

THE NORWEGIAN COMPETITION AUTHORITY ISSUES ITS FIRST FINE FOR BREACH OF THE NEW STANDSTILL OBLIGATION

On 4 February 2009 the Norwegian Competition Authority announced that it has issued its first fine ever for implementing a transaction before it has been cleared. The Norwegian shipbroker RS Platou was fined for having implemented its acquisition of control of Glitnir Securities, a Norwegian subsidiary of the Icelandic banking group, before the transaction was notified to the Competition Authority.

In October 2008 RS Platou ASA acquired 50.01 percent of the shares in Glitnir Securities AS. The remaining shares were acquired by Glitnir Securities employees. When the Norwegian Competition Authority received RS Platou's notification of the acquisition, the transaction had already been closed, the board of directors of Glitnir Securities had been replaced and the company's name had been changed to RS Platou Markets.

RS Platou was fined NOK 150,000 (approx. EUR 17,000). In determining the amount of the fine, the Competition Authority emphasized that the company was aware of the standstill obligation and chose to implement the transaction regardless. At the same time, it was undisputed that the transaction did not raise any competition concerns. The acquisition was cleared within the Competition Authority's initial deadline of 15 working days.

Infringements of the standstill provision can lead to fines of up to 10 percent of the parties' annual turnover. The modest fine issued in this case was significantly below this limit (approx. 0.02 percent of RS Platou's turnover). The parties may risk higher fines in cases where the transaction raises competition concerns.

The standstill obligation

The automatic standstill provision entered into force on 1 July 2008 and applies to all transactions that are subject to filing under Norwegian merger control rules. From the day the Competition Authority receives a merger filing by way of a so-called *standardised notification*, 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 new standstill obligation prevents the parties from implementing the transaction before the expiry of the 15 working days deadline. The standstill obligation will be automatically extended for another 25 working days if the Competition Authority requests the parties to submit a complete notification.

The standstill obligation in Norway corresponds in principle to the standstill obligation under Article 7 of the EC Merger Regulation

for transactions notified to the European Commission. However, since the turnover thresholds for merger filing in Norway are very low, the standstill obligation will apply to a very significant number of transactions that do not raise any competition issues, including mergers and acquisitions that only involve companies that are not established in Norway ("*foreign-to-foreign*" transactions). It should also be noted that the Norwegian standstill provision does not include an exemption for public bids similar to Article 7 (2) of the EC Merger Regulation. The Norwegian Competition Authority is currently working on the adoption of a regulation that will provide for a similar derogation as Article 7 (2) of the EC Merger Regulation. However, until this regulation is adopted, it is possible for an acquirer of a listed company to apply to the Norwegian Competition Authority for an individual exemption from the standstill obligation.

FOR FURTHER INFORMATION, PLEASE CONTACT:

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