Perspectives on the distinctiveness of Norwegian price and competition policy in the XXth century

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Economic and political developments in West European and North American countries have differed considerably in the XXth Century, although the more fundamental modernisation processes have been less divergent. Nevertheless few social scientist and economic historians believe in just one or a couple of more or less successful paths of economic development. Alfred Chandler has listed three distinct paths within the major industrial countries prior to the Second World War, those of the USA, UK and Germany. Francis Sejersted has presented a historical theory of a distinctive Norwegian economic modernisation process covering more than the latest 100 years, the so-called "Norwegian Sunderweg".[1]

The aim of this article is much more modest than Chandler and Sejersted. The purpose is to analyse an important part of the economic governance[2] or regulation of Norway in the XXth century, namely its price and competition policy, and draw some comparisons, mainly with West European countries. The present analysis mainly addresses domestic price and competition policy in the narrow sense, i.e. the activities of the bodies directly engaged in enacting and administrating provisional or permanent price and competition legislation.[3]

[1] Chandler (1990), Sejersted (1993).

[2] Campbell, Hollingsworth, and Lindberg (1991).

[3] While other areas of policy and legislation are obviously important when analyzing this topic, constraints of time and space prevent me from doing more than cite examples of developments in these areas. Questions concerning Norwegian firms' participation in international cartels abroad or other forms of agreements with respect to foreign markets are excluded. On this, see Schröter (1993), pp. 110-122. Prior to 1960 Norwegian

During most of this period Norwegian price and competition policy has been distinct in comparison to developments in America as well as in Western Europe; although policies have been influenced by, and to some extent adjusted to, policy developments abroad in the XXth century, especially since the 1970s. Its distinctiveness includes legislation and the administrative and legal apparatus to administer and enact it. The determinants of policy and most policy changes were predominantly domestic in the sense that national institutional and political factors and path dependencies played a major role. Taken together one could talk of a Norwegian or a national competition policy model. Whether the model concept is the most analytically appropriate is of secondary importance.

Norway was the first European country to introduce competition regulation, and continued to follow a fairly independent line up to participation in the European Economic Area in 1992 in terms of legislation, policy-making bodies and actual policies pursued.

We will present the main characteristics of Norwegian price and competition legislation, administrative bodies and actors and the actual regulation policies pursued in a West European perspective through thematic chronology. Three elements represented the core of the Norwegian distinctiveness in price and competition policy, 1) Permanent legislation was established at an early stage and continued to be among the most modern in a European context into the 1960s. 2) From great administrative and legal autonomy of price and competition regulation authorities to political subordination. 3) The prolonged emphasis on detailed governmental price controls. We will analyse the development of the three elements emphasising major changes and shifts and explanations linked to path dependencies and changing power relations among important domestic actors. A characteristic feature is that while Norway was influenced by foreign developments it still took a distinctive path that should be explained in a basically domestic context.

competition authorities supported rather than criticized or imposed restrictions on export industries participating in international cartels; even when this implied more or less complete cartellization of the domestic market, as in the case of sardines, pulp, wallboard, paper and newsprint, e.g. *Trustkontrollen* 1929, p.457 ff, Espeli (1993), pp. 32, 66-67, 103-104, 118-119. The Royal Decree on horizontal price cooperation, in force from 1961 to 1994, excepted exports from the prohibition.

Permanent legislation was established at an early stage and continued to be among the most modern in a European context into the 1960s.

The permanent Norwegian Trust Act of 1926 was second only to the German Decree against the Abuse of Economic Power Positions of 1923. It could, however, be argued that Norway was the first European country to implement specific legislation enabling control of and intervention against abuse of restraints on competition.[4]

The provisional Prices Act of 1920 introduced compulsory notification and registration of restrictive business arrangements and dominant enterprises as well as of subsidiaries of cartels or dominant companies in other countries. This was the beginning of the official cartel register, which existed to 1993. This Norwegian novelty was copied in various versions by some countries in the inter-war period, notably Denmark, Poland and Czechoslovakia.[5] In the post-war period Germany, Britain, Finland, Sweden, Austria, the Netherlands and Spain adopted different forms of compulsory notification but the registers were not necessarily open to the public. The register in the Netherlands was a secret for decades.[6]

The system of notification and the later partial public access to the register reflected a hope that the principle of transparency of restraints on competition would be an efficient but not a sufficient control

[4] Herlitz (1971), p.8, Boserup and U.Schlichtkrull (1962), pp. 60, 63, Voigt (1962), p.177. The French Penal Code contained a provision (article 419, effective from 1810 to 1926) that prohibited price agreements, but the courts distinguished between "good" and "bad" agreements and court decisions were normally relatively liberal, cf.Yamazaki and Miyamoto (1988), 269-277. Similar provisions could be found in Italy, cf. Andersen (1937), pp. 95-104, Haaland (1994), p. 23. Prior to 1918 cartels were illegal in Austria according to an act of 1870, which also prohibited strikes and lockouts. It is interesting that in both Austria and Hungary specific cartel laws were proposed but not enacted around the turn of the century; these were the only European countries where such legislation was proposed prior to 1914, Aarum (1920), pp. 149-50.

[5] Brems (1954), p.174, Andersen (1937), pp. 109-124, Schröter (1993) , pp. 105-106, Lorentzen (1952), Boserup and U.Schlichtkrull (1962), pp. 68-70. In Sweden an act of 1925 was based on similar legal principles, but did not include compulsory notification, which was introduced in an act of 1946.

[6] OECD (1978), pp. 165-175, Goldstein (1963), p. viii.

mechanism. There existed no legal provision for state intervention against possible abuse in Norway until an amendment to the act in 1922 enabled the Price Directorate to intervene against prices fixed by cartels and dominant enterprises.[7] Large parliamentary majorities adopted these legal provisions, the Conservative Party included, subsequently included in the Trust Act. It should also be noted that these provisions were utilised both by provisional Price Directorate and the Liberal government in 1925.[8] The period 1920 to 1926 has consequently been labelled "the period of provisional trust control".[9]

While most countries that eventually enacted competition-regulating provisions initially concentrated on cartels and restrictive business practices, Norway included control of market-dominant enterprises and monopolies from the outset (1920). This reflected a widespread and long-lasting political concern over the possible abuse of economic power by cartels and big business to the disadvantage of consumers, small-scale producers and merchants.

The obvious political origins of this go back at least to the end of the XIXth century. One early instance reflecting political concern over cartels was the criticism levelled by the Liberal parliamentary representative and later party chairman and prime minister, Gunnar Knudsen, against the fire insurance cartel in the 1880s. Knudsen demanded governmental action against the cartel that already held a virtual monopoly in parts of the fire-insurance market. The fire-insurance cartel (1858-1982), that later extended its virtual monopoly into other forms of non-life insurance, was one of the most prolonged, powerful and well-organised cartels in Norwegian history.[10]

The intense struggle on the shaping of the concession acts on waterfalls was the most central political issue in the sphere of central government regulation of business and industry between 1905 and the debate on the trust law proposals. That debate started in earnest with

[7] In the Trust Act, section 8, dominant companies were defined as companies with share capital or total assets exceeding NOK 1 million. In the Prices Act, section 34, the main criterion was a 25 per cent or greater share of total production or distribution of a commodity or service in the country.
[8] Espeli (1990), p.172, Haaland (1994), pp. 174-207.
[9] Knoph (1926), p. 12, Haaland (1994), p.196.
[10] Espeli (1995a).

the recommendation of the Royal Commission in 1921.[11] In the prolonged discussions on the concession laws, the actual and potential problems posed both by domestic and foreign trusts, monopolies and dominating enterprises at local and regional level spurred political concern and action.

The influential Liberal Johan Castberg, architect of the concession act of 1909, represented an American-inspired anti-trust perspective combined with a quest for social and economic equality having domestic foundations. Even influential Conservative figures accepted and to some extent supported legal provisions that functioned as competitive controls by preventing, at a fairly early stage, the establishment of trusts and monopolies regardless of national ownership. When the concession acts were revised and extended during World War I the controls lobby became more influential.[12]

Norwegian competition legislation - like its German counterpart - was until 1940 based on the 'control of abuse' principle, i.e. the authorities were in certain circumstances empowered to prohibit restrictive business practices, e.g. exclusive agreements and instances of refusal to deal (boycott). The German model of regulation considered restraints on competition, especially in the form of cartels, as essentially beneficial for the economy - stimulating rationalisation, innovation and mass-production and preventing abrupt changes in economic conditions. Germany consequently abstained from regulating cartels by law until 1923. Its original legislation was mainly aimed at intervening against clear abuse of cartels' market power.[13]

The American model of governmental regulation of competition, founded on the Sherman Act (1890) and the Clayton Act and Federal Trade Commission Act (1914), was on the other hand predominantly critical towards cartels, trusts and monopolies and prohibited these and other

[11] The commission was appointed in 1916, Knoph (1926), p. 7.

[12] Haaland (1994), pp. 48-106, Nordby (1983), 380-407, 414-445.

[13] Under German legislation most boycotts required prior approval from or notification to the cartel court. An important provision of the German legislation gave cartel members the freedom to cancel their membership under certain circumstances, Andersen (1937), pp. 42-51, Djelic (1998), pp. 55-57, Neumann (1998), pp.42-44. In Norway cartel agreements could not last more than one year and the term of notice for such agreements could not exceed three months without the explicit approval of the Trust Control Council.

forms of restrictive business practices. Legal and administrative enforcement - not to mention effects - varied considerably however.[14] Compared to Germany and America it is obviously true, as economic historian Helge Nordvik has noted, that it was the German rather than the American model of regulation that shaped Norwegian competition policy prior to 1940.[15] It should be added, though, that the German model could just as well be characterised as the *European* model prior to the inter-war depression. In Europe, Germany and Norway excepted, no country operated legislation specifically controlling cartels and monopolies or other forms of restricted (price) competition among economic agents prior to the depression.[16]

The absence of legislation indicated indifferent, affirmative or at least not particularly critical attitudes to radical forms of restrictive business practices - just as in Germany. This is clearly evident in countries such as Denmark and the UK where political initiatives to introduce legislation to enable control of cartels and monopolies in the wake of World War I were defeated. The political victors were the proponents of a return to the pre-war liberal economic and political order, where the state was generally expected to abstain from interfering in the market place. In the UK lawmaking attempts were aborted in the early 1920s and the Monopolies Inquiry and Control Act was not enacted until 1948 largely due to American pressure. The British dominions, Canada, Australia and New Zealand, were however more influenced by the American model and enacted competition acts prior to World War I.[17] In Denmark a permanent trust law proposal similar to the Norwegian was defeated in 1920. A liberal act on price agreements, which was not enforced in any significant way, was passed in 1931, and followed by a renewed and more restrictive act in 1937, based on the Norwegian Trust Act.[18]

[14] It should be noted as a matter of historical irony that anti-trust measures probably led to the great merger wave in American history, cf. Bittlingmayer (1985). See also Weaver (1980), 123-135, Katzmann (1980), 152-158, Andersen (1937), pp. 61-85.
[15] Nordvik (1995).
[16] Boserup and U.Schlichtkrull (1962), p. 60, Andersen (1937), Schröter (1996).
[17] Mercer (1995), pp. 43-52, Fryer (1992), pp. 159-173, Hannah (1983), pp. 40-53, Sharpe (1985), pp. 81-83, Haaland (1994), p. 235.
[18] von Eyben (1980), pp. 7-13, Andersen (1937), pp. 112-115, Thomsen (1983), Pedersen (1979), pp. 273-83, 487-89, 620-25, Lorentzen (1952).

Norwegian legislation to regulate competitive conditions was not only among the first to be introduced but also the most encompassing in terms of economic activities. The Trust Act applied to all private and municipal business activity. The Prices Act of 1953 included economic activities of the central government as well – although the practical importance of that was marginal until the 1980s. In comparison the modern West German Act against restraints on competition of 1957 excluded important sectors such as transportation and banking. The whole service sector was excepted in Irish legislation until 1987. Less wide-ranging exceptions were in existence in the Netherlands into the 1990s and Italy enacted its first competition legislation as late as in 1990.[19]

Norway remained at the forefront in terms of developing a legal and institutional framework for modern domestic competition policy in Western Europe into the 1960s.[20] The Prices Act of 1953 was followed by the prohibitions open to dispensation on vertical and horizontal price agreements, collaboration on tenders included, in 1957 and 1960 respectively. This meant that resale price maintenance was banned in Norway seven years earlier than in the UK and the Netherlands in 1964. The Norwegian ban was decided unanimously by parliament (the Storting) in contrast to countries as Denmark and the UK, regardless of the fact that the ban was meant to be, and proved to be, more wide-ranging than the prohibitions introduced in Sweden and Denmark in 1957.[21]

The prohibition of 1957 and 1960 implied a change of legal principle in competition policy. The principle of intervention against abuse of restraints on competition - the core of the German and Norwegian model of regulation prior to 1940 - was replaced by a prohibition from which dispensations could be made on a discretionary basis. The burden of evidence was moved from the authorities to the price cartels and firms

[19] OECD (1978), esp. p.157 ff, Martin (1998), p. 257, Brusse and Griffiths (1998), pp. 19-30, Barry and O'Toole (1998), p. 231.

[20] In 1960 only Norway, France and Germany appear to have enacted prohibitions, albeit with exceptions and dispensations, against horizontal price cartels, Boserup and U.Schlichtkrull (1962), Schröter (1996), Voigt (1962), OECD (1978), pp. 5-18.

[21] Mercer (1995), pp. 149-169, von Eyben (1980), pp. 11-12, Espeli (1993), pp. 30-31.

if they desired to continue their activities. They had to convince the authorities that their application for dispensation would be "compatible with the public interest".[22]

The prohibitions indicated an influence from American competition policy in the late 1950s. However, there is no archival evidence of American influence, much less pressure, on Norwegian competition authorities after 1953.[23] The American influence was much greater in West Germany. The US found it politically essential that the provisional anti-trust legislation based on American traditions enacted in 1947 by the occupation authorities was replaced by similar legislation enacted by the *Bundestag*. The American pressure on the German government was prolonged and significant until the Law against restraint of competition was enacted in 1957. France similarly enacted new competition statues, but these were not meant to be implemented, for the sake of appearance to appease the US in 1953. But even in these countries the differences compared with America's legal and administrative traditions are striking.[24]

The provisions of the Norwegian Prices Act followed in the domestic tradition of wide-ranging enabling acts - the Trust Act being a typical but fairly extreme example - which relegated the civil courts to the sidelines. The practical possibilities for judicial review of discretionary decisions made by price- and competition-regulating bodies have been very limited, especially in comparison with the American model. In the US the ordinary courts have been the decision-making power in regard to the Sherman and Clayton Acts.[25]

It should be noted that the only major legal modification, extending competition regulation in the new Competition Act of 1993, was the prohibition of market sharing.

Considering the original Norwegian emphasis on possible or actual problems of competitive restraints caused by dominant enterprises, it is somewhat surprising that merger control was not introduced until 1988,

[22] Espeli (1993), pp. 27, 51-59.
[23] Although Wilhelm Thagaard (on his position see later) was an active participant within OEEC and GATT and elsewhere, cf. Chamberlain (1954), p.viii, his scepticism of American corporate capitalism does not seem to have waned significantly.
[24] Djelic (1998), pp. 104-107, 148-49, 168-174, Neumann (1998), pp.44-45, Kamecke (1998), p.143-147, Boserup and U.Schlichtkrull (1962), pp. 75-77, Voigt (1962), p.187 ff.
[25] Peritz (1996), [Fryer 1992 #1880].

which was comparatively late in Western Europe.[26] One explanation was the political faith in the effectiveness of price control of monopolies and oligopolistic markets. Another was the political emphasis, especially since the late 1950s, on creating national champions, hoping that these would be competitive in an era of freer trade.

From great administrative and legal autonomy to political subordination of price and competition regulation authorities.

Right from its establishment as a provisional body in 1917 the price and competition administration had wide discretionary powers and was relatively speaking independent of the ordinary system of civil courts as well as of the political authorities, especially prior to 1953. The formal autonomy of the Price Directorate in relation to political bodies was drastically reduced after the Second World War. The Directorate's relative independence of political bodies became largely conditional on political circumstances and the Directorate's leadership. This brings us to what could have been considered a fourth element of the Norwegian distinctiveness, the person Wilhelm Thagaard.

Wilhelm Thagaard

Between 1920 and 1960 Thagaard was the Director General of the governmental administrative body, the Price Directorate (1920-26, 1940-42 and 1945-1960) and Trust Control Office (1926-1940). The comparative uniqueness of Thagaard, who more or less personified the Norwegian price and competition policy regime and the autonomy of its bodies for 40 years is beyond discussion.[27]

The industrious and vigilant Wilhelm Thagaard (1890-1970), a trained lawyer and economist, was no bureaucrat or civil servant in the Weberian mould, but combined administrative and political activities between which the borderlines were often fluid. Thagaard was a man whose

[26] OECD (1984), pp. 16-49.
[27] Nordvik (1994a), p. 3, Hodne (1989), p. 248.

vision was to create a better society through extensive state regulation of competition and prices - a stance placing him in the mid-ground between capitalism and socialism where technocrats, particularly social scientists, would function as social engineers governing developments. Although he held few formal political positions, it is nevertheless misleading to characterise Thagaard as a "technocrat".[28]

Thagaard belonged to the radical and state interventionist wing of the Liberal Party, the predominant governing party in Norway from 1888 to 1935. In the inter-war years the Liberal Party was fundamentally split on the issue of competition and regulation policy, and Thagaard and the radical wing lost the internal power struggle in the 1930s, and again in the post-war years.[29] Political sympathy for Thagaard's ideas was greatest in the Labour Party, particularly in the 1930s and 1940s. In 1952/53, however, the Labour leadership ultimately drew back from his radical law proposals.

Thagaard developed the political tradition of the radical Liberal Johan Castberg[30] and represents the link with the reformist Labour government that took office in 1935. Thagaard was a highly controversial public figure. Throughout much of his administrative career he was persecuted, if not hated, by large sections of the business community and by liberal and conservative journals, papers and politicians alike.[31]

Hence public-choice theory is not very useful in explaining either Thagaard's motives or actions or his department's activities.[32] Thagaard's aims went far beyond increasing the budgets and personnel and strengthening the legislative competence of his department. In the period when Thagaard and his department saw their widest discretionary powers,

[28] As done by Slagstad (1993b), p. 99. Se also Kili (1993), pp. 64-82, Andersen (1992), 162-66.

[29] Hellevik (1971), Slagstad (1993b).

[30] Castberg (1862-1926) was chairman of the Royal Commission whose report of 1921 proposed a trust law. Castberg was probably instrumental in getting Thagaard appointed as member of this commission in 1919. Castberg was also vice-chairman of the Parliamentary Justice Committee in 1925-26 which prepared the passage of the Trust Act in the Storting.

[31] Haaland (1994), pp. 208-224,Kili, (1993), pp.102-105.

[32] On public choice, see Mueller (1995).

far more powerful and external forces were shaping developments. In this period Thagaard represented national interests, 1939-1945, or wide political interests on the domestic front, 1945-1953. One partial concession to the public choice perspective is appropriate however. In the beginning of the 1920s Thagaard worked extensively to keep the Price Directorate in being, pending the enactment of a permanent Trust law, by expanding into cartel control. Without this expansion it is questionable whether the Price Directorate and Thagaard's administrative and institutional position would have survived to 1926. It should be noted that Thagaard's ambitions were not checked but to a large extent supported by the Storting.[33]

The autonomy encompassed in the Trust Act

Prior to the permanent legislation in 1926 decisions by the price administration could normally either be appealed against in the ordinary systems of courts or in the superior administrative and political bodies, the Ministry of Justice and the Cabinet (the King in the Council of the State). The Trust Act of 1926 established the Trust Control Council that consisted of representatives from various trades, consumers and trade unions. The Council could in practice act only on the basis of proposals from the Trust Control Office that was led by Thagaard. The Council was the only body that could make formal decisions on central government intervention against prices and restrictive business practices. The Council could intervene against prices, rates of profit or other commercial terms fixed by business associations, dominant enterprises as well as individual firms and self-employed tradesmen. The precondition was that the Council found that prices or rates of profit were unreasonable, i.e. too high, or if competition in the trade was not sufficiently workable.[34]

The autonomy of the trust-controlling authorities both in relation to the system of civil courts and the political authorities in their day-to-day activities was exceptional. The Norwegian system was and proved to be far more autonomous than the German system. Both countries established

[33] Haaland (1994), pp.146-208.
[34] Knoph (1926), pp. 83-101, Munthe (1954), pp. 37-38.

a kind of cartel court, independent of the ordinary system of courts, whose members largely represented various economic interests. In Norway prior to 1940 the Trust Control Council's decisions could not be appealed against in civil courts nor political bodies, nor could the Ministry or the Government review its decisions. Norway did not act on the unanimous resolution of the Inter-Parliamentary Union in 1930 recommending that the ordinary law courts should have the final word in questions of government intervention against restraints on competition.[35] It could, however, be argued that the Trust Council and later Price Council functioned as a kind of court.

In Germany the decisions of the Cartel Court were from 1930 onwards progressively transferred to the Minister of Economics. Another important difference was that under the 1923 decree the German Minister of Economics had the right to file a request with the cartel court to take specific action against cartels. In 1936, i.e. under Nazi rule, all government control of cartels came under the direct control of the same Ministry.[36]

In the inter-war period the Norwegian political authorities had no formal right to make recommendations to trust-controlling bodies, far less to instruct them in any matter. Their autonomous institutional position, Thagaard's strong influence in relation to the Trust Control Council, and the limits to Cabinet ministers' attempts to exert informal influence, were clearly documented in the so-called Lilleborg-case. The decision of the Trust Control Council, formulated by Thagaard, was influential if not decisive in ousting the Liberal Government from office in 1931. Prime Minister Johan Ludvig Mowinckel experienced, to quote his own words in parliament, that the Government's "authority, its powers, its will (were) done away with by the trust control", i.e. by Thagaard.[37] This incident appears to be unique in a Western European context.

Most of the European countries enacting cartel or competition legislation in the 1930s also opted for direct or close political and governmental control. This was typically the case in the Netherlands as well as in Czechoslovakia, Hungary, Yugoslavia and Poland, but to lesser extent in the Belgian act of 1933 regulating enforced cartellization.

[35] Boserup and U.Schlichtkrull (1962), pp. 59-67.
[36] Voigt (1962), pp. 177-187.
[37] Quotation from Kili (1993), pp. 110-112, Semmingsen (1969), p. 146.

Denmark, however, that to a large extent copied the Norwegian legislation, moved from giving the courts the final word in its act of 1931 to the Norwegian council model in 1937.[38]

The practical interpretation of the imprecise Trust Act was to a large extent delegated to Thagaard and his office. It seems that the Trust Control Council overruled Thagaard on only one occasion.[39] Thagaard and his office continued and intensified the administrative practice prior to 1926 of corresponding and talking with the representatives of organised economic interests and other directly involved parties in the cases being considered. These contacts were often tantamount to negotiations in which the Trust Control Council was not necessarily involved. The structure of these relations favoured cartels and organisations administering other forms of restrictive business practices, while unorganised consumers and customers were often absent.[40]

The Norwegian Power Study of the 1970s introduced the concept "the negotiated economy".[41] The concept seems to be a fairly appropriate description for the inter-war years, as well as for control of restraints on competition in most of the post-war period.

Thagaard soon proved to be friendlier to cartels than the major business organisations had expected. A significant problem for the Federation of Norwegian Industries, especially in first half of the 1930s, was that some member trade associations became tempted to ask for Thagaard's and governmental assistance to implement enforced cartellization to alleviate their structural or cyclical difficulties.

Thagaard was more than willing to consider such demands, but wanted radical and general extensions of his department's enabling provisions. The important amendments to the Trust Act in 1932 were insufficient. Thagaard's explicit aim was that the state, through the established trust-control bodies, should be able to initiate and enforce cartellization and other measures to restructure troubled and inefficient industries regardless of opposition within the industry. The proposals

[38] Andersen (1937), pp. 109-124, Albæk, Møllgård, and Overgaard (1998), pp. 77-79.
[39] Espeli (1990), pp. 213-215, 246.
[40] Munthe (1954), p.53, Espeli (1990), p. 251.
[41] Hernes (1978).

reflecting these aims triggered extensive political and ideological discussion from 1934 to 1938/39 on the role and powers of governmental control of competitive restraints and on the utility and legitimacy of competition as such. The political struggle led to no legal changes.[42]

Only the Conservatives opposed the amendments of 1932 to the Trust Act, initiated by Thagaard and influenced by the domestic effects of the depression. The amendments opened the way for enforced cartellization subject to fairly strict conditions, one of which was that the majority of the firms in an industry had to request such intervention. If the Council deemed that conditions were satisfied, it could impose minimum prices. Thus a main principle of the act was reversed in the sense that not only unreasonably high but also unreasonably low prices could warrant state intervention. While intervention against unreasonably high prices was primarily intended to protect the consumers, the opposite was aimed at protecting producers from more or less destructive price competition and predatory pricing.[43]

The new provisions were applied in eight industries on a provisional basis. Only one intervention was in a major manufacturing and export-dependent industry, sardines, where it had long-term effects. Five were dismantled in the course of the 1930s.[44] The policies of the trust-controlling authorities were clearly influenced by the economic cycles of the period. However, analysis of conditions and particularities of the respective industry, trade or case were more than a desire to promote equal treatment of industries and sectors governed decisions concerning restraints on competition. Thorough sector studies document the fairly decisive impact of Thagaard and his department on both the timing and the actual shape of the cartel agreements within the brewing industry as well as in the agricultural implements trade.[45] Thagaard's search for a consistent competition policy with clear and ambitious aims were much more evident in his programmatic and ideologically controversial law proposals than in his day-to-day decisions.

[42] Hellevik (1971), Mangset (1974), Dahl (1985), pp. 157-164, Danielsen (1984), 335-336, Hodne (1989), pp. 196-200, Kili (1993), pp.108-153.
[43] Andersen (1937), pp. 258-275.
[44] Munthe (1954), pp. 43-45, Espeli (1995a), pp. 25-31, Haaland (1992a).
[45] Hovland (1995), Espeli (1990), pp. 159-252.

There were other limits to the influence and autonomy of the trust-controlling authorities however. During the 1930s large sections of sales of agricultural and fisheries products were effectively cartellized in response to structural and cyclical crises. These developments were to a large extent made possible by wide-ranging, but product- or sector-specific enabling acts that were passed by the Storting. Political action to alleviate the problems in the agricultural sector of the 1930s was commonplace. Norway differed from the continental pattern in its extensive legal delegation of market-regulation powers to the farmers' co-operatives. Even in Denmark, where farmers' co-operatives had much larger market shares than their Norwegian counterparts in the late 1920s, governmental control of more or less enforced cartels was in principle significantly greater. Sweden came closest in following the Norwegian example in this respect.[46]

Price regulation and the height of influence

Thagaards independence and political influence was probably greatest during the Second World War. The price controls enacted by governmental decree from September 1939 were masterminded by Thagaard who was given a more or less carte blanche by the political authorities in 1939/1940. Thagaard even managed to protect the autonomy of the new Price Directorate, established in autumn1940, against the wishes of the occupying Germans and Nazification attempts by the Quisling government. The German authorities did not intervene although they considered that the German price regulation system, legally different, was superior. They felt that Thagaard's system would suffice.[47] The price regulation system during the war meant that every increase in prices and profits as well as the pricing of new goods and services in principle needed approval of the Price Directorate. The Directorate's decisions could not be appealed against. The Directorate was also empowered to close down establishments whose production or use of resources was not considered worthwhile.

[46] Just (1992), Lie (1980), Rothstein (1993), 176-82, Tracy (1989), p.123 ff.
[47] Kili (1993), 159-60, Semmingsen (1969), pp. 142-143.

A decree by the government in exile in London on 8 May 1945, to a large extent formulated by Thagaard, decided that the Price Directorate should keep most of its wartime powers and autonomy in peacetime. This famous and very controversial Lex Thagaard meant that Thagaard and his Directorate, in effect, could only be overruled by the government in questions dealing with restructuring of industries through closing down of establishments. Those provisions were never used.

The administrative decisions of the price authorities could be appealed against in the courts that could then undertake a judicial review of the formal procedures preceding the administrative decision. Courts would normally abstain from legal review of the administrative judgement and the decisions as such. The Norwegian Supreme Court nevertheless undertook two constitutional reviews of the application of enabling powers under the provisional price legislation after 1945 in regard to price regulation funds. On both occasions the governmental rulings were considered to have been constitutional. This reflected the fact that constitutional review of legislation was at its nadir especially in the cases of economic conflicts between the State and business.[48]

From reduced formal autonomy to political subordination

The prolonged period of price and profit regulation administered by the Price Directorate based on provisional legislation was replaced by the Prices Act of 1953. The Prices Act did not reduce the legal scope for implementing central government regulation of prices and profits significantly in comparison to the emergency provisions of the reconstruction period.[49] The discretionary character of the provisions at the core of control and regulation of competitive conditions was also generally extended. One of the few retrenchments in comparison with the Trust Act, relative to the amendment of 1932, was that the authorities could not intervene and enforce cartellization.[50]

[48] Semmingsen (1969), p. 144, Smith (1993).
[49] Blom (1954), p. 3, Yttri (1993), pp. 13-16.
[50] Espeli (1993), p. 5, Blom (1954), pp. 96-100.

An important difference compared with the Trust Act was a new formal division of powers between political and administrative bodies that soon demonstrated its importance. The Storting was formally included in the ongoing elaboration of competition policy for the first time. Parliament was to be consulted every year through a governmental report on the general instructions as to price and competition controls and regulation in the current year, as well as on major changes in provisions of the act. The practical and political importance of this consultation was generally insignificant. The Storting was content to endorse the recommendations of the government.[51]

Much more important was the reduced autonomy of the Price Directorate, and to a lesser extent the Price Council, in relation to its superior Ministry. The Directorate was to seek the approval of the Ministry in decisions involving questions of general principle unless the Ministry had not instructed the Directorate on such matters previously. The King, i.e. Cabinet, or the Ministry was the ultimate decision-maker on most radical forms of intervention against competitive restraints and regulation of prices and profits. Some types of decisions made by the Price Directorate and the Price Council could be appealed against before the Ministry or the King in the Council of State who was entitled to amend or cancel any decision made by the administrative bodies.[52]

The material content of these decisions could not be appealed against in ordinary courts. This was the case in most European countries that enacted new or amended their older competition legislation after the Second World War. Germany is the most obvious example, but Denmark's development is a more natural comparison to Norway. The Danish monopoly law of 1955 stated that governmental interventions against individual cases of restrictions on competition could not only be appealed against before a special appeal body but also the ordinary courts.[53] Norway was however not alone in giving or keeping space room to the

[51] Espeli (1993), pp.145-46. Up to 1960 the Storting had to decide the yearly maximum rate of dividend liable to dispensation

[52] See section 49 of the Act. Only in one instance was a decision by the Price Council overruled by the Cabinet, Espeli (1993), pp. 147-48.

discretionary powers of administrative and political decision-makers. France was a typical example until 1987.[54]

The practical importance of the reduced formal autonomy of the Price Directorate was not significant until the end of Thagaard's reign. In 1959-60 the government and the Storting in effect instructed the Price Council to accept a ten-year agreement on market sharing and production quotas between domestic cement factories. This literally cemented one of the most extensive and effective cartels in Norwegian history ranging from the manufactures to the retailers. The basic argument was that EFTA and increased foreign competition more or less demanded closer co-operation among domestic firms if they were to remain competitive. The ambition was to create national industrial champions. The political signal to the competition authorities dealing with the numerous applications for dispensation from the ban on horizontal price agreements was that the authorities should not obstruct or prohibit "constructive co-operation between firms".[55]

Under Thagaard's final months of leadership it nevertheless tried to hold a restrictive line hoping that the Ministry of Wages and Prices, the only body that could grant dispensations, would support the professional advice from the Directorate. Such hopes quickly faded away under Thagaard's successor, Rolf Semmingsen (1961-1977). The Directorate more or less capitulated to the political judgements of the Ministry and government. Semmingsen, a lawyer by profession, was a member of the Labour Party and a loyal civil servant. He did not pursue Thagaard's role as a powerful and influential leader of a relatively independent administrative body with wide discretionary powers and as an active participant in the public debate. For the first time since its establishment, the Price Directorate became relegated to being a more or less passive executor of policies decided by its superior Ministry or the Cabinet.

Until the late 1970s the Price Directorate was in the shadows in terms of political and administrative influence. Charles Phillipson, Semmingsen's

[54] von Eyben (1980), pp. 11-12.
[55] Souam (1998), pp. 207-210, OECD (1978), pp. 177-196.
[56] Quotation from Espeli (1993), p.59, se also pp. 74-76.

successor, another lawyer by profession, attempted to change this position. Phillipson grasped the opportunity for renewed independence in the early 1980s when policy changed, a process that his successor, Egil Bakke 1983-1995, continued. On a number of occasions Bakke opted for confrontation rather than passive adjustment to political judgements and signals. In choosing a high public profile, Egil Bakke, the first plain economist in charge of the Price Directorate, assumed one of the characteristics of Thagaard's leadership, although Bakke's basic message was completely different.[56] But even in the 1980s the Price Directorate and the rest of the competition-regulating administration never regained Thagaard's position as the initiator or motive force of competition policy. The Directorate's for example showed consistently lukewarm interest on the question of introducing merger control until the amendment had been made in 1988.[57]

Norway's participation in the European Economic Area (EEA), formally established in 1992 meant that for the first time essential elements of domestic competition regulation have been subordinated to a supranational body, the EFTA's Surveillance Authority (ESA). Norway has become part of the competition-policy regime of the European Union and must to a large extent follow and copy its rules and procedures on most matters without having any formal influence on its premises and formulation.[58]

However, there is still some room for national adjustments. When Norway's competition legislation was renewed in the beginning of the 1990s it was decided to strengthen the powers of the Competition Authority, which replaced the Price Directorate in 1994, as well as its superior Ministry. On the other hand the independent Price Council that had had the ultimate power to intervene against mergers since 1988 was not replaced by an independent Competition Appeals Board, as proposed by the Royal Commission, in the Competition Act of 1993. The wide

[56] Cf. Eskild Jensen's portrait of Bakke in Hope (1995). See also Halvorsen and Undrum (1995), 62, 67-68, Espeli (1993), pp. 113-14, 123-24.

[57] Espeli (1993), pp. 130-144, see also Espeli (1993), pp. 73-78, Espeli (1995b), pp. 138-151.

[58] Sejersted (1995).

enabling powers of the new Competition and Price Policy Acts are placed solely in the hands of the Competition Authority and the government. Thus the discretionary traditions of Norwegian price and competition policy have been reinforced in its administrative apparatus and decision-making procedures.[59]

The prolonged emphasis on detailed governmental price controls.

State price controls, normally regulations stipulating maximum prices and rates of dividend, constituted the third major element in the Norwegian model. These controls were mainly in effect on consumer goods and services together with interest rates after 1945. Since the late 1930s Sweden has probably borne the closest resemblance to Norway in this respect. It is nevertheless more debatable whether the emphasis on ordinary price control and price regulation policies in Norway was qualitatively different from the actual policies pursued in many countries in Western Europe after 1945. Ludvig Erhard's lifting of all state price controls in connection with the German currency reform in 1949 was not representative of developments in the rest of Western Europe.[60]

Price controls were common during the First World War. Norway introduced provisional price-regulations on all goods, not services, relatively late, in July 1917, but kept regulations in effect much longer than in other European nations. Not until 1922 were most price regulations abolished. However, prior to the Trust Act coming into effect in 1926 the Price Directorate continued to intervene to bring prices, regulated by price agreements, down through appeals or impositions.[61]

In contrast to Germany the Trust Act combined control of anti-competitive practices and price control. In addition to intervening against

[59] If the Competition Authority issued writs and the option is not accepted the case had to be brought into the civil courts according to the procedure in civil cases. Serious offences liable to imprisonment for up to six years were dealt with as a criminal case, Competition Act section 6-5 and 6-6.
[60] Djelic (1998), pp.174-75.
[61] Espeli (1990), pp. 60-66, 172.

prices set by cartels and companies with market powers, the trust-control authorities could regulate prices in general by setting maximum prices on specified goods or services. This authority was used not infrequently in the rest of inter-war period.[62]

Prolonged war-time controls

The outbreak of the Second World War in 1939 resulted immediately in comprehensive governmental price and profit controls being established. Price controls were commonplace during the war and in the immediate reconstruction period. Norway differed from many West European countries by making controls more comprehensive and keeping them longer, to the end of 1953, and continuously tightening them.

The prolonged period of comprehensive price regulation was established in close co-operation with existing cartels and trade associations. The corporately composed price committees, which normally used the trade associations' administrations as their secretariats, conserved and strengthened established price cartels, which had mushroomed in the inter-war period, and were instrumental in creating new ones. The numerous price committees, totalling ninety-three already in October 1939, formed the core of the price regulation system at the outset. However, their importance and independence declined as the state's price-control administration was strengthened.[63]

The trade associations on the other hand retained another important role, more or less delegated by the state that supported price regulation and restrained competition. Imports and domestic production were to a large extent distributed to wholesale dealers and retailers based on the market shares of the late 1930s. This conserved historical market shares and functioned as an effective barrier to entry, echoing the situation in the 1930s.[64] Similar arrangements were found in Finland and the Netherlands.[65]

Price controls became increasingly restrictive during the occupation,

[62] Munthe (1954), pp. 39-42.
[63] Hodne (1989), pp. 220-222,249, Espeli (1990), pp.533-547.
[64] Espeli (1990), pp. 389-517, Hodne (1989), pp. 192, 252-258, Solli (1967).
[65] Virtanen (1998), pp. 232-234, Brusse and Griffiths (1998), pp.17-18.

1940-45. The control system proved fairly successful in checking inflation - but less successful in curbing black markets - considering the fact that the money supply increased five-fold due to German withdrawals from the Norwegian Central Bank.

The relative success of the war-time-control system was one of the reasons for its continuation. The most fundamental reason was the impossibility of reaching a political consensus on a full-scale monetary reform that would have done away with the surplus liquidity created by the Germans. The business community was very sceptical of such a reform. Paraphrasing historian Einar Lie one may conclude: When business leaders had to choose between liberalised markets and competition and their financial fortunes - they chose money. In addition the young, Keynesian-inspired economists dominating the economic planning policies of the Labour government in the reconstruction years felt that a very substantial liquidity surplus represented no major problem. It would, in fact, be an advantage when the expected post-war depression materialised.[66]

The Keynesian economists, the Labour Government and Thagaard were pretty confident that it was possible to control prices and profits to avoid inflationary problems. But that was not all; it would also secure a far more efficient allocation of resources - considering the political aims of reconstruction - than could be achieved by applying the principles of market competition.

Both objectives proved difficult to fulfil after some years. The practical problems of co-ordinating the various administrative bodies necessary to achieve the second objective were insurmountable. Primitive industries prospered in the absence of foreign competition. Prolonged and comprehensive price controls resulted in structural and sector rigidities and were a disincentive to innovation. External pressure, inflation through imports and trade liberalisation, had brought the price regulation system based on a policy of price stabilisation at the 1945-level to the point of collapse in the autumn of 1949 when Britain devalued. The crisis was provisionally resolved by allowing substantial price increases in 1950,

[66] Lie (1995), pp. 46-95, quotation p. 82.

followed by a gradual phasing-out of much direct governmental regulation of the economy. The major shift in price regulation occurred at the end of 1953 when the majority of price controls were abandoned. But even then a third of services and commodities included in the consumer price index were subject to price regulation.

The shift from direct to indirect regulation, which is normally more in conformity with the market mechanism than direct regulation, should not be exaggerated however. In contrast to most historical research, I would emphasise that the dismantling of the war-time regulation system that started in 1949 was much less drastic and took longer than previously believed. After all price regulation was the core of the system of direct regulation, together with external trade and capital and currency transactions.[67]

As from the early 1950s, when credit became scarce, one can even witness that the Labour government began to intervene directly and indirectly in the credit market on a broad front to keep down interest rates. Competition on interest and deposit rates had to be kept to a minimum, thereby prolonging and securing formal and informal cartels in the banking sector. The central institutional instrument of this policy was initially a corporative negotiating body, the Committee of Co-operation, 1951-65 that was later followed by more direct means of state regulation.

The classical period of public price and profit regulation was accompanied by heated political and ideological debate. This focused on the principles and scope of enabling acts - which were largely grounded in Lex Thagaard (1945) and its successor Lex Brofoss (1947) - as well as on the framing of future permanent legislation in the sphere of price and competition law. The climax of the debate centred on the proposal for a rationalisation law that would have extended the controlling powers of the state in respect of cartels to include closure and establishment of firms in a wide-ranging and discretionary enabling act. The proposal was put forward by a government-appointed commission very much influenced by Thagaard's membership. The law proposal was put aside by the Labour

[67] Cf. though Lie (1995), esp. pp. 171-75.

government which, partly influenced by a massive campaign organised by the major business organisations, was content to table a modified Prices Bill. The debate had clear links going back to the second half of the 1930s on proposals for radical amendments to the Trust Act.

For Norwegian historians, evaluating the debate on the proposals of the governmental commission for price and rationalisation laws in 1952 and the outcome of the political struggle in 1953 could be considered an important test of manhood. The historical debate on the subject has been substantial but largely inconclusive. This is true both in regard to the motives and the reasons for the Labour Party's adjustments during the struggle, as well as to interpretation of the outcome of the struggle. Research has, not unnaturally, centred on the constitutional and ideological aspects of the struggle. The dissension concerning the provisions of the Prices Act, as well as their translation into regulation policies proper and their links with the price and competition controls preceding and following the struggle, have attracted far less interest.[68]

In our perspective the most significant feature of the struggle is its apparent uniqueness. In no other Western European country did large socialist/social-democratic parties, or governments comprising other parties for that matter, seriously contemplate introducing similar permanent enabling acts addressed to private enterprises after 1950. This reflected a fundamental distrust of the market mechanism, with competition as its necessary tool, as an efficient and just mechanism for allocating resources.[69] Political scientist Ulf Torgersen has even argued that the Labour Party had a tendency to reject the market on moral grounds, most notably the markets for credit and housing, for decades after the struggle in 1952/53.[70] The Labour Party's distrust of resource allocation via a decentralised market mechanism was shared by Wilhelm Thagaard to the mid-1950s at which point his views seem to have been radically modified.

However, these figures in the political environment were not alone in their scepticism or opposition to effective or workable competition.

[68] Bergh (1977), Bergh (1987), Grønlie (1993b), Sejersted (1984), Sejersted (1988), Slagstad (1993a), Slagstad (1993b), Ytri (1993), Lie (1995), pp. 202-218.
[69] Sejersted (1988), p. 295.
[70] Torgersen (1983), pp. 75-78.

Since the 1930s the organisational representatives of agriculture and fisheries had rejected the principle of competitive markets for unprocessed and many processed products of their sectors, preferring cartellization through producer co-operatives if possible. The major business organisations supported in principle competition but preferred extensive cartellization in reality.

Norwegian price regulation in the period of reconstruction does not seem to have differed qualitatively from that of other Scandinavian or Western European countries, although the comprehensive nature of the regulation seems to have been among the most prolonged.[71] The comparative emphasis on central government regulation of prices and profits in Norway was more evident in the wide discretionary enabling powers provided by the Prices Act as well as in their subsequent frequent utilisation.

The Prices Act implied more extensive integration of price and competition regulation than in the inter-war period and relatively greater emphasis on ordinary price controls. These policies - each having fairly different aims and times perspectives - were combined legally into one act and administered by the same bodies. Price regulation measures were normally limited to short-term restrictions on inflation, while competition policy had a medium or long-term perspective aimed at structuring the character of competition and resource allocation. This was not the legal pattern prevailing in Western Europe.[72] Sweden and Denmark, being close to Norway in emphasising price controls in the post-war years, opted for legal separation. The Swedish Price Control Act of 1956 was mainly intended as emergency legislation to cope with exceptional situations, like the Norwegian Price Policy Act of 1993.[73] However, the non-socialist parties, the Liberals excepted, argued for separate laws on prices and competition in 1953.[74]

[71] Cf. my comparison with Denmark in a book review in (Norwegian) *Historisk Tidsskrift* 1994, pp. 250-51 and Lorentzen (1952). For a different view, see Hodne (1989), pp. 248-49, 273-74.

[72] Boserup and U.Schlichtkrull (1962).

[73] Jonung (1981), von Eyben (1980), pp. 319-36.

[74] Parliamentary Records 1953, Innst.O.II, Bachke and K.Willoch (1959), pp. 174-210.

1954-1960, a basic policy reorientation aborted

In his final years as head of the Price Directorate, Thagaard spearheaded a reorientation of price and competition policy whereby the emphasis was clearly placed on measures to make competition more effective rather than on price control. Thagaard's fundamental views on the allocative efficiency of the market and on the advantages of cartels and restricted competition had changed.[75] The core of the policy reorientation was the Royal Decree of 1957 prohibiting resale price maintenance and the Decree of 1960 prohibiting horizontal price agreements and collaboration on tenders. The policy reorientation can be seen as an introduction to a modern competition policy similar to that enforced in 1980s.

As mentioned, the policy reorientation had wide political support verbally but proved fairly shallow when conflicts with other important policy aims emerged in the natural course of events. The turning point came when the Ministry of Wages and Prices became aware that the abolition of certain important horizontal price cartels would make it more difficult for the authorities to monitor, control or regulate prices on commodities and services that were central to the consumer price index. Increases in the consumer price index above a certain level were directly linked to most wage and incomes agreements and would thus imply more or less automatic wage increases. Moreover, the abolition of some cartels would probably lead to at least short-term consumer price increases that might be politically unacceptable to the government in relation to the central wage negotiations in the spring of 1961. Short-term price considerations overcame the positive effects on resource allocation in a longer-term perspective.

The Labour government's introduction of a provisional and partial price freeze in 1961 was to large degree centred on horizontal price

[75] Thagaard in *Pristidende* 1961,76-79, basically explained his negative attitude to price agreements with reference to the trend towards free trade, marked by GATT and EFTA. "With more intensified foreign competition ..., there is no use in seeking protection behind price agreements." Schröter (1996), pp. 147-48, presents the traditional and in my view wrong picture of Thagaard.

agreements for which provisional dispensation had been granted. Dispensations given for a short and specified period were largely prolonged until further notice on condition that price increases would not take place without the approval of the Price Directorate. The major initial reason for granting many short-term dispensations - improved resource allocation - was either forgotten or relegated to the level of a subsidiary argument. This was typically true for dispensations in manufacturing industries.[76]

The return to emphasis on price control was fairly dramatic.[77] We mentioned that in 1954 a third of services and commodities included in the consumer price index were subject to governmental price control or other forms of publicly administered prices. In 1962 the share was three quarters. Although the share declined in the following years this did not imply a basic change of policy.

In the 1970s the activities of the price- and competition-authorities became completely dominated by governmental price and profit control measures. This followed in the wake of nearly three decades of varying, but continuous, emphasis on the same. This had created, at least within some sections of the Price Directorate' staff, a culture which in regulation literature is known as the problem of capture or clientism, i.e. the regulators to a large extent identified themselves with the businesses that they were to control.[78]

This culture evidently became a problem when policy changed 180 degrees in the beginning of the 1980s, emphasising effective competition. The complex conflicts within the Directorate in the 1970s and early 1980s over leadership and professional judgements more or less paralysed the Price Directorate's enforcement of controls on anti-competitive practices that were not related to instances of refusals to deal. The Price Council decided these cases. The culture created by the interdependence and symbiosis evolving between price cartels and central government price regulation was one of the most important barriers against implementing

[76] Espeli (1993), pp. 60-74, 77-81.
[77] For a different view, see Hodne (1989), pp. 317-320.
[78] Wilson (1980), i-iv.

measures aimed towards making competition more effective at a time when this was the prime policy goal.[79]

The failure to control the rampant inflation from the late 1960s through negotiated economies and price control led to a fundamental reappraisal of economic policies within the Labour government as from the late 1970s. The redefinition of policies was initiated by the Minister of Finance 1973-1979 Per Kleppe, who experienced second thoughts after having been the architect of very ambitious economic policies since 1973. The need for more effective markets were emphasised.[80]

The 1980s brought a fundamental change in policy implementation. The basic aim of policy in the 1970s, short-term price controls to limit inflation, was replaced by intermediate and long-term resource allocation through workable competition. The positive impact that more efficient competition would have on short-term inflation were considered subsidiary. The policy shift was very much influenced by theoretical and ideological impulses and policy recommendations from abroad, notably the OECD and the Chicago school of economists. However, it seems that domestic experience, conditions and political judgements were more decisive factors. The reorientation of economic policy was prompted by lack of success in combating tendencies of stagflation in the Norwegian economy by traditional and direct means such as administratively fixed interest rates and extensive state regulation of prices and profits.

The Labour government that made the initial official ideological change of course before being replaced by the non-socialist Willoch government, 1981-86, implicitly accepted that previous policies represented a case of regulation failure. The Willoch administration began fairly rapidly to implement measures aimed at making competition more effective. Measures implemented within the traditional scope of the Prices Act did not usually spark off political controversy. However, measures extending beyond this scope, especially in relation to deregulation of housing and credit markets, triggered significant political and parliamentary conflicts.[81]

[79] Espeli (1993), pp. 83-88, 100-103, 116-118.
[80] Espeli (1992b), pp. 163-201.
[81] Willoch (1990), pp. 125-26, 306-312, Espeli (1993), pp. 111, 116-122, Halvorsen and Undrum (1995), p. 65 ff.

Compared with previous periods the most significant difference is that the ideological supremacy of effective competition has not really been seriously challenged. Norwegian economists had previously never shown virtual unanimity on the advantages of effective competition in practical policy issues. Now they were very much influenced by the Chicago school of economists and set the premises of public debate on competition policy issues. Public and political discussions centred on the scope of competition and the speed, form and practical implementation of measures to make markets more efficient.

The redefined competition policy represented in many ways a switch from a market-failure perspective – demanding governmental regulation – to regulation-failure perspective and the problems of political overload and rent-seeking. The theory of contestable markets became very influential and was one of the indications of a relative shift from static to dynamic market efficiency in the theoretical legitimacy of competition policy.[82]

The ideological and intellectual change did not imply that practical policy measures have been consistently directed at making markets more efficient. The most obvious example of a divergent development, which even prohibited markets from functioning, was the statutory regulation of wages according to norms set by the main organisations of employers and employees from 1988 to 1990 pursuant to a provisional wages act.[83] It could be argued that the traditional emphasis on government price control within the Norwegian model of competition policy was replaced by formal and informal government regulation of wages and incomes in the late 1980s. On the other hand, wage and working conditions have always been exempted from the scope of Norwegian price and competition legislation.

The Norwegian departure from comprehensive price regulation in

[82] Fehr (1995), Bailey and W.J.Baumol (1984).

[83] The provisional act on regulation of wages and dividends also fixed a rate of dividend, which was not allowed to exceed the previous year's level. While ordinary price controls were not reintroduced, dominant enterprises had to notify increases of prices and rates of profit prior to implementation, thereby enabling the authorities to intervene before increases were put into effect, Halvorsen and Undrum (1995), p. 62.

the beginning of the 1980s, was part of main-stream developments in Europe. It seems, however, that deregulation in this sphere started earlier than in Sweden and much earlier than in Finland and Belgium, which in this respect was similar to other latecomers such as Greece.[84]

Conclusions

The distinctive character of Norwegian price and competition policy does not imply that it was the most special or unique example among West European democracies. In the post-war period that description could perhaps better be applied to Austria or the Netherlands - the latter labelled "Europe's cartel paradise" - among countries with cartel legislation and Italy and Belgium, with little or no competition legislation until the late 1980s.[85] The distinctiveness of Norwegian policy is more obvious when compared to other Nordic countries, which are considered to be fairly similar in many respects. Although the Scandinavian countries were heavily influenced by the German model of regulation prior to the Second World War, which favoured competitive restraints and cartels, this should not be interpreted as a sufficient argument for playing down the differences between the competition policy cultures in the four countries.[86]

Denmark was closest to Norway, introducing cartel legislation similar to the Norwegian in the 1930s. With the exception of bans against resale price maintenance and collusive tendering, Denmark, as well as Sweden since 1953, continued to follow the principle of abuse control and intervention, to a larger degree than Norway. The influence of organised business, which successfully torpedoed the trust law bill of 1919, was significantly greater in Denmark until about the 1960s, measured in terms of interventions against restrictions on competition by the authorities.

[84] Jonung (1981), Virtanen (1998), p. 236, Martin (1998), pp. 190-191.
[85] Brusse and Griffiths (1998), p. 15 (quotation). The Austrian Cartel Act of 1951 integrated competition regulation into the corporatist framework of Austria that had no formal parallel in the corporatist structures of Norway and Sweden, Boserup and U.Schlichtkrull (1962), p. 77, OECD (1978).
[86] See Schröter (1993) and Schröter (1996) for a different opinion.

In Norway major business organisations had the same aim in the 1920s but their political influence proved insufficient. Norwegian political opinion was far more concerned with the possibility of abuse of economic power by cartels, trusts and dominant companies, not only in relation to consumers but also in relation to small and medium-scale producers and retailers; thereby necessitating the option of government intervention - as in the concession acts. After the Labour Party gained government control, consumer protection, or, more correctly, government price control, gained the upper hand to facilitate moderate wage and incomes agreements in the Norwegian version of organised capitalism in the post-war period.

Prior to 1953 Sweden operated no competition-regulating legislation as such. There is no doubt that political traditions and the institutional environment in Sweden, and for an even longer time and more clearly in Finland, were more favourable towards competitive restraints, cartels and dominant enterprises in particular, than in Norway. In both Sweden and Finland the state encouraged rather than put obstacles in the way of competitive restraints, supporting larger companies and cartels organised by them. The Swedish economy was much more cartellized and monopolised in the beginning of the 1920s, with significant effects on consumers, than in Norway. Despite this being well known, no effective political and legislative action was taken in Sweden.[87] In Finland the state and business worked closely together both during the inter-war years as well as the post-war period to create or keep competitiveness in foreign markets by reducing domestic competition.[88] In 1957 Norway demanded stricter anti-cartel legislation in Finland and Sweden to take part in the Nordic customs union.[89] Finland enacted its first ineffective legislation in 1958. Though Finland seems to have been forced to strengthen legislation due to its association with EFTA in 1961, the country's liberal attitude to cartels and other restrictions on competition continued to the middle of the 1980s.[90]

[87] Magnusson (1997), pp. 362-363, Millbourn (1997), p.111.
[88] Kuisma (1993), Alfthan (1922), Virtanen (1998), pp. 230 ff.
[89] Eriksen and Pharo (1997), p. 300 and 453, note 41.
[90] Virtanen (1998), pp. 240-265.

In the 1950s and 1960 Swedish politicians and administrators had a strong belief that transparency of competitive restraints alone would have positive effects on market behaviour. "In Sweden publicity is almost a substitute for the administrative or judicial process which, in other countries, decides whether a restriction is harmful and is to be terminated. Public opinion is the ultimate tribunal," concluded an American observer in 1963.[91]

The political scepticism in Norway towards big business mainly operating in domestic markets and not owned by the State was considerable prior to the 1960s when scale became the universal solution to most industrial problems. Sweden which generally has been most heavily influenced by social democratic governance had similar state regulation of interest rates in the post-war period. Nevertheless it seems that central government control of prices, profits and restrictions on competition was more extensive in Norway. The discretionary status of governmental interventions against prices and competitive restraints also appears more pronounced, partly due to differing administrative traditions.

Norway was a pioneer as regards the autonomous position of competition-regulating bodies in relation to political bodies prior to 1940 or 1953. After the Second World War the main tendency in Western Europe was for competition-regulating authorities to be fairly independent of or to gain independence in relation to political bodies. In addition, decisions by the relatively independent authorities could be appealed against and reviewed by the ordinary courts. Norway chose the opposite course. The Prices Act of 1953 stripped the administrative bodies of their previous formal autonomy in relation to Ministry and government that could review most of the decisions of the Price Directorate and the Price Council. The administrative bodies thus became far more susceptible to political influence and pressure depending on circumstance and political fluctuations. Without a strong and independent leadership the professional judgements - which are susceptible to the often radically changing fashions of mainstream economists and their predominant theories[92] - would be effectively adjusted to the political signals from the government. This was particularly evident

[91] Goldstein (1963), p. 167, se also esp. pp. 218-219.
[92] Norman (1993), Ryssdal (1995), 226 ff.

in the 1960s and 1970s. In the 1980s, when the Price Directorate opted for a more independent line in accordance with the basic competition-policy aims, it was more or less formally instructed or overruled on a number of occasions.

The difference between Norway and Western Europe and the other Nordic countries in this respect was not only cemented but also increased in the Competition Act of 1993. At that juncture the minority Labour government through a political compromise managed to prevent the establishment of an independent Competition Appeals Board that could not be instructed by the government in specific cases. Although the King in the Council of State could have intervened if material governmental interests were endangered in the system proposed by the Royal Commission, this would have created a more independent competition authority than the present system.

According to economist Preben Munthe, the history of Norwegian price and competition policy has been a combination of the trivial and the tragic, thus implicitly implying its lack of importance.[93] I would argue that this is a superficial simplification. It shows a lack of understanding of the fundamental and long-lasting importance of the institutional framework shaped by societal forces and developments in Norwegian political and economic history. The distinctive characteristics of Norwegian price and competition policy fit fairly well with Francis Sejersted's theory of Norwegian "Sonderweg". Sejersted emphases that the comparative weakness of organised capitalism in Norway and the opposition to big business in particular laid the foundations for "democratic capitalism".[94]

It has been argued that the fairly affirmative policies towards cartels during the period the Trust Act was in effect were economically counterproductive in the sense that the legislation and policies functioned as an obstacle to a more effective restructuring of manufacturing industries in Norway. A competition policy similar to the American model might have inspired a merger wave in Norway resulting in larger and more efficient and competitive companies.[95] Such a fairly radical counter-factual

[93] Munthe (1993)
[94] Sejersted (1993), esp. pp. 172-73.
[95] Sogner (1998), 254-55. Similar but less explicit arguments are typical of Munthe (1954).

hypothesis is always difficult to evaluate. It should however be mentioned that the experiences of Sweden and Finland, where no legal restrictions whatsoever were imposed on cartellization prior to the 1950s, seem to indicate that much more complex causes were at work in shaping large and fairly competitive export-oriented companies.[96]

Price and competition policy has been arguably one of the most significant arenas of conflict and of compromise among opposed economic, political and ideological interests during Norway's modernisation process. The traditional and important cleavages of Norwegian politics at the voter level are easily detectable for those who wish to see them.[97] The importance of the *modus vivendi* reached concerning the State's role in controlling and regulating prices and competition in the strategic political struggles can hardly be overstated. The struggles relating to the concession laws (1906-1907), the Trust Act (1921-1926, 1934-1938), the prices legislation (1945-53) and the less clearly defined issues in the 1980s - credit policies being among the most central – are among the most central in the Norwegian XXth century history. The outcomes of these struggles were central in shaping the changing regulatory regime that has been influential in shaping the Norwegian modernisation process in the XXth century.

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