

## **Fact Sheet: ESA investigates DNB, Nordea, Finance Norway and BankID**

### **Background**

In 2015 the EFTA Surveillance Authority (“ESA”) received a complaint from the Swedish company Trustly, a provider of online payment solutions, regarding alleged blocking by the Norwegian banking community of its ability to provide a new e-payments service called payment initiation services (“PIS”) in Norway.<sup>1</sup>

PIS is an electronic payment solution that enables customers to pay for goods and services online directly from their bank accounts, without the need for a credit or debit card. It also allows merchants to receive immediate notification that the payment has been made.

Following a preliminary review of data collected from members of the Norwegian banking sector, ESA has decided that there is sufficient information at this stage to require an in-depth investigation in respect of:

- DNB Bank ASA and DNB ASA (“DNB”);
- Nordea Bank AB (publ) and Nordea Bank Norge ASA (“Nordea”);
- Finance Norway and its related organisation Bits AS; and
- BankID Norge AS (“BankID”)

The purpose of the investigation is to determine whether there has been an infringement of the EEA competition rules. ESA may decide to extend the scope of its investigation and/or include additional financial institutions at a later stage, if deemed appropriate.

### **Significance of a decision to open proceedings**

The decision to open proceedings is essentially a procedural step. It signals ESA’s intention to proceed with an in-depth investigation; it does not mean that ESA has concluded that the companies in question are guilty of anti-competitive conduct. The decision has no bearing on the outcome of the investigation and it does not prejudice in any way the existence of a competition law infringement.

The main legal consequence of opening proceedings is that it relieves the national competition authorities in the EEA EFTA States of their competence to apply the EEA competition rules to the practices concerned.

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<sup>1</sup> The complaint was initially addressed to the Norwegian Competition Authority and was subsequently allocated to ESA pursuant to the rules governing cooperation within the EFTA network of competition authorities.

Opening proceedings also triggers certain procedural rights for the parties. These are set out in ESA's [Best Practice Guidelines](#).

### **Next steps**

Following the decision to initiate proceedings, ESA will continue its investigation to determine whether there are any competition law concerns.

There is no legal deadline to complete inquiries into potentially anti-competitive conduct. The duration of an antitrust investigation depends on a number of factors, including the complexity of the case, the extent to which the undertakings concerned cooperate with ESA, and the exercise of the rights of defence.

If, following its investigation, ESA reaches the preliminary conclusion that one or more infringements of the competition rules were committed it would address a “statement of objections” to DNB, Nordea, Finance Norway, Bits AS and BankID setting out its concerns. The addressees of the statement of objections would then have the opportunity to respond to ESA's preliminary findings in writing and orally, at an oral hearing, should they wish to do so.

If ESA's views remained unchanged following this process, ESA would proceed to the adoption of a decision addressed to DNB, Nordea, Finance Norway, Bits AS, and BankID finding that they had infringed the EEA competition rules and imposing a fine, if appropriate. ESA has the power to impose fines of up to 10% of global turnover on undertakings that infringe the competition rules.

### **The EEA competition rules**

The competition rules in Articles 53 and 54 of the EEA Agreement correspond to Articles 101 and 102 TFEU.

**Article 53 EEA** prohibits agreements, decisions or concerted practices which prevent, restrict or distort competition between undertakings.

**Article 54 EEA** prohibits dominant undertakings from abusing their market power.

Articles 53 and/or 54 EEA may apply, for example, to certain practices aimed at restricting competition by keeping prices high and/or eliminating competitors.

### **The EFTA Surveillance Authority**

- Ensures that Norway, Iceland and Liechtenstein respect the EEA Agreement.
- Protects the rights of individuals and market participants.
- Ensures timely implementation of EEA law.
- Pursues breaches of EEA law.
- Enforces the rules concerning state aid.
- Takes action against breaches of the EEA competition rules.

Further information about the EEA competition rules and the role of ESA can be found on ESA's website: <http://www.eftasurv.int/competition/>.