertical restrictions contained in the agreement will fulfil the conditions for exemption under section 10(3) of the Competition Act. Please see the EU chapter of this book for further details.

- 28** Explain how a supplier's warranting to the buyer that it will supply the contract products on the terms applied to the supplier's most favoured customer or warranting to the buyer that it will not supply the contract products on more favourable terms to other buyers is assessed under antitrust law.

In some decisions under the former Competition Act 1993 the NCA drew a distinction between clauses that implied that the buyer indirectly influenced the supplier's sales prices to third parties (which were considered illegal) and clauses that only warranted the buyer at least the same prices as the supplier applied to its best favoured customers (which were considered legal). Hence, the NCA held that a clause obliging the supplier to apply less favourable prices to its other customers than to the buyer would fall foul of the prohibition of price cooperation, since the prices agreed between the supplier and the buyer would indirectly determine the best prices obtainable by any other customer of the supplier. In contrast, a clause that obliged the supplier to apply to the buyer at least the same prices as it applied to its other customers was held to be permissible. This approach appears to have been abandoned in subsequent cases under the former Act, and it can be expected that clauses of this kind will now be assessed in the same manner under the Competition Act 2004 as under the EU/EEA rules.

- 29** Is there a formal procedure for notifying agreements containing vertical restraints to the agency? Is it necessary or advisable to notify it of any particular categories of agreement?

It is not possible to notify agreements to the NCA. Section 10(3) of the Competition Act contains an automatic exemption clause for agreements fulfilling certain criteria (the same as those set forth in article 81(3) EC/article 53(3) EEA). Undertakings are required to carry out a self-assessment of whether their agreements are caught by the prohibition and, if answered in the affirmative, whether the criteria for exemption are met.

- 30** If there is a formal notification procedure, how does it work? What type of ruling (if any) does the agency deliver at the end of the procedure? And how long does this take? Is a reasoned decision published at the end of the procedure?

See question 29.

- 31** If there is no formal procedure for notification, is it possible to obtain guidance from the agency as to the antitrust assessment of a particular agreement in certain circumstances?

The NCA, according to article 9 of the Competition Act, is obliged to provide guidance to undertakings on the interpretation of the Act, its scope and its application in individual cases. Despite this wording the NCA will not, in general, provide guidance as to how the Act shall be applied to a concrete agreement or practice.

The NCA has issued general guidelines on guidance under the Act, which are available on its website (but only in Norwegian): www.kt.no.

- 32** Is there a procedure whereby private parties can complain to the agency about alleged vertical restraints?

Private parties can file complaints to the NCA, requesting that an alleged breach of section 10 of the Competition Act is brought to an end. No formal requirements apply to such complaints. If

the NCA rejects the complaint it must state the reasons for its decision, and the complainant has the right to appeal the refusal to the Ministry of Government Administration and Reform.

The Competition Act contains certain provisions on the investigation of the NCA in such cases (see question 35), and the Public Administration Act and general principles of administrative law will provide an additional framework for the case-handling of the NCA and the rights and obligations of the parties.

33 How frequently is antitrust law applied to vertical restraints by the agency?

Since the current Competition Act entered into force in 2004 the NCA has dealt with specific vertical restraints in only a limited number of individual cases. Most of these cases were initiated by formal complaints and resulted in the NCA refusing to act on the complaint. However, in 2005 the NCA carried out a sector inquiry in the Norwegian grocery market. The inquiry resulted in a report in mid-2005 and a handful of decisions in early 2006 imposing a duty on the grocery chains to submit their supply agreements with approximately 20 of the largest suppliers to the NCA on an ongoing basis. The NCA carried out a sector inquiry of motor vehicle distribution in 2005 and has on various occasions in the past couple of years expressed an interest in vertical restraints by arranging seminars on selected topics like the US Supreme Court's judgment in *Leegin Creative Leather Products, Inc v PSKS* in 2007. Vertical restraints have also been an issue in certain merger cases.

34 May the agency impose penalties or must it petition the courts or another administrative or government agency? What sanctions and remedies can the agency or the courts impose when enforcing the prohibition of vertical restraints?

Violations of section 10 of the Competition Act can result in criminal sanctions (fines and imprisonment) or administrative sanctions (administrative fines and periodic penalty payments).

According to section 29, an undertaking or an association of undertakings may be subject to administrative fines issued by the NCA if the undertaking or the association of undertakings or someone acting on its behalf, intentionally or negligently infringes, inter alia, section 10. According to the preparatory works of the Competition Act the required standard of proof is mere probability.

In 2005 a regulation on the method for setting of administrative fines and leniency was adopted. The rules laid down in this regulation reflect, but are not identical to, the European Commission notices concerning calculation of fines and leniency. The maximum fine is 10 per cent of the aggregate group turnover of the undertaking in question.

Decisions imposing administrative fines are not subject to administrative appeal, but can be contested in civil litigation against the state. The court may review all aspects of the matter.

According to section 28 of the Competition Act, the NCA may impose periodic penalty payments until the situation has been rectified.

According to section 30 of the Act, criminal fines or imprisonment of up to three years may be imposed on anyone who intentionally or grossly negligent infringes, inter alia, section 10. If the infringement has been 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, will be considered. Fines or imprisonment are imposed by the courts in criminal proceedings brought by the prosecution authority. The prosecution authority normally first proposes that the person or company in question accept the fine and only initiates court proceedings if the proposal is rejected.

The statutory limitation period for violations of section 10 of the Competition Act is 10 years.

35 What investigative powers does the agency have when enforcing the prohibition of vertical restraints?

Under article 24 of the Act, the NCA may request any individual or undertaking, including third parties such as customers or competitors, to provide the NCA with the information it considers necessary in order to perform its responsibilities under the Act. The request could include information in written or oral form, or both, and it may be retained as audio recordings. Furthermore, the NCA may require access to sources of such information for examination. Failure to provide the information requested may result in administrative fines, criminal fines and imprisonment.

If there are reasonable grounds to assume that the Competition Act or decisions under the Act have been infringed the NCA may obtain a court order to carry out surprise inspections (dawn raids) at the premises of undertakings and other places where evidence may be found, including private homes if there are special reasons to assume that evidence may be kept there. The undertaking has the right to legal assistance, but the NCA does not have to await inspection until legal counsel has arrived.

The duty to provide information as described above also applies during a dawn raid. During the dawn raid the NCA has the power to search for and confiscate evidence, including original documents. It also has the right to access PCs and computer systems to download copies of electronically stored information, even in situations where this necessarily results in the confiscation of information outside the scope of the investigation.

The NCA does not have the right to confiscate documents covered by legal privilege. Under Norwegian law communication with in-house counsel is also protected by legal privilege, provided that he or she has functioned as a legal adviser in relation to the matter in question (and not, for example, as a member of the management group).

The protection against self-incrimination and other safeguards stemming from the European Convention for the Protection of Human Rights and Fundamental Freedoms apply. The protection that follows from EU/EEA law in respect of self-incrimination is not directly applicable when applying Norwegian domestic competition law, and the protection against self-incrimination pursuant to Norwegian competition law may therefore be of a somewhat more narrow scope than that in the EU/EEA.

36 What notable sanctions or remedies have been imposed? Can any trends be identified in this regard?

Since the Competition Act entered into force in 2004 no sanctions or remedies have been imposed for violations of section 10 alone in cases concerning vertical restrictions. However, in Decision V2007-2 the NCA imposed an administrative fine of 45 million kroner (approximately €5.6 million) on Norway's dominant diary producer Tine BA by parallel application of section 11 (corresponding to article 54 of the EEA Agreement) and

section 10 (corresponding to article 53 of the EEA Agreement). The NCA found that Tine had engaged in exclusionary practices by entering into an agreement with a supermarket chain that gave Tine exclusive supplier status for certain products. At the time it adopted the decision the NCA said publicly that it would also consider the role of the supermarket chain in relation to the conclusion of the agreement but no decision has been taken against the chain. In the meantime Tine has initiated litigation against the state to obtain annulment of the NCA's decision.

37 Can sanctions or remedies be imposed on companies having no branch or office in your jurisdiction?

According to article 5 of the Competition Act it is the impact of the vertical restraint in Norway that is the necessary nexus between the agreement and the jurisdiction. Therefore, sanctions or remedies may be imposed on companies having no branch or office in Norway.

38 To what extent is private enforcement possible? Can non-parties to agreements containing vertical restraints bring damages claims? Can the parties to agreements themselves bring damages claims? What remedies are available? How long should a company expect a private enforcement action to take? Can the successful party recover its legal costs?

In principle it is possible to initiate private enforcement actions before national courts in order to, inter alia, compel undertakings to cease anti-competitive behaviour after section 10, demand

Update and trends

While the number of cases that proceed to formal decision remains low there are signs that the NCA is taking an increased interest in vertical restraints. Hopefully its decisions in future cases will contribute to the development of a richer and more transparent Norwegian competition policy in this area.

interim measures, claim damages, or fulfil a contract in natura. Section 10 is sometimes invoked to challenge the validity of an agreement, but in our experience rarely as the sole basis for the claim. While there are examples of out-of-court settlement of damages claims in the aftermath of cartel cases, no such actions have to our knowledge ever been decided by Norwegian courts.

The average time frame for the Norwegian courts to handle a case in the first instance is six to 18 months depending on the venue and the complexity of the case. Pursuant to the Norwegian Civil Code, the main rule is that the unsuccessful party must cover the necessary legal costs of the other party.

39 Is there any unique point relating to the assessment of vertical restraints in your jurisdiction that is not covered above?

No.

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