Regulatory Reform in Norway

Modernising Regulators and Supervisory Agencies

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Publié en français sous le titre :

LA MODERNISATION DES RÉGULATEURS ET DES AGENCES DE SUPERVISION

FOREWORD

Regulatory reform has emerged as an important policy area in OECD and non-OECD countries. For regulatory reforms to be beneficial, the regulatory regimes need to be transparent, coherent, and comprehensive, spanning from establishing the appropriate institutional framework to liberalising network industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment.

This report on *Modernising Regulators and Supervisory Agencies* analyses the institutional set-up and use of policy instruments in Norway. It also includes the country-specific policy recommendations developed by the OECD during the review process.

The report was prepared for *The OECD Review of Regulatory Reform in Norway* published in 2003. The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers.

Since then, the OECD has assessed regulatory policies in 16 member countries as part of its Regulatory Reform programme. The Programme aims at assisting governments to improve regulatory quality — that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. It assesses country's progresses relative to the principles endorsed by member countries in the 1997 *OECD Report on Regulatory Reform*.

The country reviews follow a multi-disciplinary approach and focus on the government's capacity to manage regulatory reform, on competition policy and enforcement, on market openness, on specific sectors such as telecommunications, and on the domestic macro-economic context.

This report was prepared by Stéphane Jacobzone, Directorate for Public Governance and Territorial Development, and Marie-Anne Frison-Roche, Institut d'Études Politiques. Hughes Bouthinon-Dumas provided research assistance. It benefited from comments provided by colleagues throughout the OECD Secretariat, as well as close consultations with a wide range of government officials, parliamentarians, business and trade union representatives, consumer groups, and academic experts in Norway. However, given the time constraints, this report was reviewed by the Norwegian authorities but was not peer reviewed by an OECD official body. It is published under the authority of the OECD Secretary-General.

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1.2.1 The recent trends with regards to independent Bodies and building market-oriented institutions

The modern public governance led a number of OECD countries to establish independent bodies or agencies with a differentiated governance structure, in order to "improve the efficiency and effectiveness of government entities with specialised functions", and also "improve the legitimacy and expertise of decision-making". These agencies, in various forms, play a significant role in OECD countries, with up to 131 executive agencies and 1 035 non-departmental bodies in the UK, 300 central agencies in Sweden and 79 crown entities in New Zealand (OECD 2002c). While some of these agencies have a purely managerial function, others are in fact exerting supervisory or regulatory functions. When they perform this role, they are known as “independent regulators”, or in a broader sense, independent supervisory bodies.

Independent regulators are a key component of regulatory reform and one of the most widespread institution of modern regulatory governance (See box 1). These institutions are often at arm's length from the ministries or even the executive power. They are increasingly used when competition is being established in formerly monopolistic industries, including utility sectors with network characteristics such as energy and telecommunications, and in other sectors where sector-specific prudential oversight is needed such as financial services.

The expected benefits from setting up independent regulators are to protect market interventions from direct political interference and also from the influence of specific interests, such as those of the firms regulated. Independence is also expected to go hand in hand with transparency, stability and expertise. The economic benefits of market openness, in terms of domestic and international investment, have been greatest in the sectors where independent regulators are prevalent, though the causality remains ambiguous.

However, independent regulators are not immune to risks, because they may "slow structural change" and obstruct convergence between sectors or lead to institutional rigidities. They may also contribute to fragmenting governmental policies and actions, in particular in the case of competition policy. They are also not necessarily exempt from any risk of capture. In addition, when setting up independent bodies, accountability is not automatically ensured and may be improved by setting out explicit objectives and requirements for reporting to Parliament and Government such as procedural requirements and substantive judicial review. Therefore, implementation requires careful review.

Box 1. **Independent regulators in the OECD work on regulatory reform**

Independent regulators have been considered in various ways as part of the OECD Work[1]. This was reflected early on in the OECD 1997 Recommendations which advised governments to, *inter alia* "Create effective and credible mechanisms inside the government for managing and co-ordinating regulation and its reform".

In its reviews of regulatory quality in 16 countries to date, OECD (2002d) "welcomed the move to establish independent bodies", because this trend offers great potential to improve regulatory efficiency. Specialised and more autonomous regulators are likely to yield faster and higher quality regulatory decisions and are characterised by more transparent and accountable operations. Where they have been most effective and credible, their independence and roles have been based on a distinct statute with well-defined functions and objectives. However, in light of the risks mentioned above, it is crucial to address key institutional design issues in order to reap the full anticipated benefits of setting up independent regulators.

This has led to a call for "comprehensive reviews of the independent regulatory bodies to identify problems and develop consistent solutions. More work by the OECD to monitor and assess best practices in designing these important regulatory institutions would further assist countries in ensuring that they yield the expected benefits in market performance while respecting norms of transparency and accountability".[2] The current review of supervisory bodies in Norway could therefore represent a first step, i.e. a case study in this process.

1.2.2 Supervisory bodies in Norway: the concept of tilsyn

In Norway, supervisory bodies are known by the term of "*tilsyn*[3]" (See Box 2.). This term includes various concepts such as supervisory agencies, inspection commissions or surveillance agencies, and economic regulators.[4] The borderline between *tilsyn* and other types of administrative agencies is not clear-cut. A *tilsyn* may indeed have few or no regulatory functions. *tilsyn* are normally organised as part of the administration at large in order to manage in a decentralised manner one or various administrative services. It is common that different laws state which supervisory body shall have the responsibility to perform supervisory activities. Actually, the number of regulatory enforcement and economic tasks delegated to *tilsyn* explains the relative small size of central ministries. However, a distinction between regulatory and specifically administrative functions remains when distributing the powers between the *tilsyn* and overseeing ministry. In theory, the system relieves ministers from the burden of the administrative management, helping them to focus on their "steering" function, which is strategic decision making.[5]

In 2002, the Ministry of Labour and Government Administration inventoried 39 *tilsyn* with various roles[6]. Each *tilsyn* has its own specific characteristics depending on the circumstances under which they perform supervisory activities and the reforms that it has undergone. For example, the *tilsyn* in charge of protecting data privacy (Datatilsynet), has complete independence of decision-making while others are directly under the supervision of a ministry in the competition arena. This reflects the historical process through which *tilsyn* have been created in a fragmented way without a *whole of government* perspective.

Box 2. **The concept of *tilsyn* and managing the State through separate bodies**

The Norwegian term (*tilsyn*), will be used throughout the report to describe the Norwegian Supervisory Bodies. *tilsyn* belong to the broader category of agencies created by law to perform a specific function or supervise a given sector. Generally, the *tilsyn* is an entity attached to a ministry, run by a director or board, but with greater autonomy than a department integrated into the administration of a ministry. Some of these entities are called *direktorat*. There are no general distinctions between agencies under the two terms, and tilsyn as used in this report includes also the group of *direktorat*. Some of these *tilsyn* are close to independent regulators in other countries, such as the Competition Authority or the Banking Insurance and Securities Commission, while others are still having supervisory functions connected with a ministry structure (Directorate of Public Roads).

1.2.3 The scope of the current report

For the current report, a sample of 11 *tilsyn* has been selected, which fall into the three main categories[7]:

- monitoring risks (health, environmental, transport-related, etc.);
- protecting civil liberties and democratic values
- ensuring economic and competitive aspects of market functioning.

The 11 *tilsyn* selected for this report are presented according to the main categories below:

MONITORING RISK	PROTECTING CIVIL LIBERTIES	ECONOMIC REGULATION
Civil Aviation Authority = Luftfartslilsynet	**Data Inspectorate** = Datatilsynet	**Competition Authority** = Konkurransetilsynet
Railway Inspectorate = Jernbanetilsynet		**Banking, Insurance and Securities Commission (BISC)** = Kredittilsynet
Directorate of Public Roads = Statens vegvesen/Vegdirektoratet		**Post and telecommunications authority** = Post- og teletilsynet
Pollution Control Authority = Statens forurensningstilsyn		**Norwegian Water Resources and Energy Directorate** = Norges vassdrags- og energidirektorat
Board of Health = Statens helsetilsyn		**Petroleum Directorate** = Oljedirektoratet
Petroleum Directorate = Oljedirektoratet		
Norwegian Water Resources and Energy Directorate = Norges vassdrags- og energidirektorat		

A more detailed description of this example is presented in ANNEX 1. This description refers to the institutional system as of end 2002. Some of the *tilsyn* have a long history, such as the competition body, one of the earliest in Europe, the Banking Insurance and Securities Commission[8] or the Water resources and electricity body, which all had forerunners established by the 1920s. Other bodies are more recent, such as the civil aviation authority (2000). Significant reforms were undertaken in the late 1980s and early and mid 1990s, with the establishment of the Banking, Insurance and Securities Commission (BISC) in 1986, on of the few in Europe to take an integrative approach to the whole financial sector, the setting up of the telecommunications' regulator in 1987 and the reshuffling of the competition authority in 1994.

ANNEX 1. General Description of selected Norwegian supervisory bodies (tilsyn), as of January 2003

1.3 A dynamic for change in the framework of supervisory bodies

1.3.1 Recent trends in the administrative environment in Norway

The Norwegian model of public administration is characterised by two main features. On the one hand, the supervision system is highly decentralised compared with other countries, reflecting the Nordic approach in trust-based decision-making (see Chapter 2). As early as 1970, a strong and active Parliament created agencies and made ministers accountable for their results: the Modalsli committee recommended that Ministries should concentrate upon policy-making responsibility while technical decision making could be devolved to autonomous, non-departmental agencies, which are nevertheless still highly dependent on the political impetus from the center.[9] This could prompt greater efficiency and result in a clearer definition between political and administrative tasks. In this system, the courts play only a minor role, when compared with other countries.

On the other hand, a series of new internal and external forces have challenged the system, in terms of increasing market openness to competition, of defining new roles for state enterprises and integrating the economy into the European market through the EEA agreement. In the late 1980s and early 1990s, the government launched a number of privatisation, deregulation and market reforms with a significant impact on a number of sectors such as the financial sector, telecommunications and the electricity sector. This also had an impact on the application of general competition law. Membership to the European Economic Area influenced market supervision agencies, either to establish new supervisory bodies, such as in telecommunications or to make significant changes to their regulatory powers.

The forces towards opening the product and capital markets[10] still exert pressure and are related to a demand for greater independence of decision making in market-related matters:

- The move towards competitive markets in sectors or fields where services were previously provided by a monopolistic public sector, reveals the problem of conflicts of interests. The State is both the owner of the major operator on the market, and the regulator of the same market. This could be solved in theory through direct privatisation of the major operator. However, privatisation does not solve the problem of market power. In addition, in the Norwegian context, it faces specific feasibility problems due to the size of the domestic financial market (OECD 2003c) and also the considerable opposition of Parliament. The independence of decision-making has to be pursued by other means, for example by clarifying the various roles of the State, as a shareholder and as a regulator. The management of non strategic assets has been transferred to a specific ministry, the Ministry of Trade and Industry (See chapter 5). This means the State is increasingly acting as a regulator rather than a promoter or actor of the economy.

- The growing integration into the Nordic (especially for energy) and European markets is also a driving force for more independence. As a member of the European Economic Area (EEA), Norway is closely associated to the European Union. This has implications for transcribing the European Directives in Norwegian law. For example, the European Directive on privacy and the use of personal data led to the reform of the regulatory authority responsible for personal data (Data Inspectorate) in 2000. European directives on the opening up of telecommunications have also played a key role in supporting regulatory authorities that are independent of the political authorities for this sector. In the case of energy, and more precisely electricity markets, deregulation of the Norwegian market and the Nordic arrangements established under the Nord Pool agreement, preceded the rest of the European agreements on market openness.

However, at the end of 2002, Norway remained at a crossroads in addressing such challenges. The institutional transformation remains incomplete. Some *tilsyn* have established a strong reputation for independence *de facto*, such as the Competition authority and the BISC. However, current appeal mechanisms for specific decisions tend to undermine this independence. The definition of powers and functions, and budgetary system to support more independent action are still based *de jure* on the 1970s system, which provides only weak guarantees for independence.

1.3.2 The need for reform and its impact on supervisory bodies

The government acknowledged the need for reform and released a programme "*Modernising the Public Sector in Norway"*, which includes *inter alia* the request for the following elements[11]:

- A less complex public sector.
- A consistent system of rules and easy access to information.
- Improved confidence in the public sector, with a sound division between the various roles, as authority, owner, service provider source of financing and control body.

The last point would allow exposing service production to competition and requires strengthening public supervisory bodies[12] In 2002 the government established a programme "*Modernising the Public Sector in Norway"*. A cabinet committee oversees the implementation of the programme. The agenda includes reviewing and simplifying legislation in general and competition law in particular, an action plan to reduce administrative burdens on business, and it introduces requirements to estimate total costs in connection with tenders, investments and reorganisations of service provision. It also announces a review of the feasibility of extending the use of outcome-based systems of financing, and the launch of a review of the *tilsyn*.

This statement to Parliament was accompanied by a thorough review of the *tilsyn*[13]. The purpose of the review consisted in strengthening the supervisory and control functions to reinforce the expertise while clarifying some of the functions, and to review the appropriate location of the supervisory activities. This process culminated in the release of a White Paper in early January 2003[14], which calls for reinforcing the independence of the supervisory agencies, redefining the boundaries for many of these agencies and providing a better horizontal co-ordination. The White Paper also proposed a number of changes in terms of the localisation of the agencies (See box 3).

This proposed reform can be considered as a preventive and proactive move that will improve the overall public governance system. One noteworthy feature of this reform, compared with other countries, is that it does not result from a major crisis or blatant institutional dysfunctions. The reform is intended to promote efficiency and productivity through a clearer division of tasks and responsibilities and through reinforcing independence. The intention is to establish a common basis for all *tilsyn*, and leave the specific aspects to be developed later in each specific field.

Box 3. The **2003 White Paper for improving the quality of the institutional framework of the tilsyn**

The 2003 White Paper was prepared as a report to the Parliament (Storting), in order to present the pathway to modernising the institutional framework for the *tilsyn* in Norway and will be followed by proposals of law amendments to be submitted for Parliament's approval. The White Paper has been prepared under the auspices of the Ministry of Labour and Government Administration after consulting with the relevant ministries. The objectives of the white paper are to

Increase the independence of the tilsyn in relation to superior ministries.

In particular, the white paper proposes:

- To distinguish between the political role of Ministers, in terms of weighing social considerations and priorities, and express these into general norms approved by law. The *tilsyn* should be more focused on the implementation function, with clear and unambiguous technical objectives, leaving the major trade-offs to the ministers. Their role is to enforce their resolutions and professionally guide or instruct the objects under supervision, in order to act more efficiently.

- That the possibilities of ministries of instructing supervisory agencies be cut off and that the decisions of supervisory agencies only be referred to special appeal bodies that will be set up. In cases or areas where specific important and/or fundamental considerations commend, the law would allow the whole government (King in Council) to alter the decision of the supervisory agencies and the special appeal body.

This will apply to the working life of the new supervisory authority, the new petroleum agency (see below), the subordinate agencies to the ministry of transport and Communication (Railway Inspectorate, Civil Aviation Authority), the Ministry of Trade and Industry (Norwegian Maritime Directorate) and the Competition Authority currently under the Ministry of Labour and Government Administration.

Improve the clarity of the horizontal design of the tilsyn

The White paper proposes to:

- Establish a new Petroleum Agency to perform and coordinate safety and Working Environment Supervisory activities in the petroleum off shore industry and a few land-based sites in the same industry.. This agency will include the area of safety and work environment from the Norwegian Petroleum Directorate and resources from the Directorate for Civil Protection and Emergency Planning and the Norwegian Labour Inspection Authority.

- Replace the electrical safety directorate and the Directorate for Civil Defence and Emergency Planning by the Directorate for Emergency Planning and Public Safety, in charge of organising industrial safety and security, and under the Ministry of Justice instead of the Ministry of Labour and Government Administration.

- Establish a “Norwegian Working Life Supervisory Authority”, which will be given the coordinating role for all supervisory agencies concerned with activities related to business and trade industry, and will no longer have a board involving social partners.

- Draw a borderline between the tasks of the competition authority and the tasks of sectoral agencies, such as the NBISC, the Norwegian Post and Telecommunication Authority, and the Norwegian Water Resources and Energy Directorate. The competition-oriented role of sectoral regulators will be to assist the competition authority in its function with sector-specific considerations. Sectoral specific regulation for finance, post and telecommunications will also be downsized.

1.3.3 An analytical pathway to the report

Choosing an analytical pathway for analysing the Norwegian *tilsyn* was a challenging task. The *tilsyn* considered in this report represent a sort of hybrid category, which includes bodies performing functions in terms of economic regulation, such as competition, telecommunication, electricity, oil or financial services, but also bodies specialised in safety issues, for the railways or the civil aviation, and bodies specialised in civil liberties and public health. The OECD has conducted some preliminary research[15] but an agreed methodology is still to be developed. A recent review conducted in the United Kingdom used the principles of good regulation (transparency, accountability, proportionality, consistency and targeting) to consider the regulatory framework for three industries. However, the current report had to address a broader set of institutions, which also included the competition agency.

The approach selected for this report was derived from the Norwegian approach itself, which corresponded closely to an analytical framework developed for assessing French regulators[16]. This leads to the following pathway of analysis (See Box 4):

- Balancing independence and accountability
- Analysing the function and purpose of the various agencies, which includes:
  - The institutional design of the sectors and the coordination between the *tilsyn*
  - The powers of the *tilsyn*

Coordination is a complex question, which includes both the application of competition law provisions and sector specific regulation (OECD 2000). The coordination between regulators arises for example in the field of health and safety, when several regulators have overlapping jurisdiction, resulting in complex arrangements with the regulatees.

In addition, this report was also intended to explain the auditing mechanisms and how to assess the performance of the *tilsyn*. The evaluation of performance requires measuring the outcomes or outputs of the *tilsyn*'s decision in relation to the objectives which had been initially fixed, and also taking into account the inputs and resources allocated to them. The assessment requires defining indicators of regulatory performance, together with indicators of inputs, such as authority, staff resources, expertise and legal powers.

This defines the analytical pathway selected for this report. Section 2 discusses the notions of independence and accountability and section 3 analyses the horizontal design. The design of an effective regulatory system is addressed in section 4 and section 5 focuses on evaluating the performance. In each case, the report introduces the main analytical principles and their current application in Norway. The report relies on the international perspective, to the extent that relevant comparative data are available. This leads to an analytical discussion, which takes into consideration policy options.

BOX 4. A framework for analysing tilsyn

The definition of a framework for analysing *tilsyn* or independent regulators in a market based economy can be organised into two axes (see figure):

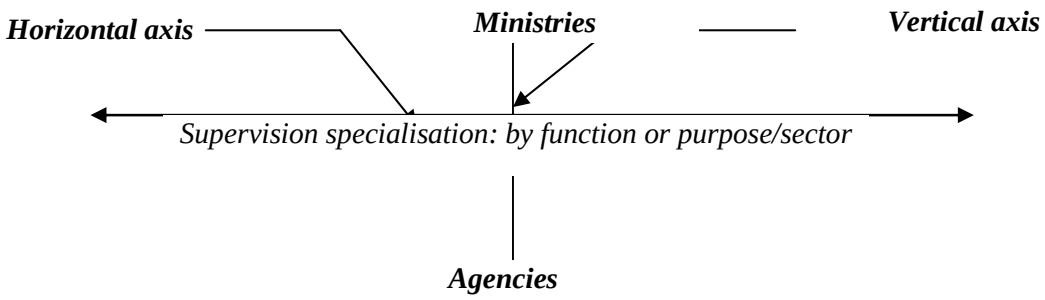
1) A vertical axis, corresponding to of hierarchical relationships between *tilsyn* and ministries

2) A horizontal axis, corresponding to the relative specialisation and co-ordination of the agencies. This specialisation can be divided into two subdimensions:

2.1 Function: type of duty and powers: inspection, advice, licensing, authorisation

2.2 Purpose (or sector): health, security, free markets

As a result, this is even a "three dimensional" framework.



2 INDEPENDENCE AND ACCOUNTABILITY OF SUPERVISORY AGENCIES

Many of the Norwegian *tilsyn* have their existence rooted in a tradition of decentralised administration, which depends on the political impetus from the centre. In that context, independence and accountability mechanisms had to be taken into account. As options for change are being considered, the discussions in this section will focus on the challenges of transition from a system of dependence, although limited in practice, to one of relative independence with limited rule-making power.

2.1 The Norwegian system today: a relative dependence of the *tilsyn*

2.1.1 The historical legacy

In Norway, the *tilsyn* do not all have the same status. Each one has come to have its own specific characteristics, depending on the results of the legislative provisions under which it was created and the reforms that it has undergone. For example, some *tilsyn* have complete independence of decision-making with respect to the minister to which they are attached. This is the case in particular of the Data Inspectorate, which is responsible for safeguarding civil liberties and privacy potentially threatened by the collection, storage and processing of personal data. In other cases, the *tilsyn* is placed under the responsibility of an official within the central administration and is therefore an administrative unit connected with the ministry, although it has specific autonomy to carry out its missions. An example in this regard is the *tilsyn* in charge of public roads (Directorate of Public Roads). Consequently, most *tilsyn* are agencies that are relatively autonomous in their day-to-day functioning, but remain under the hierarchical authority of a minister.

This explains why some *tilsyn*, such as the Norwegian Data Inspectorate, are independent of the ministry, while most others remain subject to ministries which can overrule their decisions. Some *tilsyn*, such as the Norwegian Board of Health, are also governed by a director-general, while others have adopted the board method, such as the legislation stipulated in 1986 for the Banking, Insurance and Securities Commission. Another example of this inconsistency is the fact that some *tilsyn*, such as the Norwegian Competition Authority, receive their funding from the general government budget, while others are funded by contributions from the sector itself, as is the case for the Norwegian Post and Telecommunication Authority.

In 1994, the reform of the competition authority left the possibility of individual instructions and appeal of the decisions of the body under the responsibility of the Minister for Government and Public Administration, which is quite different from a number of comparable OECD countries. In some cases, the regulatory bodies have kept several functions based on historical reasons and the regulatory activity is only one of the functions assumed by the regulator, as is the case for water and electricity or for petroleum. Some of the features of the regulators also depend on when they have been established, and the dominant thinking of that time for this type of institution. For example, in the field of health and privacy, special appeal boards for the regulators' decisions have been established from the start, which is not the case for other *tilsyn*. Finally, the regulators were delegated significant powers, in terms of rulemaking, for preparing and enacting some of the rules, as is the case for the national board of health. Therefore their role was not necessarily confined to enforcing the rule.

Amid these inconsistencies produced by history, the 1967 Act remains a reference point, as it generally determines the legal relationships between authorities governed by public law. It lays down the principle of the subordination of administrative bodies to ministers. Successive laws have gradually freed various authorities from this dependency. In this respect, Norway developed in much the same way as other countries, such as the United Kingdom and France.

2.1.2 A comparative cross-sectional overview

The key features of governance of the *tilsyn* in Norway reveal a certain level of dependence to the political power (ANNEX 2). Most of the bodies have a Director General, and not a collegial board. A collegial board is thought to be conducive to stronger independence than a single director general nominated by the political power. A second important feature is the terms of office. When it is indefinite, as is the case for the competition authority, the railway inspectorate or the civil aviation authority, then it considerably reinforces the independence of the director general, but in a not very common way. In other cases, when it is for a fixed duration and it is renewable, subject to the decisions of the political power, independence is weaker. This is the case of many *tilsyn*. In addition, many of these bodies can still receive instructions from the executive power on individual matters, as is the case for competition, communication, petroleum and the transport sector. However, the health and safety field seems to be less bound to these individual instructions. Most of the *tilsyn* are relying on public funds, which results in yearly agreements with fixed targets in relation to the supervising ministry. In substance, many of these agencies are in some way accountable to the ministries and report to the ministries.

ANNEX 2. Independence and financing of selected Norwegian supervisory bodies

A second key feature is the current system of appeal, which leaves the authority of deciding on appeals normally with ministers (ANNEX 3). The system is based on the Public Administration Act[17] of 1967, stating that the minister shall exercise regulatory powers by implementing laws through general and specific decisions. Section 28 of this Act lays down the principle of how appeals shall be directed to the administrative agency (the appellate instance) which is the immediate superior to the administrative agency that made the administrative decision. If the decision is given by a *tilsyn*, the appellate instance will be the relevant ministry. However, it is custom that ministers consult the whole government in a Cabinet meeting when ruling on matters that may be controversial or otherwise of importance. In the case in which the minister is legally invested with the authority to make a decision – which may be based on investigations carried out by regulatory authorities – this decision can be appealed to the supreme political and administrative authority, namely, the King in Council. Exceptions to this system can only be made if provided for by a special law, as was done for the *Datatilsynet*, whose decisions are appealed to an *ad hoc* appeal body.

ANNEX 3. Possibility of appeals after decisions are led or instructed by selected Norwegian supervisory bodies

2.2 An international perspective

The debate on the notion of independence is far from being at the international level. Independence is a new requirement in the organisation of the relationship between government and the economy, which still needs to be put into practice in a number of countries. However, the concern for independence is now encountered everywhere, and the fact that something which was formerly of no concern has now become so important, can generate scepticism.

In a number of countries, the competition authorities appear to have stronger requirements for independence than those which currently prevail in Norway (ANNEX 4). Although full information on independence is not always currently available within the OECD, a number of countries have established boards for decision making. In addition, the system for appealing decisions does not involve elected officials but is often handled through courts, either specific courts or "normal" judicial courts. The ministries intervention can exist *ex ante*, and can be associated in some cases to the investigatory powers, the competition authority being more of a jurisdiction.

ANNEX 4. A comparative overview of competition authorities

As for the other regulators, the Norwegian telecommunications authority has a longer term of office than in most countries, except Mexico, Switzerland, Denmark, Finland and Hungary (Annex 5). However, the possibility of having decisions overturned by the minister exists only in Hungary, Mexico and Portugal. In Canada the Governor in Council restricts considerably the possibility of overturning decisions. In some cases, the decision can be overturned by a special board, such as the monopolies and mergers commission in the UK or the telecommunications consumer board in Denmark.

ANNEX 5. Independence of regulatory institutions: the case of telecommunications

In the field of electricity (ANNEX 6), the Norwegian regulator has a 6 year term which is opposed to Finnish and Danish regulators who have an indefinite term, but match the time frame of the other countries. The possibility of renewal also exists in other countries, even if it can be restricted to one renewal. The fact that the regulator is not a collegial board is not in line with most of the countries surveyed except for the UK.

ANNEX 6. An overview of the independent regulatory agencies in the Electricity Supply Industry

2.3 From formal dependence to independence

In Norway, the former model of direct control of economic actors by ministerial oversight has worked relatively well. In spite of direct ministerial oversight, the practice of many of the *tilsyn* has involved a significant degree of independence, as is the case for the competition authority. It is difficult to measure *ex ante* the impact of adopting a regulatory model based on regulators that are fully independent of the executive, i.e. an American approach. The independence of regulators is a costly principle, since these authorities are partly detached from the central executive power. Independence can produce unwanted effects unless it is balanced by proper requirements for accountability. The direct management of regulations by Ministers is also supported by political accountability.

Trust in the Government is one of several "key" conditions for a centralised system to work. Trust has to be shared by public opinion, citizens, operators and institutions. However, the notion of trust may no longer be sufficient. This is the result of opening markets, and moving away from a monopolistic public supplier of services. As outlined above, the integration into the European Economic Area and the technological challenges are putting the Norwegian system at a cross-road. They reveal conflicting interests, which before were latent but could now be easily handled within the Government sphere. However, with more open and transparent market conditions, the current situations are no longer bearable, as conflicting interests are likely to become unsustainable.

The main companies have evolved from quasi administrations to quasi private enterprises (OECD 2003b). At the same time, the Government is promoting entry of private and foreign companies into the market. New entrants are naturally suspicious of a ministerial authority that is simultaneously responsible for defending ownership interests of the historic operator, and the openness of competition. This conflict of

interest was evident when the minister was asked to overrule two decisions made by the Competition Authority on acquisitions in the electricity sector, even though the State is still the owner of the acquiring company. If Norway is genuinely wishes to liberalise its economy, it must instil confidence in new entrants. In this regard, procedural changes can promote the openness of competition. The current system may seem to be inclined to favour the interests of the current operators, which makes it more difficult for outsiders to penetrate.

Stronger requirements for independence are then a logical result of this evolution. Although independent regulators still involve an exercise, by government, of its sovereign power, it is one which is not influenced by its own direct economic interests, but by the longer term prospect of overall market efficiency. Abolishing appeals to the minister, provided the policy-making authorities can continue to play their role, especially with regards to setting general regulatory rules, is a step in this direction.

In this system, trust is shifting, from *a priori* trust in government to one of *a posteriori* trust in independent regulators who must account for their actions. This is why independence has to be accompanied by accountability requirements. This shifting of trust, which stipulates that governments are not to combine the role of regulator and operator – a rule that now has virtually a constitutional value in the law of the European Union –has to be adapted to the political culture of each country. It would not be appropriate to take the same measures in the political systems of countries whose history has led them to systematically separate the powers of the State, such as in the United Kingdom and the United States, and a country like Norway, which is built on trust in government. In addition, compared to other countries, Norway has the means of ensuring a system of *a posteriori* trust, because its political culture is built on relatively direct communication between citizens and government, which a population of 4.5 million is an admitted advantage. This tradition of consultation and transparency in the general political system is a strong asset for Norway if it is to implement a modern system or regulatory governance. Nevertheless, a number of mechanisms exist for ensuring high quality regulation, which also contributes to strengthening the accountability of independent regulators (see section 4.3).

2.4 Independence and accountability in practice

A regulator's independence is forged in practice. Even if on paper the supervisory systems seem to be relatively dependent upon the political power, it seems from understanding the Norwegian context[18], that on a day-to-day basis, regulators make decisions are generally not contested, largely because the businesses and consumers concerned have no desire to do so, which for all practical purposes makes these regulators independent. Therefore, even if the legal possibility of appeal is very important, and has played a key role in publicised cases, its practical role may not be as important.

On the other hand, regulators may have fully independent powers, such as the power to make proposals or react to government decisions, but may not necessarily exercise them. For example, when the sensitive issue, which was both political and technical, of choosing the location of a new airport was raised, the view of the supervisory authority then in charge[19], which differed from the official view, was not expressed, although it was entitled to do so. The *Kredittilsynet* (BISC) illustrates unquestioned independence and trust gained among operators and consumers, even though its decisions are legally subject to the oversight of the minister.

Regulators can be accountable even when this is not explicitly required, for example if beyond making all their decisions available, they are transparent about their decision-making procedures. However, accountability requires that specific procedures are implemented and followed up by reliable evaluation (See Sections 4 and 5).

2.5 Building a stronger legal framework for independence and accountability

Independence and accountability will only be ensured if they are guaranteed by the regulatory system itself and are not merely the result of good practice and the goodwill of individual regulators. This requires building institutional conditions that will ensure an independent state of mind. For this reason institutionalising independence more firmly might be desirable, even though Norwegian regulators are already relatively independent.

At the same time, independence, like dependence, is never absolute and needs to be balanced by accountability and requirements for performance assessment (see section 5). Certain decisions require total independence, while others do not. For example, when regulatory authorities, such as the Norwegian Railway Inspectorate, verify compliance of legal safety requirements when authorising and monitoring the activities of operators, they can be given full independence. However, when a regulatory agency such as *Kredittilsynet* ensures the equilibrium of the banking sector and builds a market of attractive financial instruments, it is understandable that the sector is not governed by its decisions alone and that the Ministry of Finance also has a broader role to play. This is reflected in the current and planned arrangements in Norway.

Box 5. The tools for independent and accountable institutions

There are three ways of ensuring the independence of regulators while ensuring accountability:

- Building appropriate governance structures
- Designing a proper system of appeal, including which authority will hear appeals. This is a vertical relationship.
- Instituting a dialogue between regulators and Parliament and citizens in order to build institutional trust.

In addition, the relative specialisation of the regulator by sector is another dimension which needs to be considered,. Regulators specialised in one single sector may develop a more narrow perspective and are more prone to regulatory capture than regulators overseeing multiple sectors, which are necessarily farther away from the regulatees. This aspect will however be discussed later as part of the horizontal design.

2.5.1 Governance structures

In general, governance structures for independent regulators are important. In countries where these institutions were first established, as in the United States or Canada, they have often been created as boards or commissions. The decision making power in these boards is exerted in a collegial way. Regulators are now very often structured according to this model. Even the United Kingdom, which had previously given regulatory power to a single person, notably in the electricity and gas sectors, has adopted a more collegiate approach. In some cases, the head of the board may not be able to reach a decision vetoed by a majority of board members, as was the case recently for the FCC in the United States[20].

In this context, the governance structure for the Norwegian *tilsyn* relies largely on a single head, with a Director General (See ANNEX 2) and almost never on a board. This differs from the earlier style of Norwegian bodies, such as the competition authority which was first established as a board during its inception in the 1920s. In some cases, the terms of office are indefinite, which is not very common from an international perspective, for example the competition authority, the Post and Telecommunications authority, the railway inspectorate or the civil aviation authority. For telecommunications, this indefinite

term exists in the Czech Republic, Hungary, Denmark, Finland and Mexico, but not in Sweden (Annex 5). In the electricity field, the indefinite term exists for Finland and Sweden, which are also the only countries, with the exception of the UK, to have a single head.

A collegial approach could offer the possibility of internal discussions before adopting a decision, which, resembling somewhat to due process, increases the decision's legitimacy and reinforces independence. Moreover, the complexity of the problems which *tilsyn* must solve justifies not only that several people should be involved but also that several types of expertise are represented.

2.5.2 The organisation of appeals

2.5.2.1 The notion of "appeal"

The concept of "appeal" is used here in the broad sense and is not limited to judicial appeals, but includes more informal procedures within government itself, such as the Ombudsman. US and European law stipulates that any person who contests an administrative decision has a "right of appeal". The proper organisation of appeal procedures is therefore a legal obligation, a democratic requirement and a means of ensuring regulatory effectiveness. Currently, the vast majority of regulatory authorities in Norway only make decisions that are subject to reversal by the minister upon appeal. When a regulator is under the authority of two different ministries, as is the case of the Norwegian Petroleum Directorate which is subject to the Minister of Petroleum and Energy as well as the Minister of Labour and Government Administration for health and safety issues, the regulator acts under the supervision of both authorities. The appeal for safety and work environment issues are directed to the Ministry of Labour and Government Administration while the appeals for resource management are directed to the Ministry of Petroleum and Energy.

The ministerial appeal differs from judicial appeals. The minister can not only consider but alter a decision, from a legal and procedural perspective. This is an appeal of a hierarchical type instituted by the 1967 Act, which stipulates that the minister shall exercise regulatory powers by implementing laws through general and specific decisions. Therefore, the minister fully exercises the authority previously exercised by the regulator. The minister's decision itself could only be contested at a late stage in a court of law which is quite frequent concerning tax decisions, but less so in regulatory matters rare in Norway.

2.5.2.2 Maintaining ministerial authority while limiting the scope of direct ministerial appeal

Maintaining the authority of elected officials can be justified by defending the ultimate public interest or, in some cases, deciding between conflicting interests. First, ministers exercise a policy-making authority that encompasses interests that go beyond merely ensuring the smooth functioning of the sector concerned. For issues that go beyond the interests of regulation, ministers can have responsibility for policy-making decisions. The choice of the location of an airport can require a decision of this kind. Second, regulations work well when they are aimed at promoting a specific interest, such as opening up a sector to competition. When two legitimate interests conflict, choosing between them is a policy decision a regulator is not ideally suited to make. For example, when there is a conflict between safety needs and corporate interests in the petroleum industry, involving a revenue generating function for the country as a whole, the decision can only be made at a political level not by a single minister, but by the whole of the government. On such matters it is custom in Norway that a minister consults the full government at Cabinet meetings (regjeringskonferanser) which are held frequently, normally twice a week. The White Paper nevertheless proposes that the formal power of appeal be invested in the King in Council, as it indicates a higher threshold for reversing decisions, and as a decision by the King in Council requires a formal documentation and information to the Public which would not be required for a simple Cabinet meeting.

Subsequently, relinquishing all policy-making authority entirely might make it impossible to defend interests other than those of the operators. This concern was expressed in public hospitals where closure for safety concerns, which would be the regulator's duty, could harm the public in the absence of alternative possibilities when providing care in emergency situations. Consequently, ministerial policy-making authority needs to be maintained in a regulatory system. A final argument justifies this approach, for since regulations are an integral part of Norway's general institutional organisation, ministers, rather than regulators, are responsible to Parliament for policy. It is therefore inconceivable, unless the fundamental principles of the Norwegian political system were to be changed, that regulators could exercise authority for which ministers had political responsibility, without ministerial oversight – especially as ministers cannot remove regulators when many of them have indefinite terms.

Maintaining ministerial authority does not rule out abolishing the possibility of appealing the regulators' decisions to ministers on a casual basis. According to the 2003 White Paper proposal, the ministerial appeal would be restricted to certain cases of major importance and fundamental interest, and consequently the government would involve itself in regulatory decisions to a lesser degree. At the same time, the rule-making power is clearly identified as being of ministerial responsibility, where major political trade-offs are to be made (See box 3). By leaving regulators only with the authority to make individual decisions, the minister can exercise the power to set regulations, and thus ensure that higher policy interests prevail. This approach combines maintaining the policy-making authority of ministers, while at the same time supporting arguments in favour of abolishing appeals to the minister against regulators' decisions.

Abolishing appeals to ministers will ensure the independence of regulators if it is accompanied by removing instructions on individual matters. However, this does not imply that there should be no contact between regulators and ministers. If the regulatory system assumes that regulators are not hierarchically dependent on ministers, they still have to enter in dialogue with the concerned parties, which includes ministries. When regulators grant authorisations or impose sanctions, they are applying the general regulations adopted by the minister. Lastly, the resources that regulatory authorities need to operate are largely allocated by the ministries, either directly through public financing, or indirectly by allowing regulators to collect taxes and fees from the businesses in the sector.

Consequently, communication between regulators and ministers is encouraged, especially if the possibility of appealing decisions to the minister is abolished. Regulators frequently meet with central administrations, with the Competition Authority and with each other when necessary. This is consistent with the Norwegian tradition of a public system built on dialogue and consultation.

2.5.2.3 Establishing special appeal bodies

Special appeal bodies can be a tool to preserve the right of appeal in a less political way than in the previous system, while ensuring the technical competence of appeals decisions. The most recent reforms, in particular concerning *Datatilsynet*, have replaced the authority of the ministry with an independent administrative body. This body is able to reverse decisions created by law which is a specific exception to Section 28 of the Act of 1967. This approach makes it possible to give up ministerial appeal in some cases without overburdening the general judicial system. Furthermore, this administrative appeal body is a quasi-judicial collegial body that will evaluate appeals collectively, therefore ensuring it will operate using procedural principles similar to those of the courts. Lastly, this appeal body can call on sector specific expertise, such as technical experts, economists and specialised lawyers and is essential to meet the level of expertise of the regulators. For example in 1998 the United Kingdom created the Competition Commission Appeal Tribunal a specialised court for reviewing the decisions of regulators and the competition authority.

Referring regulators' decisions to the courts is also influenced by the legal culture of the country concerned. In a system of Common Law, this question will not arise but in a system of Roman Law it does. Difficulties are minimised in systems of Common Law because technical regulatory system can be integrated into an ordinary institutional framework to challenge executive decisions. However, in the countries of Roman or Germanic Law, the possibilities of appeal are influenced by the legal culture and the role of the judicial system. Norway, which has a Germanic legal system influenced by Denmark, does not have a specialised judicial system and tends to judge from a procedural and legal perspective, not to substitute its decision for the original decision. Therefore, only giving appeal to the ordinary judiciary system would lead to a very restrictive appeals system. In some countries, specific appeal systems to a single, specialised court have been established. This makes it possible for judges to gain a greater understanding of the economic debate of regulators and to go beyond the mere external control of legality of decisions.

Norway does not have for the moment a strong tendency of recourse to the courts about administrative decisions, except in the area of taxation. The role of lawyers remains limited compared with other countries, and the courts themselves show little inclination to address regulatory issues. Modifying regulatory appeal systems in which the courts play a very important role, as in the United States, would therefore not be an option. In addition, the Norwegian judicial system does not have specialised judges. Both the public and judges themselves are attached to the principle of the unity of the judicial system.

2.5.2.4 The possibility of extra-territorial appeals (EFTA Court, Europe, WTO)

The integration of the Norwegian economy into regional systems, such as the EEA and the European Union, involves requirement to comply with laws of the European Union. Norwegian companies can already appeal to the *EFTA Court* located in Brussels and responsible for ensuring such compliance (See main report Box 14). Norwegian companies developing their activities in regulated sectors are generally international and have subsidiaries in EU countries that can bring cases before EU courts. Lastly, the judicial powers of the World Trade Organization continue to grow. For example the agreement in the field of telecommunications is binding for States with regards to their policies of openness to competition and goes beyond the general requirement not to erect barriers to free trade. Furthermore, the World Trade Organization is going to extend the scope of its rules. These systems function along highly judicial lines, whether appeals are made to the Court of Justice of the European Communities or to the Dispute Settlement Body.

2.5.3 Institutional and democratic dialogue

Institutional and democratic dialogue is a relatively natural feature in Norway where the relations between the government and the public are built on a transparent basis.

2.5.3.1 Strengthening relations with Parliament

The Parliament is the branch of government through which democracy expresses itself most fully. That is why regulators, for whom it is crucial to remain an integral part of the democratic system while maintaining their independence from the authority of ministers, often wish to have a closer dialogue with the Parliament.

Most Norwegian *tilsyn* already present annual reports that review their activities. Progress could be made by organising public hearings with Parliament on an annual basis. For example, a parliamentary debate on the financial markets including the regulators takes place annually, based on a white paper from

the Ministry of Finance. However, the technical complexity of regulations is such that parliaments find it difficult to play their role in this policy dialogue, which remains in the hands of ministerial administrations specialised in the sectors concerned. This can be overcome through specialised committees in Parliament which would be qualified to discuss technical issues with regulators. This could also be coupled with the requirements for performance assessment (See section 5). The law might stipulate, as is done in certain countries' legislation, that the annual report to Parliament and a description of the agency's activities, could suggest changes that might be made in the legislative and regulatory framework. This would be especially welcome because *tilsyn* do not have rule-making authority. Furthermore, reports of this type frequently include two or three thematic studies describing the regulatory authority's operating principles, which would subsequently provide a very useful reference for all concerned.

2.5.3.2 Ensuring the legitimacy of tilsyn through direct dialogue with citizens

Because of Norway's relatively small population and its tradition of political dialogue, both directly and through trade unions and business associations, it is well placed to have strong dialogue between regulators and citizens. Other interest groups are generally well organised, e.g. organisations concerned with the environment or humanitarian work, while consumer interests are represented mainly through a government agency (the Consumer Council of Norway). The *tilsyn* are obliged by the Public Administration Act (sections 16 and 37) to notify all concerned parties before an administrative decision is made and to give the parties opportunity to express their opinion within a stipulated time limit. These hearings generally involve NGO's, business and concerned citizens (e.g. in the neighbourhood of a proposed plant expansion), and possibly other government agencies and ministries. NGOs can meet with regulators to discuss the difficulties encountered. These meetings are held regularly. For example, the Norwegian Data Inspectorate meets with consumer associations three times a year. These meetings can sometimes have a wider audience. In July 2002 a national council meeting included regulators, representatives from central government and consumers' associations to discuss the topic of consumer protection through legislation. Ad hoc meetings can also be held, as was the case in winter 2002-2003, when there was a sharp rise in the cost of electricity. However, in the case of such an acute crisis, the possibilities of a full dialogue are more limited.

Such practices contribute to strengthening the legitimacy of the *tilsyn*. The loss of legitimacy due to stronger independence could therefore be compensated by closer contact with businesses and consumers. This dialogue also enables regulators to have access to information that it would be difficult to obtain elsewhere, in particular from their contacts with new entrants and consumers. However, effectiveness and legitimacy can sometimes be at odds. To ensure their legitimacy regulators must hold public consultations, but to be effective it is sometimes necessary to have confidential meetings. How to strike a balance between the two factors will depend on the subjects being addressed and practical experience, except for an annual public hearing that could be specified by law.

2.6 Securing proper material conditions for independence

Appropriate resources are also a prerequisite for independence to be ensured in practice, and for the legal aspects to be implemented in a satisfactory manner. This concerns both financial and human resources. A key factor of independence is the technical competence of the staff. Agencies need to be able to form independent opinions on issues without relying on external competence.

2.6.1 The financial resources

Financial resource issues are generally not a key factor in the Norwegian debate. The *tilsyn*' need for financial resources is relatively modest (See annex 2) although if this is less likely to be the case of qualified labour (see below). The largest *tilsyn* are those for oil and electricity, but in relation to the economic activity concerned, these amounts are small. In addition, the Norwegian Water Resources and Electricity Directorate have in fact a variety of functions, which include regulating electricity, hydrological resources and environmental protection. A number of the tilsyn are financed mainly from public funds, while others have all or a main part of income from fees that are levied on the regulated industry, such as finance, petroleum, fire and explosion prevention, lotteries, civil aviation authority and post and telecommunications. If this is the case, the fees need to be approved by the Ministry first.

In addition to the absolute level of financial resources, it is important that discretion be used when allocating resources to these authorities. Norway has not yet implemented mechanisms through which *tilsyn* would be able to self-generate and self-manage their resources, as will be for example the case for the new French Financial Services Authority (AMF). However, financial pressure is not generally an issue, both for the *tilsyn* and the Ministry of Finance. The regulated parties did not express high concerns, except in the field of aviation. This situation could change if some of the *tilsyn* are to be relocated to other geographic locations (See below).

ANNEX 2. Independence and financing of selected Norwegian supervisory bodies as of January 2003

2.6.2 Human resources

Independent supervisory authorities need to be able to recruit staff with the appropriate expertise, to establish their authority and match the technical competence of the regulated parties. The regulators generally operate in highly technical sectors: The skills and experience of the civil servants working for them are of fundamental importance for the effectiveness of regulatory action, the esteem stakeholders hold for the regulators, and lastly their authority. Even if the *tilsyn* are relatively small in Norway, they may consume a significant share of the qualified labour resources for the sectors concerned.

The negative impact of competition on the labour market in Norway when compared with other countries is limited. The size of the capital Oslo is relatively small and the competition with the private sector is not as attractive as it could be in other major economic or financial centres. In addition, although the *tilsyn* staff generally recruited under civil service rules, they profit from slightly higher salaries than staff in the base ministries. As these are not insignificant material benefits by Norwegian standards, where wage inequalities remain limited, highly-skilled teams can generally be recruited and retained. For example, the effectiveness of the BISC is based on the universally acknowledged technical expertise of its staff.

However, striking a balance between independence and competence is often difficult. All countries are faced with a contradiction between competence, which requires close and continuous contact with stakeholders (in particular the ministry and operators), and independence, which can be tarnished by too close contact. In spite of this, in many OECD countries, the independent regulatory bodies are still located close to the main centres of political power. This problem of maintaining appropriate distance is specific to the geographical position of the regulatory authority. The 2003 White Paper makes a number of radical proposals in terms of changing the current geographical position of the Norwegian *tilsyn.*

The tradition of positioning regulators in a country's political and economic capital reflects the traditional model of centralised decision-making. Although it may be desirable to move away from this practice; it can also be seen as a barrier to recruiting highly-qualified technical staff. Locating certain *tilsyn*

near an academic centre, as would be the case for the Competition authority in Bergen, would be an effective way of striking a balance between independence and competence, since the authority would be close to a significant center of resources. This could help deter other difficulties which might otherwise arise, such as offering professional careers to dual professional households outside the main metropolitan area, in an already sparsely populated countryside.

Another factor to be taken into account is the relative attractiveness of civil service jobs. In Oslo, these jobs compete with more attractive private sector job opportunities. In other regions, the alternative job opportunities are less attractive. However, this requires also that the costs of the transition be addressed properly. Countervailing strategies and a temporary budget increase might be necessary to maintain the appropriate level of expertise. In addition, innovative techniques can be used to maintain and increase the knowledge base of an organisation. Through knowledge management techniques, administrative and organisational changes can usually be tackled while minimising the negative potential impacts. Implementing these techniques would help re-train the staff of the *tilsyn* if some of these authorities were to be relocated. In these highly political matters, a balance also needs to be found between maintaining the skills of *tilsyn* teams and other objectives of public policy for which the government is solely responsible, essentially regional development.

2.7 Policy options

The major policy option is to consider the steps that would be necessary to strengthen the independence of *tilsyn* while preserving their accountability. The main options considered in the 2003 White Paper imply a change from a system of regulators answerable to ministers to a system of regulators with greater independence. This would involve a transition from a system in which decision-making power has not been transferred fully from the minister to the regulator, to one in which regulators will exercise their powers more independently. As in other countries facing similar challenges, this transition is at the core of the issues underlying the debate on independent regulators. The move to independence needs to be accompanied with clear mechanisms ensuring for accountability, while not undermining independence. In Norway, this might involve reconsidering the role of the judicial review, or implementing specific mechanisms for systematic assessment of the performance of *tilsyn*. As discussed earlier, strengthening dialogue with Citizens and the Parliament is also essential to preserve the legitimacy of regulators and offer them the possibility to be part of the democratic debate.

3 HORIZONTAL DESIGN

The horizontal design issues involve a whole of government perspective. Usually, the reform process progresses slowly, due to specific problems or the need to comply with certain European directives. The need for a comprehensive overhaul and possibly reorganising the whole systemic arrangements for performing supervisory, regulatory or competition enforcement law functions emerges after a number of incremental changes have been implemented. The reasons for addressing horizontal design issues is therefore to contribute to strengthening the regulatory system, to lightening the regulatory burden, and better focusing on the use of public resources which are involved in regulatory governance. After discussing some of the horizontal design issues from a general perspective, the specific Norwegian situation will be introduced, with highlights on co-ordination among sectoral *tilsyn* in relation to the competition Authority. This will allow for discussion on policy options and recommendations.

3.1 Horizontal design issues, by functions or sector

3.1.1 The implications of horizontal specialisation

Different combinations of horizontal specialisation can be found (Table below). The vertical dimension, in terms of relative independence and the horizontal dimension, in terms of function or sector specialisation must be considered jointly. Independence will be stronger if it is accompanied by oversight across several sectors because the regulatory agency will be placed further away from specific interests of a given sector. However, this is more difficult if the agency has a multipurpose role.

Multiple roles also entail other difficulties, such as multiple objectives. The regulator, which is in theory a technical agency, will be faced, with the responsibility of making political choices without having a broad vision or the democratic legitimacy to do so. This will often be the case with regulators operating *multiple* functions in a *single* sector.

Table: Models of regulatory agencies

	Degree of political dependence	
Degree of specialization	*Politically dependent* regulator	*Independent* regulator
Single function regulator with *oversight across various sectors*		***Situation B***
Regulator with *multiple functions* in *a single sector*	***Situation A***	

The alternatives to multiple objectives and functions can, in theory, be avoided by strictly specialised regulators, with a pure "market" reinforcing function. However, even in practice, the need to preserve the universal service exists in most countries as in the case of telecommunications regulators, (See ANNEX 7) and in Norway (Storsul 2002). In addition, multiplying several strictly specialised regulators could also lead to other difficulties, such as a higher risk of capture by a particular sector, institutional rigidities, and difficulties in tackling broad sectors of the economy, as they are merge through technological developments.

Annex 7. Telecommunications regulators, regulations on universal service

3.1.2 The Norwegian situation

The Norwegian situation is characterised by a relatively high number of *tilsyn*. They perform three core functions:

- Safety, risk management
- Protection of civil liberties
- Economic regulation

The current institutional setting is very complex and reflects the historical evolution to date. It is characterised by a high number of *tilsyn*, which are only partly represented in our sample (See Annex 1 and 2), overlapping competencies and multiple functions. The *tilsyn* have been set up to address the specific needs for specialisation in government decision-making and to monitor specific sectors. The need to

understand the these characteristics justified detaching departments from the central administration in order to bring them closer, in the form of regulatory authorities, to the sector itself. This is what was done in the financial, energy and public health sectors. In the process, these authorities were organised in a way that followed the structure of the sector itself and are very different from one another. The differences can be historic in nature, but also inherent to the very idea of having *ad hoc* regulators for specific sectors. In some other cases, as for telecommunications or protection of data privacy, the decisions reflect the need to implement European directives.

The competition authority appears as one example of a cross-sectoral agency, with one clear mission, in terms of enforcing competition law. Among the "non economic" agencies, the pollution control authority also has a clear mission, with a cross-sectoral responsibility. The situation is murkier for several other agencies. The Water and Energy Directorate is charged with a number of missions and functions, which include regulating the electricity market and prevention of accidents concerning Dam safety. In the electrical safety area, the Fire and Electrical Safety Directorate exerts the supervisory function. Similarly, the Petroleum Directorate involves both an economic function of maximising oil resources and a safety and environment protection role. Two of the three transport agencies have a single responsibility in terms of safety. The third, the Directorate of Public Roads, has a public enterprise function of building and maintaining roads, and a regulatory function of controlling transport safety and licensing.

In other cases, such as the Board of health, the agency consolidates various inspection and regulatory functions in the sector. The Banking, Insurance and Securities Commission offers a good example of sectoral integration, as it takes into account all the interconnections between banking, financial and insurance activities.

The situation is in fact more problematic as there are a number of other *tilsyn* which do not belong to the above examples, but still have significant overlapping responsibilities. This is particularly true for safety issues. Private companies are facing up to 9 different *tilsyn* in charge of various aspects related to safety at work. This creates an unnecessary administrative burden and results in complexity as businesses have to comply simultaneously with different regulations and requirements.

Public liberty Tylsins are a very small size making it difficult for them to exist as organisations. In addition to the above examples, the media-ownership authority, the Mass media authority and the Norwegian Board of Film Classification are three very small agencies operating in the field of culture and for a relatively small country.

3.2 The coordination among *tilsyn*

Co-ordination among regulators can take three general forms:

- Ensuring that a common doctrine can be applied to give enterprises within a particular sector a legal certainty as of the various regulations they have to comply with.

- Ensuring that the time frame for certain decisions respects the autonomy of each regulator, while not penalising the private company due to unnecessary delays or contradictions.

- Minimising the burden of compliance with regulatory standards for.

There are two parts to co-ordination. First, the report considers the general co-ordination issues, mostly among the technical *tilsyn*. The specific horizontal co-ordination issues between the competition authorities and the various economic functions performed by technical *tilsyn* are addressed afterwards.

3.2.1 General co-ordination issues among technical tilsyn

The best way to ensure a common doctrine is to hold regular meetings and public hearings. The legislator can contribute to this by standardising the annual reports which regulators submit. This will facilitate comparison and harmonisation between regulators. Such co-ordination already exists to a significant degree in Norway. One example is the collaboration established between the regulator of telecommunications (PT) and the media regulator. This co-ordination is a rational response to the technological convergence of information and the networks carrying information.

Another area where the dialogue seems to be well established relates to consumer organisations and the consumer Ombudsman. In all the areas where the *tilsyn* have regulatory responsibilities which might impact on consumers, such as posts and telecommunications, electricity or transports, a regular dialogue has been established with the consumer organisations, including the consumer Ombudsman, which can be legally considered as a *tilsyn.*[21] For example in July 2002, a national meeting was held including the various *tilsyn* with regulatory powers impacting on consumers, the representatives of the ministries and consumer groups around the theme of protecting consumers through regulation.

However, the dialogue is sometimes not enough to fully ensure that some of the standards applied to private companies will be established in order to minimise the regulatory burden. In the field of safety and security, enterprises have to comply with 9 different supervisory authorities and 4 different ministries. This could be resolved through "One stop shops" (See section 3.4). Another example where co-ordination among *tilsyn* is not fully applied is with the Data Inspectorate, which protects privacy and the BISC. The experience of the Data Inspectorate with the industry remains limited and tends to lead to very restrictive practices, which differs from those of the BISC.

In some cases, the *tilsyn* depends on two ministries. This is currently the case of the Oil Directorate because of its different functions and makes some of the co-ordination issues difficult. This *tilsyn* reports to both the Ministry of Labour and Government Administration, and the Oil Ministry. In addition, it needs to co-ordinate its task with the pollution control authority, the board of health, and inspectorate for health and safety at work.

The issue of co-ordination for health and safety has been discussed at length in Norway, with the first attempts in the early and mid 1990s for strengthening the co-operation mechanisms. The situation in this field reflects the increasing role of the oil industry. This results in an awkward situation, as the "off shore" industry is under the supervision of the petroleum directorate, whereas the land-based oil industry, which is only a few establishments, is supervised by the Water and Energy Directorate.

3.2.2 The co-ordination between sectoral tilsyn and the National Competition Agency

3.2.2.1 A pending debate: how to manage the relationship and, potentially, the overlap?

This is a pending and core issue emerging in the debate surrounding economic sectoral regulators in many countries. It was discussed at length during a roundtable held at the OECD in 1999[22]. This central issue was tackled early on in Norway. In 1997 the Competition Authority invited academic experts to prepare a report on the topic. The Competition Authority is not a "regulator" in the appropriate sense of the term, as it is not attached to a specific sector and because its main task is not a regulatory one, but it has to ensure that the rules of competition are complied with and public and private competitors are treated equally.

This involves both a vertical and a horizontal dimension:

- As the competition authority has overall responsibility for competition policy, to which extent can this authority be delegated to subordinated authorities following laws in Parliament?

- Once the delegation occurs, how are the competition and regulatory enforcement tasks to be distributed between the two?

- When the sectoral regulator is empowered with economic objectives that are not related to competition, such as sector-specific prudential oversight in the financial sector, or non-economic objectives, such as media diversity for the media-authority, how are the conflicts resolved?

The specific universal role of the Competition Authority in terms of mergers gives it a natural "across the board" role, which results in a complex situation. This extends to large economic sectoral *tilsyn* such as the BISC or the NVE. However, this would lead only to what might be called a "circumstantial" relation, since it exists only when this type of merger occurs (See chapter 3 Competition OECD 2003a), The most complex issue concerns the monitoring of mergers. Chapter 3 mentioned a case in which there was a conflict between the position of the Competition Authority and the specific requirements concerning the regulation of the electricity sector desired by the ministry. If the monitoring of mergers is considered a regulatory tool and not merely a procedure for preventing anti-competitive behaviour, it would be logical to entrust it to the *tilsyn* themselves. This is the case in the EU for mergers between financial institutions, as the review is carried out by the banking authorities rather than the competition authority who are ordinarily responsible for this type of monitoring. It might suffice to ensure mechanisms for mutual co-operation. These would consist of entrusting economic regulators with the monitoring of mergers in the sectors for which they are responsible, while requiring them to consult and consider the views of the Competition Authority on how to preserve dynamic competition.

In other matters, the fields of competence overlap between sectoral regulators and the competition authority. Regulators can only enforce the principle of open competition by detecting and sanctioning anti-competitive behaviour, such as the abuse of its dominant position by the historic operator. The role of *tilsyn* naturally leads them to regulate abuses of dominant positions, *i.e.* behaviour that it is also the ordinary task of the Competition Authority to sanction.

A number of simple, reliable and effective solutions can be envisaged. One solution consists of depriving the sectoral regulator of all jurisdictions in cases that fall within the general competence of the Competition Authority. The opposite approach would be to give to the sectoral regulator exclusive authority to regulate anti-competitive behaviour without the Competition Authority being involved. Both systems are excessive and assume that there is a clear-cut distinction between cartels and abuse of dominant positions. This is not always the case. The Norwegian approach is intermediate and involves a number of close co-operative agreements and frequent meetings.

The situation is more difficult when the sectoral regulator is required to follow non-economic objectives such as media diversity. In that situation, the trade-offs between two highly desirable but competing social objectives seem to reflect the case when a possibility of appeal to the political level would be deemed desirable.

3.2.2.2 Co-ordination mechanisms

A number of agreements have been established between the Competition authority and sectoral regulators. The National Water and Energy regulator and the Competition authority issued a joint report on their competencies in 1996, which provides for joint meetings and for parallel handling of cases in order to speed up the process. The two *tilsyn* will also consult each other before issuing regulations or guidelines.

The Competition authority and the Financial Services Agency (BISC) co-operation are governed by an agreement reached in 1996 between themselves. The current system allows for a significant degree of overlap, with different criteria to assess mergers across the two institutions. The Competition Act emphasises efficient utilisation of public resources and the Financial Supervision Act emphasises financial strength, stability and competition aspects. The decision-making authority has been delegated to the BISC in certain areas, and for such decisions the appellate body is the Ministry of Finance. In financial market decisions given by the Ministry itself, the appellate instance is the King in Council, while the appellate body for the Competition Authority is currently the Ministry for Labour and Government Administration. The agreement for co-operation provides for mutual information, clear timing deadlines, commenting on proposals for new legislation and regular liaison meetings. It seems that, in spite of the complex institutional framework, the system has been able to work relatively well in practice due to this collaborative approach, which is easier thanks to the framework for co-operation.

In the field of post and telecommunications, the Ministry of Labour and Government, also the appellate body for the Competition Authority decisions, remains the appellate body for the individual decisions of post and telecommunications in matters of competition in the postal sector only, since the Ministry of Transport and Communication still owns the Post. However, other decisions of the PT are referred to a special appeal board or the ministry for questions of political nature or fundamental importance. The current system leads to a certain degree of overlapping competence, duplication of supervisory resources and legal and administrative uncertainty. There is in deed an agreement between the PT and the Competition Authority.

3.2.3 The key role of broader institutional co-ordination, including international networks

3.2.3.1 *International networks*

Another key instrument of broader co-ordination is the international level, particularly for a country such as Norway, which is integrated into regional (Nordic or European) and broader international groupings. The regulatory system needs to avoid isolation to ensure that it is not by-passed by enterprises. This is particularly true for companies with a legal foothold in one of the EU countries because competition cases can be brought to the EFTA court and to the European Union. This is also true for issues concerning citizens due to the growing role of the European Court of Justice. The international networks therefore play a crucial co-ordination role.

The thought of having national regulators replaced by supra-national entities has waned as regulators need to be close to the sector for which they are responsible. At the same time, they benefit from being included into international networks and *fori* to establish a common doctrine. Two examples are the Florence Forum, which brings together national electricity regulators and the Madrid Forum, which is an assembly of gas regulators. The European Commission plays a central role here because of the unifying role of European directives, which have an impact on Norway. Another example is the international organisation dealing with the securities commissions This helps harmonise worldwide standards. The result is the creation of a co-ordinated system which promotes common standards.

3.2.3.2 Co-ordination with the Ombudsman

The Norwegian *tilsyn* benefit from links with more general networks in other fields. This applies in particular to the Ombudsman, which is technically a *tilsyn* but which was not included in the sample. This Nordic institution has served as a model for many countries, and there is currently an active network of national Ombudsmen worldwide. The Ombudsman is a highly original approach, since its main task is to find solutions and protect interests, whether using the law or other ways. The Ombudsman and regulators share a mode of functioning. Additionally, protecting consumers and citizens is a major task of Norwegian regulators. Regular contacts between regulators and the Ombudsman, or more specifically, arrangements for referring cases from one to the other, could help.

3.2.3.3 Co-ordination with the courts

Ensuring co-ordination with the courts is more difficult because courts have multiple, non-specialised tasks, and in particular in Norway. The timing of court decisions is often in another time frame compared to sectoral regulation. However, this co-operation is to be encouraged, particularly if a shift to a more judiciary approach was to occur in Norway. Currently, the role of the judiciary remains relatively limited, except for some cases which are brought to the courts, such as in the telecommunications sector. However, jurisdictions play an important role in settling disputes, a power which is generally not very frequent among Norwegian *tilsyn*.

Courts also have the right to impose criminal sanctions, including an exclusive competence for matters of jail sentencing. However, courts, particularly when they are not specialised, as is the case in Norway, could also benefit from the technical expertise of the *tilsyn*. Currently, co-ordination between the judicial system and the competition authority is well developed through the National Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim). Regular contacts between the various *tilsyn* and the courts could help. The courts could more systematically obtain the competent regulator's opinion when the offence concerns a breach of legislation organising regulation.

3.2.4 Policy options

As mentioned in the OECD review, it is crucial to address key institutional design issues to reap the full anticipated benefits of setting up independent regulators. The objectives of the reform in Norway are to modernise the public sector, and to clarify the framework for the functions of the *tilsyn*.

3.2.4.1 Various options for merging tilsyn or their functions

The first study carried out by *Staatskonsult* in 2000 and in 2002 drew up a list of *tilsyn* and proposed to consolidate them. These studies opted for making the regulators' objectives the criterion for consolidation, which is in fact the most effective method. This leaves a residual category of *tilsyn* which remains hard to classify. Furthermore, some of the distinctions made may seem dubious. The distinction between technological regulators and economic regulators made in those reports is difficult to apply in practice, as the issues are interrelated.

The first option is to separately consider the *tilsyn* responsible for protecting citizens and civil liberties as they protect specific rights in a sector rather than the sector itself. This is the case of the *Datatilsynet*, the media-ownership authority, and the Mass Media authority. The potential for reorganisation could take into account the relative size of these bodies, and some of the obvious synergies, for example between the mass media authority, the media ownership authority and the board of film classification.

A second option is to consider the *tilsyn* in charge of sectoral economic regulation in the telecommunications and energy regulators, or in the financial sector, with the need for sectoral regulation against the general enforcement of competition law. These are major regulators with a well identified sector. These options have been discussed in OECD (2000). The sectoral regulation can be omitted when sectors have no specific particularities against the general market-based segments of the economy. Due to the presence of the grid, this will take some time in the electricity field,. In theory this could bee, in theory be the case in the very long-term for telecommunications. However, the relative role of the incumbent and the basic infrastructure are still too high in Norway and the setting up of the independent regulator (PT is too recent) for winding up the specific sectoral regulatory regime. The same applies to financial services, where the need for sector specific prudential oversight remains.

Another related option is to merge various sectoral regulators as the sectors concerned have become so interrelated that a given risk can spread from one to another. This is already the case in Norway which has one of the most integrated financial services authorities in Europe. The United Kingdom currently has an integrated Financial Services Authority and France is moving in the same direction.

The third option is to consider merging the functions instead of the authorities themselves. This could be the case for the supervisory authorities in charge of safety, health and environment matters. Whereas the board of health has a clear and across–the-board responsibility for all matters related to the health care system, the safety functions are distributed across a number of overlapping agencies. In 2001, two commissions in charge of reducing road accidents were combined because they had identical functions. In the current situation, certain regulators such as the electricity regulator have certain safety functions, while also enforcing economic or competition related aspects. The regulatory burden could be minimised either through setting up "one stop shops" (see below) or through transferring the safety or inspection function to one agency clearly in charge of this objective.

The merged function may be the core of their activities, as is the case for the Norwegian Railway Inspectorate. It may also be a necessary adjunct to regulatory work, as in the case of granting inspections prior to a licence or authorisation. In addition to merging services that use common techniques, it may be effective to merge services when the inspection work has the same purpose, such as monitoring plant and equipment safety. The possibility of merging the inspection services of the water and energy regulator for the land-based oil industry with those of the petroleum activity regulator for the oil industry off shore would be a welcome move.

3.2.4.2 The "one-stop shop" approach

The "one-stop shop" establishes a mechanism, whether institutionalised or not, which enables the regulatees to complete the formality through one single notification and a unified set of rules. This type of organisation increases efficiency and accountability because it allows for information to be shared in a transparent way. This is particularly relevant to the case of safety regulation.

The "one-stop shop" approach is a classical alternative in the field of regulation, as in practice the potential for merging regulators remains limited and cannot necessarily produce by itself all the benefits in terms of lowering transaction costs. The "one-stop shop" can also provide the State with an effective alternative to merging agencies if this encounters obstacles. This has been applied at the European level. The new EU regulations of 2002 changed the relations between the national competition authorities and the European Commission so that trans-European companies only deal with a single authority a single "window", even though national regulations become applicable in a second phase.

This “one-stop shop” is particularly appropriate when an issue involves many regulations in a single perspective, such as safety requirements. The Norwegian regulators, for example all agencies responsible for health, safety, working environment and environment in the land-based industry, have already set up a joint Internet site that acts as a “one-stop window” for companies. Lastly, establishing a “one-stop shop” will ultimately result in unifying the rules because, when rules are compiled and codified jointly, it is possible to fill the gaps and unify provisions.

4 POWERS FOR HIGH QUALITY REGULATION

4.1 The powers of the Norwegian *tilsyn*, a domestic and an international perspective

4.1.1 The current powers allocated to the Norwegian tilsyn

The powers refer to the type of legal rights that will be granted to regulators, in terms of inspection, licensing, authorisation or pricing. An overview of the powers of Norwegian *tilsyn* is presented in Annex 8. These powers fall in various categories. The "economic *tilsyn*" have powers to enforce economic regulation, as expected in terms of:

- Enforcing competition law, intervening against mergers (Competition Authority).
- Granting licences (Post and Telecommunications (PT), electricity (NVE), or recommending them to the ministry (BISC).
- Price fixing or price surveillance: access pricing to electricity networks (NVE), access pricing to the network (PT)

Annex 8. Mission, objectives and powers of selected tilsyn as of January 2003

The overall supervision of prices, formerly a function of the competition authority, is no longer exercised. As a result, the local inspection infrastructure of this authority has drastically been reduced in recent years, and now focuses on its core market promotion functions (See Chapter 3, Competition).

The powers of other *tilsyn* are more in terms of safety enforcement, inspection and sanctions, as is the case for the transport sector. The civil aviation authority or the railway inspectorate have the power to grant licenses based on specified requirements laid down in the regulations. These authorities are also in charge of supervising compliance with those requirements. In the same way, the Data Inspectorate has the power to verify compliance of statutes and regulation with the law. The powers of the board of health are also defined in terms of verifying compliance with safety and quality standards, and they can imply the right of closure for certain facilities. This board also has the power to conduct audits and advise providers and patients.

The powers of certain authorities are defined in a looser way and are related to various objectives, including the power to issue regulation as well as verify compliance. This, for example, is the case for the Petroleum directorate, which includes safety, knowledge and economic value to society. The powers

include issuing regulation, making decisions regarding consents, and verifying compliance with regulations. The board of health is also in a position to prepare certain regulations, based on its auditing function. In the same way, the civil aviation authority has a power of rule-making in terms of safety, which is essentially to translate to the Norwegian context and to the international regulations which apply to civil aviation. Finally, the Pollution Control Authority also has power to exercise authority through regulation and control measures.

4.1.2 The powers of the Norwegian tilsyn in an international perspective

An in-depth comparison of the powers of the various regulatory institutions across OECD countries would require a first cross-national systematic investigation. However, a few glimpses of evidence can be obtained from existing OECD work, particularly in the field of telecommunications and electricity. Annex 6 presents an overview of the main functions of the independent regulators in the Electricity Supply Industry. These powers generally include monitoring pricing and access to the grid. This can be done *ex ante,* with regulated third party access, or *ex post*, with negotiated third party access. The end-user tariffs can be controlled as well, as in Italy or Portugal, or Sweden. Norway is in a very liberalised position, with market mechanisms for electricity generation and supply, which would not be compatible with *ex ante* enforcement of prices. Norway has regulated third party access based on ex-ante (network income) and ex-post (actual tariffs) measures. Generation, trade and supply are competitive with no regulation of prices. Physical market rules and market access arrangements are regulated by the electricity regulator. The other powers are more related to the monopoly operations of energy companies. In terms of these competition related issues, the powers are exerted on the basis of joint agreements between the electricity regulator and the competition authority. This has led, for example, the competition authority to prohibit the main state-owned producer, Statkraft from acquiring 45.5 per cent in another generating firm (Agder Energi). However, as a result of the current possibility of appeal, the decision was overturned by the Ministry, under the condition of divesting assets. Contrary, in a parallel case, the Ministry confirmed the decision of the competition authority, where the NCA had prohibited Statkraft's acquisition of Trondheim Energiwerk. Finally, the financial markets related to energy (forwards and futures) are regulated by the Financial Authority (BISC). The three regulators are at present working together to develop their cooperation.

Annex 6 Overview of the independent regulatory agencies in the Electricity Supply Industry

Comparing the powers of the competition authorities is a challenging task, as these institutions often exert various functions in terms of merger control, sectoral exemptions, and supervising restrictive agreements. Therefore, a full and systematic comparison of those powers is unavailable at this stage. However, comparative insights can be gained from analysing the various reports on competition policy and institutions published as part of the Regulatory Reform Project of the OECD. Based on these data for example, the Norwegian competition law includes provisions related to restrictive agreements, as in most European Countries, the EU and the United States. The Norwegian Competition Act has no prohibition against abuse of dominance, but is authorised to intervene against anti-competitive behaviour such as terms of business (See OECD 2003a). Norway does not seem to rely on substantive standards to exert merger controls, but considers whether efficiencies (market-competition criteria such as lower production costs) in merger control decisions, as in most other countries.

An important part of the discussion for competition authorities is the sanctions related to the violation of competition laws. From the Norwegian perspective, they generally remain below what would be observed in other countries, although they are specified in different terms. They only amount to the gains, against twice the gains in the United States, and three times in Germany and New Zealand. (see Annex 9). The incentives offered to the industry therefore remain relatively weak since decisions can be subject to appeals, and the final amount is often lower than would have been initially decided.

ANNEX 9. Violation of competition laws: sanctions

The Norwegian institutions for regulating telecommunications mirror the situation in many countries facing a similar challenge when moving from monopolistic public provision to a set of competing providers, including the former incumbent (see Annex 10). The competence to issue licences still remains with the Ministry, as in the United Kingdom or France. The regulator has the power to settle disputes, on pricing and on service quality which is similar to the Netherlands, Germany or the United Kingdom. The competition authority also has the power to approve mergers, which again is similar to many other countries. One important difference remains in relation to other countries where the division of tasks between the competition authorities and the telecommunications supervisory body differs. For example, in Australia, the competition authority exerts most of its regulatory powers from an economic perspective. The Netherlands are currently merging the telecommunications regulator (OPTA) with their competition authority, under the condition that the new body be fully independent.

ANNEX 10. Powers of the institutions in charge of telecommunications in OECD Countries.

4.2 Adapting the distribution of powers in relation to the institutional environment

This section focuses on the powers of the *tilsyn* in relation to their environment and the Norwegian particularities. Pricing powers are not discussed as they are mostly derived from the international context in telecommunications, or from the necessity to administer the grid in electricity.

4.2.1 The rule-making power

The rule-making power, the power to lay down general and abstract rules which will regulate all future cases corresponding to the situation referred to in the rule, is generally the prerogative of a politically accountable authority such as a Ministry. This authority is expressed either through promulgating primary legislation or through exerting regulatory powers. The rule-making activity itself is one of the components of the regulation, which involves the entire *regulatory system*, the institutions and actors involved, and includes primary as well as subordinate rules.

The *tilsyn* currently enjoy some rule-making power, mainly in terms of subordinate rule. This is understandable in a context where independence is not firmly established, as the *tilsyn* are still part of the democratically accountable executive. Devolving a greater degree of independence to them may imply abolishing or strongly reducing some of the rule-making powers. For example, the *tilsyn* in charge of verifying compliance with safety standards also often enact them, even if these standards are derived from international norms, as is the case for the Civil Aviation Authority.

This situation needs to be considered in a pragmatic way. The *tilsyn* have the expertise and knowledge of a sector, through close auditing and regular inspections. This enables them to enact pragmatic rules, taking into account technical possibilities. Depriving them of any role in the rule-making process would result in not taking advantage of a very worthy resource. Even if *tilsyn* were not to retain the power of rule making, they would maintain the power to take individual decisions of sanctions or licences. This would result in rule making resulting from a jurisprudential approach through use of the precedent, and interpretation of the rule of law. Reducing the rule-making powers devolved to the *tilsyn* may not produce the clearest of all systems, if the rules were to be the result from such a jurisprudential approach.

4.2.2 The power to settle disputes

Regulators have rarely given the power to settle disputes between stakeholders, notably between established operators and new entrants. This was because regulation of a given sector was designed separately from the protection and balance of the rights of the persons concerned. This assumed that civil jurisdictions would actively deal with this aspect of the dealings between stakeholders, which seems to be less of a possibility in Norway, where the role of the judicial sphere remains limited compared with other countries, and where delays in courts can be an issue. When the power to settle disputes is not allowed to the *tilsyn*, as in the case for the banking and insurance sector, special extra-judicial complaint bodies have been established, to which consumers may submit their claims.

However, as a logical consequence of the institutional context, the *tilsyn* are led to hear complaints from new entrants or consumers, *de facto* or *de jure*. Two advantages could be drawn from increasing the power to settle disputes, in parallel to the ordinary power of civil jurisdictions to do so. First, this would avoid the need for an *ad hoc* body to carry out this task and would increase efficiency, as the *tilsyn* which has received a complaint from a new entrant or consumer, stands in a better position to find an agreement between the parties. Secondly, the effective resolution, through law or by agreement, of conflicts between operators and consumers, encourages trust between stakeholders, which is a legitimate goal of regulation, together with the protection of consumers.

4.2.3 The power of sanctions and quasi-judicial requirements

The power to impose sanctions is widely enjoyed among Norwegian *tilsyn (See Annex 8).* Such power is necessary as the Norwegian regulatory environment does not rely much on courts. The courts are not specialised technically, procedures can be relatively slow and the sanctions pronounced through the judicial system often remain limited in scope, or can be difficult to administer for economic activity, such as penal sanctions. However, this could be problematic when *tilsyn* still have some *de facto* rule-making power, and when they can conduct investigations, sometimes jointly with the National Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim). Thus, there is a need to ensure that this process remains impartial, similar to the one which would be implemented in court.

4.3 Maximising the quality of the regulatory power

Independent regulators or autonomous agencies with regulatory powers are key tools for regulatory reform. As such, devolving powers needs to be accompanied with the same requirements for regulatory quality as those which apply to the general rule-making. These requirements are expressed in the OECD 1997 recommendations. They can apply to the regulator itself, as part of an *ex post* evaluation, or to the individual regulations, as part of an *ex ant*e assessment, which can then be formulated through *ex ante* regulatory impact analysis (R.I.A.). In the case of independent regulators, where the amount of pure rule-making remains limited, regulatory quality can be best expressed through the following requirements derived from the OECD reference checklist for regulatory decision making:

- Do the benefits of regulation justify costs?
- Is the distribution of effects across society transparent?
- Is the regulation clear, consistent, comprehensible and accessible?
- Have all interested parties had the opportunity to present their views?
- How will compliance be achieved?

4.3.1 Access to information is key to informed decision-making

The first two principles require access to significant information, in order to assess the costs and benefits and the distribution of effects. The power to carry out inquiries and investigations is essential here. Without this power, it is impossible to reach enlightened, appropriate and effective decisions. In addition, this produces a "Hawthorne" effect, i.e., as soon as the threat of exerting the power exists, regulated entities may be led to adjust their behaviour in a desired way. For example, the competition authority and the BISC enjoy wide investigative powers, which they can exert on their own initiative. In some cases however, *tilsyn* have to wait for a referral from a stakeholder. This can slow down their action and can deprive them from access to necessary information. From a market perspective, ensuring market contestability requires that new entrants be able to have easy access to regulators and to any information brought to light by investigations carried out by them.

4.3.2 Transparency

Transparency allows stakeholders to understand the *tilsyn's* decision-making process and is one of the ways through which independence can be strengthened. In this regard, Norway is already well placed as the tilsyn are obliged by the Public Administration Act to notify all concerned parties before an administrative decision is made and to give the parties opportunity to express their opinion within a stipulated time limit. Transparency helps the regulatory authority's ability to maintain its own internal institutional independence, as institutions tend to become prisoners of their own routine. Transparency is a goal that seems achievable in Norway, because of these institutional features.

Norwegian regulators have already taken steps to meet this transparency principle, in particular by indicating the points brought to their attention in hearings and informal meetings with ministries, businesses and other affected parties. This meets NGO's demand to be kept informed of what regulators are doing. As transparency creates trust, it also lessens the likelihood that stakeholders will challenge decisions. Hence, it makes transparency an alternative to more costly monitoring or to litigation costs.

4.3.3 Clear, consistent and predictable decisions

4.3.3.1 Clarity

Making clear decisions is one of the core requirements for regulatory quality. Transparency alone is not sufficient in this regard if the field is too technical. The *tilsyn* in charge of civil liberties – such as the *tilsyn* responsible for the protection of private data (*Datatilsynet*) or the *tilsyn* in charge of public media (Media-ownership Authority[23]) – were established because of the need to defend a wide-ranging principle of individual liberty, and because their decisions are easy to understand. However, the *tilsyn* responsible for safety or the economic equilibrium of specific sectors, such as aviation or banking markets, do not make their decisions understandable by simply making them transparent.

This is why explaining decisions in a better way is crucial to ensuring public support for the regulators' actions. This difficult task can be achieved through public hearings, and reports published on a regular basis. Regulators can also develop exchanges with stakeholders, such as training representatives of consumer or citizens' associations. Setting up well designed Web sites will also enable citizens to have rapid access to useful documents. In addition, regulators have sought to harmonise the vocabulary that each of them uses (for example, the terms used for sanctions, which must be standardised so that they can be better understood by those upon whom sanctions are imposed).

In this field, Norway would tend to compare favourably to OECD countries. The relative small size of Norway, together with the fact that NGO's are generally active, well staffed and technically equipped facilitates the understanding of *tilsyn*' decisions. As for language, there was no specific mention of specific difficulties. The lack of clarity of *tilsyn*'s decisions did not appear very strongly from the OECD Secretariat's investigations.

4.3.3.2 Consistency and predictability

Predictable decisions are also a key component of regulatory quality: modern regulatory systems are designed to meet the needs of those bound by regulations rather than those enforcing them. For this reason, businesses and consumers, as well as ministries, need to be able to predict individual decisions made by a specific *tilsyn.*

The predictability expected from a regulator, can be ensured in two ways:

- The first is characteristic of systems based on civil law, and involves asking regulators to comply as closely as possible with the general rules laid down in laws and regulations. In this case, the lack of creativity of the regulator in making individual decisions ensures the security, predictability and legitimacy of the neutral power. However, this approach is not necessarily viable within a regulatory system bound to rapid technological change, as is the case in finance and telecommunications.
- The second prevails in common law jurisdictions, and involves referring to past decisions in a new analogous case. The authority ensures that it is adopting a consistent approach, through a quasi jurisprudential process. This predictability is increased by explaining how decisions were made, not only citing specific laws, regulations and legal criteria, but also referring to previous decisions and explaining why they chose to follow them or not.

At this stage, it is difficult to assess the extent to which *tilsyn* already motivate their decisions in a satisfactory way. The Public Administration Act section 24 states that "grounds shall be given for individual decisions" and section 25 lays down requirements regarding the motivation of the decisions. It seems that this is easier for *tilsyn*long established *tilsyn*, such as the competition authority, or the electricity *tilsyn*. More recent authorities, such as the Norwegian Railway Inspectorate are still too new for an informed judgment.

4.3.3.3 Due process and consultation with stakeholders

Due process and proper mechanisms for consultations are necessary to generate confidence and trust, particularly for new entrants, and to stimulate additional investments in a sector. The new entrants need to have access to regulators but also to understand the rules of the game. This is all the more necessary if established operators are familiar and satisfied with these rules, and if they resort readily to informal, or even confidential practices with the regulator. The need to open up competition means that regulators must take particular care of new entrants. It is thus particularly important that the criteria for decisions and for decision-making processes be transparent. A possibility is to hold public hearings to provide information to competitors, and encourage their trust.

The trust also rests on the respect of the procedural rights of each participant because under the principle of due process, the parties concerned are allowed to state their arguments and to check that these have been taken into consideration. Norway's traditions for dialogue allow these procedural principles to be effective for many *tilsyn.* In particular, Norway has a rule of *non-bis in idem*, which means that nobody can be sentenced twice for the same facts, a risk which arises when an operator is liable to application of an

administrative sanction imposed by the regulator and a criminal sanction imposed by a court. In some countries, the legal systems allow both to be applied, whereas the Supreme Court of Norway has taken care to exclude such a possibility

4.3.4 Compliance

The purpose of several *tilsyn*, is to adopt individual decisions aimed at verifying compliance with different standards. Where such compliance does not involve the need for operators to obtain approval, this control may be exercised through inspections. This is the case for the Civil Aviation Authority or the Railway Authority. Usually, supervision is exerted through granting individual licences. This applies particularly to cases involving pollution, since the Act setting up the Norwegian Pollution Control Authority establishes the principle that pollution is prohibited unless special permission has been granted either by law, regulation or as an individual permit. (See *Annex* 8).

4.3.4.1 Dealing with overlapping responsibilities

In some cases, overlapping demands for licensing and safety imposed on the operators could trigger a heavy and uncoordinated regulatory burden. The power to grant a licence before operators can enter a sector, the renewal of authorisations, regular inspections, etc., are key tools for ensuring proper regulation. The matters can be more complex when the purpose of regulation is more than simply opening up recently liberalised sectors to competition, and is more a matter of maintaining a dynamic competitive equilibrium while protecting another interest, for example safety, as is the case for the oil industry.

4.3.4.2 Giving tilsyn the possibility to go to court to maximise compliance

When regulators act on their own initiative, without having to wait for a referral, they are closer to administrators than to judges. Better access to courts could also help maximise compliance. This would require that regulators be able to bring proceedings themselves, take part in a judicial procedure, and even lodge appeals against judicial decisions. Technically, this is only possible if the regulator possesses legal personality, which is the case in some countries. The German financial regulator was given legal personality under an Act of 1998. A recent reform in France, creating a Financial Markets Authority, gives legal personality to this body (2003). The legal personality contributes to strengthening independence, but above all increases effectiveness by allowing regulators to react very quickly, be a party to proceedings other than those initiated by them, and thus to state the case for regulatory requirements in other decision-making *fori*. Currently, this is not possible in Norway. This legal evolution could nevertheless be envisaged from a longer term perspective.

4.4 Policy options

If the powers delegated to the Norwegian *tilsyn* generally mirror the Norwegian situation, they might be revised or more clearly defined. For example, if the various *tilsyn* are not given the power to exert any direct rule-making, a possibility would be to allow them to propose general rules which would only become effective if endorsed by theministry. Many *tilsyn* already are involved in preparatory rule-making, inter alia not to overburden the ministries with work on technical regulations. Thus, a minister would retain the formal power to enact the rule, or to block the adoption of rules for which he would be politically accountable without depriving regulators of an essential means of regulation and without giving them an incentive to resuscitate a regulatory power through individual decisions. In the same vein, increasing the

power to settle disputes could help to strengthen the legitimacy of the *tilsyn* and to take advantage of their technical expertise. When *tilsyn* are to exert quasi judicial requirements, the process needs to be carried out in an impartial way, with different persons bringing the proceedings and imposing sanctions.

The level of regulatory quality, in terms of transparency, clarity, consistency and compliance, is generally satisfactory in Norway. Strengthening the independence of the *tilsyn* may improve the predictability of decisions, since the level of arbitrary political interference will be removed. However, this may not suffice for Norway to reach the best international standards. From an OECD perspective, it could be useful to define, as a roadmap, a set of best practices for utility regulation, as they have been developed in other countries. (See Box 6). These best practice rules could be defined after a broad review, and then be regularly checked as part of a performance evaluation.

Box 6. **Best practice for utility regulation and economic regulators in the UK and Australia**

After reviewing the economic regulators in the UK, the Better Regulation Task Force, formulated 5 recommendations:[24]

1. Regulators' annual business plans should include a clear prioritisation of their different objectives, and should explain how the decisions relate to the objectives.
2. Regulators are required to produce assessments of costs and benefits for proposals with a significant business impact.
3. The boards of regulators should include both executive and non executive members, and be appointed for expertise rather than represent stakeholder groups.
4. Regulators need to promote consultation
5. Regulators should set a programme to review market sectors for lifting price controls and removing outdated licence condition.

In Australia, the Office of Water Management has identified 9 principles of best practice regulation:[25] Communication, Consultation, Consistency, Predictability, Flexibility, Independence, Effectiveness and efficiency, Accountability, Transparency. This needs to be accompanied by a whole government approach, with a small number of regulatory bodies and consistency in their approaches. A Governance Task Force was established on 14 November 2002, to review the corporate governance of Commonwealth statutory authorities and office holders, in order to develop a broad template of governance principles.

5 ASSESSING THE PERFORMANCE OF INDEPENDENT REGULATORS

5.1 The challenges of performance assessment

Performance assessment helps to improve the whole regulatory system by making adjustments on the basis of the obtained results. This promotes the harmonisation of substantive rules through using common evaluation instruments. The purpose of performance assessment is to measure whether the action taken by regulators has been satisfactory and has led to expected results in view of their powers and independence.

5.1.1 A complex task

Assessing the performance of a supervisory institution is a difficult task, and needs to be conducted mainly from an efficiency perspective. Supervisory institutions represent a form of non-elected power, with a degree of independence, which can only be justified if it is made efficient and accountable. Assessing performance involves either *ex ante* or *ex post* evaluation. *Ex ante* evaluation is performed through Regulatory Impact Analysis in the case of rule-making. *Ex post* evaluation implies reassessing the objectives assigned to the supervisory institution to see whether it performed according to the objectives or missions which justified its creation.

It would be desirable that a Regulatory Impact Assessment be performed before setting up supervisory institutions or independent regulators, but it is not always possible. In some cases, these institutions are established or strengthened to react to a crisis, such as a financial market crisis. In other cases, these institutions are established to cope with international commitments. Many of the *tilsyn* have a long history with a gradual development from a ministerial agency.

Therefore, *ex post* evaluation is the primary tool to assess the performance of supervisory institutions. This involves assessing the returns of the resources invested into them, or more broadly their economic and social benefits against the powers or missions they were attributed. This assessment is necessary, as supervisory institutions rely on the use of public funds and the exercise of public prerogatives, and therefore need to be accountable. This assessment balances the independence devolved to supervisory institutions and requires careful monitoring. Too stringent assessment could be used as a tool to undermine the independence of regulators, thus preventing them from fully fulfilling their mission, while the absence of performance assessment could raise concerns about their legitimacy and truly undermine their institutional legitimacy and influence.

5.1.2 The pillars of performance assessment

This assessment includes the following:

- Pure financial assessment of the use of budgetary funds *(Prudent use of resources complying with financial regulations)*
- Legal review of the regulator's decision; *(Compliance with the law).*
- Broader performance assessment. *(Value for money).*

The pure financial assessment is usually the task of the national audit office, but may be performed differently for independent bodies in certain countries. The legal review of the regulator's decisions also contributes to accountability, and has been discussed above. The broader performance assessment itself can be conducted in several frameworks and by different types of institutions with a different expertise. In broad terms, this assessment can involve:

- A self assessment, conducted by the supervisory agency itself;
- An assessment produced by an executive body, such as a Ministry;
- An assessment produced by a national audit office, as a way of reporting to Parliament in broad terms on the efficiency of its policies;

- An independent assessment conducted as part of academic research to contribute to the public debate.

A major requirement for performance assessment is to state the goals clearly. These goals are usually laid down by law. In theory, the most effective approach is to give regulators clear and possibly single goals, for example opening up a sector to competition, or ensuring safety. However, in practice multiple goals have often been assigned to sectoral regulators. For example, the regulator of the Post Office and Telecommunications needs to ensure the "socio-economic" development of the sector, a vague term which makes subsequent evaluation difficult. The trade-off between various objectives such as social goals and efficiency issues is inherently a political task, something for what independent supervisory agencies do not have a comparative advantage nor a democratic legitimacy.

The performance assessment against objective external goals can also be completed by an assessment of the "internal process": whether the supervisory agency has a sound internal organisation and a good mix of technical skills. Furthermore, the rapidity with which decisions are taken, the underlying reasons given for those decisions, the number of challenges affecting them and the degree of compliance emerging from those decisions are also relevant parameters contributing to quality and performance.

Reforms can then be justified when the desired results have not been obtained by the regulator and if their internal functioning also shows shortcomings. On the other hand, if internal procedures are correct, teams competent, independence recognised and relations with other institutions or stakeholders active, then other factors must be responsible for the poor results, such as insufficient resources or legal powers. In some cases, unrealistic goals may have been set for the supervisory agency, such as an unrealistic timeframe, or too stringent safety objectives. Therefore, it is critical for the institutions in charge of performance assessment, and particularly the national audit office, to have a sound framework and to ensure neutrality and due process in considering the cases; (see for example the Norwegian Office of the Auditor General below).

5.1.3 Assessment in relation to single or multiple objectives

The institutional design of regulators impacts on the possibility of assessing their performance, as it is easier to assess a single goal/single function regulator than a multifunction sectoral regulator. This is where the traditional organisation of regulators, by sectors, as reflected in the current institutional framework in Norway, makes rigorous assessment difficult. On the other hand, moving towards single objective regulators, as in the case of safety following the White Paper's recommendations, would make the assessment more feasible.

Nonetheless, when multiple objectives cannot be avoided, they could be hierarchised by law, So far, this has not been done for any *tilsyn* in Norway. With such a prioritisation of objectives, a reliable multi-criteria evaluation is made easier, providing a relative weight to indices of satisfaction. Furthermore, the democratic aspect of the regulatory system will be enhanced because prioritising objectives is also necessary for regulators to perform efficiently. Striking a balance between freer competition and safety, or reconciling employment policy and competitive development, or regional development policy, should provide substance to the democratic public debate and be laid down by law.

5.2 The current practice in Norway

5.2.1 The framework developed by the Office of the Auditor General and recent results

Assessing performance of the public sector in broader terms is part of the Office of the Auditor General's responsibility. This dates back to the considerations made in 1972-1973 where the Auditor General is to provide the Parliament with more detailed knowledge about the activities of the government administration. This was reinforced by the Parliamentary Standing Committee on Scrutiny and Constitutional Affairs which noted that "performance audits reveal a clear need for further examination of the effectiveness, efficiency, management and supervision in the use of public funds". Performance assessment is the systematic analysis of the economy, efficiency and effectiveness of government administration on the basis of the Parliament's decisions.

The performance assessment framework developed by the Office of the Auditor General is associated with the constraints of independence, expertise, due care and objectivity when performing audits. As a result, OAG staff for performance auditing differs from the staff for public finance auditing, and involves a number of practitioners from the sectors. One third of OAG's staff is devoted to performance assessment. Each assessment involves a project initiation, a feasibility study, a main analysis, and post-audit work, and a follow-up plan. The reporting to the Parliament comes at the end of the process. The audit criteria are fixed by relevance with the sector, which involves consideration of the supervisory agencies's objectives and their internal "stated" mode of control. These reports also involve making use of existing data or collecting new data.

Since 1996, almost all supervisory agencies mentioned in this report, or some of their predecessors, have been part of the various assessments of the Auditor General. Some of the more recent results are presented in Box 7. This confirms the problem of conflicting objectives in the safety field and the need for reforming the Labour inspection authority, and is in a sense very consistent with the 2003 White Paper.

Box 7. **Recent assessments by the Office of the Auditor General in relation to the *tilsyn* (1999-2001)**

The labour inspection authority

This authority was questioned several times. It is not included in the current sample but is significantly affected by the 2003 White Paper. According to a performance audit conducted in 1999-2000, this inspectorate had used fewer resources on inspections than it had planned to. In spite of a number of years of work on methods and tools, no common guidelines as to how this could be implemented were drawn up. Some of the guidelines elaborated in certain areas were not followed by local offices. Flaws in the procedures for public procurement were also detected in 2001.

In addition, co-ordination issues arose. A report released by the OAG in 2002 underlined that there was substantial uncertainty linked to the emission figures of the environmental authorities for chemicals considered a risk to health and the environment. The labour inspection authority does not know which hazardous chemicals are being used in the workplace, and the agricultural inspection service rarely controls the use of chemicals. This underlined the risks raised by co-ordination issues among various *tilsyn* in the field of health and safety.

The civil aviation administration

The civil aviation administration financial management has been criticised for deficient budget management, poor control of costs, and under-rating of computing challenges (1999-2000) (This agency was the old supervisory body for government owned airports and air traffic control, reorganised as Avinor. This assessment refers to this body and not to the civil aviation authority established in 2000). The development of the new airport at Gardermoen in 1990 and the new express railway line were also surveyed, and are given as a case example in the framework of performance assessment issued by the OAG. The audit verified whether the civil aviation administration and the railway state had incorporated the requirement for cost-benefit analysis in their internal guidelines as a criterion for audit assessment. These existing "second order" criteria were then used to assess whether they had actually complied with it.

The directorate of public roads

The public road administration has been criticised for unsatisfactory quality assurance in planning in the development of a mainland link to Mageroya and Nordkap. In terms of performance auditing, the management of selected toll road projects were not met with sufficient management resources to ensure responsibility for follow up (1999).

The board of health

The audit revealed shortcomings in the procedures for handling complaints and raised issues as to whether several of the working methods had been given adequate priority, and whether the legal protection of those involved had been sufficiently safeguarded.

The grid function in the electricity market

The regulatory model was assessed as an appropriate tool for increasing the efficiency of grid functions and for lowering and streamlining prices for subscribers. However, the data was too insufficient to draw firm conclusions.

The pollution control authority

The OAG performed a detailed technical performance auditing of the follow up with Norwegian national regulation of the OSPAR convention within industry, waste water management and agriculture, where the pollution control authority is one of the major stakeholders. In this performance audit, the OAG reviewed practices and formulated some advice for incremental changes to improve the performance, while not revealing major shortcomings.

5.2.2 The assessment conducted by the responsible ministries

The Ministry of Labour and Government Administration has also produced studies on the "institutional governance" arrangements of supervisory agencies in Norway as a whole, with a particular emphasis for those agencies under its direct responsibility. These have been mentioned above and served as the basis for the proposals in the White Paper. They are focused on the overall institutional framework and the preconditions for good performance, such as independence or clearly articulated goals. Similarly, sectoral ministries could also assess the performance of supervisory agencies. However, the line is difficult to draw, as an assessment by another executive body in the case of a truly independent agency can also be a risk for the regulator's independence.

5.2.3 Independent academic assessment

Applied economics plays a significant role in assessing the performance of regulators. This type of assessment has been developed but mostly for sectors with significant economic impact and historical experience. Many studies have considered the electricity sector[26]. Some have also been conducted on the deregulation of the airline industry[27]. These studies provide an assessment of the economic impact of the regulator's incentives offered to the regulated sector, and in particular on the competitive nature of the market and price adjustments. Given the relatively small size of the country, the wealth of information available on the electricity sector is impressive. It can be anticipated that a similar flow of studies could be developed in other regulatory fields.

5.3 Policy options

A number of elements contributing to sound performance assessment already exist in Norway. In light of strengthening the independence of supervisory authorities, it seems that the corollary would be to ensure that accountability is also reinforced. However, performance assessment implies the need for information, with a continuous stream and comparability over time.

5.3.1 The need for information

The Norwegian situation is satisfactory in terms of transparency and access to information. The *tilsyn* have already taken many initiatives, including public hearings or the setting up of Internet sites. For example the Norwegian State Pollution Authority (SFT) provides continuously and publicly available information (on the web) on all individual plants regulated by emission permits (see chapter 2, paragraph 82). However, the production of statistical information could be reinforced. The annual report, as part of the self-assessment, is one means of feeding information to the public debate. However, these reports only provide part of the required information and could be strengthened to enable statistics to be produced on a regular basis, and ensure comparability of the results overtime. The use of international information standards for reporting needs to be encouraged to produce statistical information pertaining to specific sectors and facilitate benchmarking through international comparisons. This is particularly important in a European perspective, which promotes unified markets, as in the case for electricity. In addition to statistical information, objective parameters could be reported, for example, the time needed to hand down decisions, and should be recorded in a consistent manner across agencies.

5.3.2 One-off requests from the public authorities for expert reports

Information may also be needed on an *ad hoc* basis in cases of dysfunction or shortcomings. One-off requests can be made by either ministers or Parliament. The publicly commissioned reports can either be entrusted to national or even foreign universities, or can be conducted within the public sphere. However, care must always be taken to preserve the impartiality of the expertise, following the example given by the Office of the Auditor General.

6 CONCLUSION AND RECOMMENDATIONS FOR ACTION

6.1 General assessment of strengths and weaknesses

The current Norwegian system of supervisory bodies (*tilsyn*) reflects the overall situation of the Norwegian public administration. It has developed without major crises and has been able to cope with the technical tasks. This system is also evolving fast. Norway was a precursor in Europe in modernising its supervisory agency prior to liberalisation of the electricity market in the 1990s. However, other changes were often prompted only as a result of corresponding EU regulation, as was the case with the introduction of a specific supervisory body for railways.

These rapid changes reflect the ability of the system to adapt. The level of technical expertise, the social consensus, public consultation and transparency have provided sound elements of good regulatory practices. However, from an institutional standpoint, the reforms have often been piecemeal and remained partial. This, for example, was the case for the last reform of the competition authority in 1994. As noted in Chapter 2, a whole perspective of the government has been missing. The supervisory bodies also lack a clear notion of independence, and how they could relate to the political power.

The Norwegian government has currently laid out a framework for action with the 2003 White Paper (see Box 7), which addresses a number of issues raised in this report. While not anticipating the outcome of the debate in Parliament, and the subsequent drafting and discussion of law amendments, the current report outlines a number of options to be considered by Norwegian policy makers.

6.2 Policy Recommendations

These policy recommendations have been developed as part of the analytical framework adopted for this report, and in light of international experience. They need to be considered with caution, as no definite agreed international framework exists that can unequivocally advise on organising supervisory authorities. However, the analytical toolkit allows to draw some policy implications and to outline a number of recommendations. While some of these recommendations may deal with some of the concerns of the 2003 White Paper, they may also take a slightly different perspective and offer some complementary approaches for reconciling increased independence with proper accountability.

1. Strengthen the independence and the authority of the tilsyn

The current features for ensuring the independence of the *tilsyn* seem relatively at odd with current international practices, mainly for network industries, financial service sectors and the competition authority. The possibility of appealing the decisions to the Minister and of receiving direct instructions from the Ministry stands out in terms of the international perspective. These features have clearly been identified in the 2003 White Paper. However, other features of the governance structure of the *tilsyn* could also be streamlined, in particular in relation to the appointment process and governing structures. The possibility of indefinite terms for the directors of some *tilsyn* is also uncommon. This could result in rigidity, while at the same time the independence of the decisions was not firmly ensured. In many other countries, the practice is to have boards, where the members are appointed for overlapping periods of time.

2. Clarify the institutional framework and the functional responsibility

Overlapping responsibilities and conflicting objectives assigned to the same agency have blurred the institutional framework, particularly in the field of safety. Independent supervisory agencies need clear and unambiguous objectives to fulfil their missions properly and be accountable for their achievements. In some cases, this requires redesigning the sharing of responsibilities between agencies in order to improve the horizontal design, and make it compatible with increased independence. The 2003 White Paper makes a number of proposals in this respect, which, taking into account the existing institutional constraints, give ground to significantly improve the situation.

3. Strengthen the framework for accountability

Increased independence implies increased accountability. Establishing independent bodies with boards under no institutional control, could raise legitimate concerns in terms of their accountability. Effective and true independence from the short-term political intervention requires that this dialogue be instituted, with proper procedures to ensure accountability so that the supervisory bodies can be responsive to their environment. It is important to note that independent agencies are created or modified by law as a result of long-term policy needs, but the powers delegated to them are not immutable.

The notion of accountability is relatively difficult to translate in the Norwegian setting where the concept of ministerial accountability prevails. However, setting up Parliamentary hearings and organising a dialogue with the public opinion and the citizens[28], could offer the Supervisory bodies a possibility to remain accountable. In some other countries, the most independent supervisory bodies are given the possibility of presenting a report which provides explanations about their conduct and the rationale for

their decisions to the elected authorities. The periodicity of these reports can be fixed, such as a report to Parliament once a year. This could be similar to the annual parliamentary debate on the financial markets based on a white paper from the Ministry of Finance. The Parliamentary resources to monitor and follow up this reporting activity need to be increased and strengthened correspondingly.

4. Monitor the performance of the tilsyn

The tools for performance assessment exist in Norway, but need to be used more extensively and at regular time intervals in relation to more independent institutions. International comparisons with similar countries could be widely used in performing this assessment. Performance assessment involves producing more information, particularly quantitative information on the market outcomes and the economic performance. In addition, performance assessment can result from independent initiatives, either in the academic research, or as a result of parliamentary initiatives. The independence of the expertise providing the monitoring is key, either in terms of funding the academic research, or in providing impartial advice, as is the case with the office of the Auditor General.

5. Establish rules of best practice to accompany performance monitoring

Norway could establish best practice rules to accompany performance monitoring, in order to move to a continuous process of performance improvement. These rules could also help to accept an increased level of independence, as they would provide a clear framework as to how the authority is to be exerted. These best practice rules would also be useful as a reference point and could help to maintain the long-term strategic orientation. What needs to be avoided is to rigidify the practice and further limit changes. Therefore, the rules should be renewed periodically (e.g. every five years).

NOTES

1. OECD (2002) "Improving the Institutional Basis for Sectoral Regulators", Journal of Budget and Management, Paris. OECD (2002), Distributed Public Governance: Agencies, Authorities and other Government Bodies, PUMA, Paris. OECD (1999), Hewitt B. (1999) The relationship between competition and regulatory authorities, Journal of Competition Law and Policy, n° 1, 3, 169-246, "Relations between regulators and competition agencies", Competition Policy Roundtables No. 22, Paris. OECD (2000), "Telecommunications regulations: institutional structures and responsibilities", DSTI/ICCP/TISP(99)15/Final, Paris, 25 May. International Energy Agency (2001), Regulatory Institutions in Liberalised Electricity Markets, OECD/IEA, Paris. Further recent work undertaken under the auspices of the IEA include: "Regulatory Reform in the Electricity Supply Industry: An Overview", C. Ocaña, August 2002.

2. See OECD (2002d).

3. The word tilsyn in Norwegian conveys the notion of "watching over", corresponding to the English "watchdog", which corresponds to the supervisory role.

4. In this report, the term "supervisory bodies" and the word "*tilsyn*" will be used indifferently and will refer specifically to the Norwegian institutions. The use of the term "regulator" will refer to the purely regulatory institutions in a more general way and across countries.

5. Decentralised public agencies are not a feature unique to Norway. In many countries, autonomous agencies have been part of new public management (NPM) and modern public governance (Schick 2002, OECD 2002). This was also a key idea underpinning the UK reforms of "next steps" in 1988.

6. Staatskonsult (2002).

7. These categories differ slightly from those used by the Ministry of Labour and Government Affairs. Staatskonsult proposed four categories of *tilsyn*: those responsible for ensuring safety and supervising the health system; those that regulate energy and transport; those in charge of monitoring markets and lastly those that ensure the protection of democratic and cultural values, such as pluralism of information and respect for privacy. This type of classification has the disadvantage of separating the mission of supervising networks (transport, telecommunications, energy) from that of supervising economic aspects (openness to competition, prevention of anti-competitive practices, etc.), despite the fact that these missions are almost always interconnected in the case of network-based industries. The two last categories have therefore been grouped for the current report.

8 For a history of financial supervision in Norway, see Ecklund and Knudsen 2001.

9. Eriksen (1997).

10. See Ministry of Finance (2001).

11. Ministry of Labour and Government Administration (2002a).

12. Ministry of Labour and Government Administration, (2002), Modernizing the Public Sector in Norway, 24 January 2002, Oslo.

13. Ministry of Labour and Government Administration, (2002b).

14. Ministry of Labour and Government Administration, (2003), Oslo.

15. For an initial approach see Cordova-Novion and Hanlon (2002, "Regulatory Governance: Improving the Institutional Basis for Sectoral Regulators", OECD Journal on Budgeting, Vol 2, No. 3, Paris.

16. See Laffont Frison Roche (2002). An interesting feature is that the French notion of Independent Administrative Authority has a certain bearing with the Norwegian concept of *tilsyn*, at least covering supervisory functions in the media and civil liberties, as well as in the competition field and the utilities.

17. For the full text of the act see: www.ub.uio.no/ujur/ulovdata/lov-19670210-000-eng.pdf.

18. These statements are based on interviews with major stakeholders in the Norwegian debate based on a mission to Oslo early January 2003, including the supervisory bodies, consumers and private stakeholders and various government officials.

19. This was before the establishment of the Civil Aviation Authority in 2000.

20. To search: decision on pricing of baby bells versus the suppliers.

21. But this was not included in the detailed sample.

22. See OECD (2000). See also the original paper prepared for that meeting OECD (1999a), which includes a detailed submission from Norway. The reader can also refer to the *OECD Review of Regulatory Reform in Norway*, chapter 3, "Competition Policy", where some of these aspects are also examined.

23. Not analysed in detail within the scope of this report.

24. See Better Regulation Task Force (2001).

25. See Office of Water Regulation (1999).

26. See for example Magnus, E., incentives for efficiency in grid operations, Olsen I., Risk management in the new electricity trade, and A. Halset, Competition and market power. In Magnus Midtun (2000). See also Sorgard (1997), Braten (1997). See also the studies by Statistics Norway:, see Bye Halvorsen (1999).

27. See Salvanes, Steen Sorgard (1998).

28. As following the well-established requirement of notifying all affected parties and receiving opinions prior to decisions.

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ANNEX 1. General Description of selected Norwegian supervisory bodies (*tilsyn*), as of January 2003

Name of the supervisory Agency	**Date** Establishment/ last modified	**Laws**	**Sectors under the regulators authority**	**Institutional, Legal status, and sector**
Norwegian Competition Authority (NCA)	1926 1994	*First competition law 1926, substantially revised in 1933* *Current: Competition Act* (January 994) is the "foundation" for objectives, but also similar themes in other legislation, for instance act on advertising, act on rates for apartment rent etc	Any "commercial activity" and "undertaking", meaning economic activity, permanent or occasional and any individual or enterprise that engages in commercial activities. The Act applies to any kind of commercial activity, regardless of the kind of goods or services the activity concerns, and irrespective of whether it is private or carried out by central or local government authorities.	Directorate under the Ministry of Labour and administration.
Communications				
Post and Telecommunications Authority (PT) (Post-og Teletilsynet.	1987[2]) 1997	Telecommunications Act (1996) Post Act (1995)	Post and telecommunications companies	Autonomous administrative agency under the Norwegian Ministry of Transport and Communications
Energy				
Norwegian Water Resources and Energy Directorate (NVE)	1921 1986 1990	Norwegian water resources and electricity board established in 1921, water and energy administration in 1986. The 1990 Energy Act Water resources act 2000 Industrial concession act 1917	Water and energy resources.	A subordinated ministerial agency. The Norwegian Water Resources and Energy Directorate (NVE) is subordinated to the Ministry of Petroleum and Energy
Norwegian Petroleum Directorate (Oljedirektoratet) (NPD)[(1)]		Petroleum Activities Act relates to tax on discharge of CO2 and to scientific research and exploration for sub-sea natural resources other than petroleum resources. Act relating to Worker Protection and Working Environment	The petroleum industry.	Ministerial agency. Subordinated to the Ministry of Petroleum and Energy (and to the Ministry of Labour and Government Administration in matters relating to health and safety.
Transport				
The Norwegian Railway Inspectorate (Statens jernbanetilsyn) (NRI)	1996 2001	Act of June 1993 on the establishment and operation of Railways (Railway Act).	Railways and railway activity.	Autonomous administrative agency under the Ministry of Transport and Communications.
The Civil Aviation Authority Norway (CAAN) (Luftfartstilsynet)	2000	Act No. 101 of 11 June 1993 relating to Civil Aviation	Civil aviation.	Autonomous administrative agency under the Ministry of Transport and Communications

Name of the supervisory Agency	**Date** Establishment/ last modified	**Laws**	**Sectors under the regulators authority**	**Institutional, Legal status, and sector**
The Directorate of Public Roads (DPR), (Statens vegvesen/Vegdirektoratet)	NA	Roads Act, Road traffic act and part of Transport act	Road and transport industry. Financing national ferry services.	Ministerial agency. Subordinated to ministry of Communications. Government organisation related to building and maintaining national and (county roads) and to controlling vehicles and driver licensing.
Finance				
The Banking, Insurance and Securities Commission (BISC) (Kredittilsynet)	Major reorganisation in 1986	Financial Supervision Act, Section 3: "Kredittilsynet shall ensure that the institutions it supervise and operate in an appropriate and proper manner in accordance with law and provisions issued pursuant to the law and with the intentions underlying the establishment of the institution, its purpose and articles of association."	Banks, finance companies, mortgage institutions, insurance companies, pension funds, securities trading, stock exchanges and authorised market places, estate agents, debt collection, external accounting services and auditing activities	Autonomous financial regulator under the Ministry of Finance
Health, Safety, Environment				
The Norwegian Data Inspectorate (NDI) (Datatilsynet)	1980 2000	Act 9 June 1978 on registry related to persons. Act of 14 April 2000 No. 31 relating to the processing of personal data (Personal Data Act) Act of 18 May 2001 No. 24 (Personal Health Data Filing System Act) Act of 16 July 1999 No. 66 on the Schengen Information System (SIS)	All sectors processing personal data unless otherwise is provided by a special statute.	The Data Inspectorate is an independent administrative body under the Norwegian Ministry of Labour and Government Administration.
Norwegian Board of Health (NBH) (Statens Helsetilsyn)	Several acts	The total set of acts and regulation related to provision of health care (except pharmaceuticals and medical technical equipment).	All public and private providers of health care. (Including governmental owned and run hospitals.)	Ministerial agency. Subordinated to the Ministry of Health.
Norwegian Pollution Control Agency (NPCA) (Statens forurensningstilsyn (SFT))	1974 with several minor changes up to the present	The pollution Control act (1991). The product Control act	All sectors that have pollution problems pursuant to the two mentioned Acts, a number of special regulations have been issued.	Executive agency under the Ministry of the Environment

Source: OECD Secretariat based on a specific questionnaire addressed to supervisory bodies. (1) Note: the NPD is also a health and Safety supervisory agency. First established in 1987 as Statenstelefortvaltning and extended to Post in 1997.

ANNEX 2. Independence and financing of selected Norwegian supervisory bodies as of January 2003

Name of the supervisory Agency	Head	Terms of office	Individual instructions	Staff	Budget	Financing	Accountability
Economic general							
Norwegian Competition Authority (NCA)	DG proposed by Ministry of Labour and gov. and appointed by the King	Indefinite	Yes	120	71 mio Kr	Public funds	Reports to the ministry
Communications							
Post and Telecommunications Authority (PT)	DG appointed by King in Council	Indefinite	Yes	170	170 mio Kr.	Self financed, fees and charges, fixed by the Ministry of Transport and based on input from the regulator	Reports to the Ministry every four months, + annual report
Energy							
Norwegian Water Resources and Energy Directorate (NVE)	DG proposed by Ministry of petroleum and energy and appointed by the King	6 years, renewable	Yes	400	228 (regulation)	Public Funds	Reports to the Ministry of petroleum and energy
Norwegian Petroleum Directorate (NPD)(1)	DG proposed by Ministry of petroleum and energy and appointed by the King	NA	Yes	340	311 mio Kr.	Public funds. Some levies and fees on the regulated industry.	Reports to Ministry of petroleum and energy
Transport							
The Norwegian Railway Inspectorate (NRI)	Director nominated by government	Indefinite	Yes	20	20.9 mio Kr	Public funding	Annual reports Reports to the Ministry
The Civil Aviation Authority Norway CAAN	Head appointed by Government	Indefinite	Yes	145	121.8 mio Kr	Fees and charges and public funds. (52 % public funds). Level fixed by the Ministry of transport based on proposal from CAAN.	Reports to the Ministry
The Directorate of Public Roads (DPR)	Nominated by Minister	NA	Yes	NA	NA	Public funds, levies on drivers licensing and vehicle control, registration, funds from toll roads.	Reports to Ministryr
Finance							
The Banking, Insurance and Securities Commission of Norway	Board appointed by the King for DG appointed by King in Council	Board: 4 years DG: 6 years, renewable once		176	127 mio Kr.	Budget approved by the Ministry of Finance, charges levied on financial institutions as approved by the Ministry of finance.	Reports to the Ministry of Finance. Co-operation with the Central Bank
Health, Safety, Environment							
The Norwegian Data Inspectorate NDI	DG		No			Public funds	
Norwegian Board of Health (NBH)	DG and Dep DG nominated by cabinet	DG 6 years Dep DG permanent	No	371		Public funds	Reports to ministry of health, annual reports.
Norwegian Pollution Control Authority (NPCA-SFT)	Head appointed by the Government	6 years	Yes	270	670 mio Kr.	Public funds	Reports to the Ministry of Environment.

Source: OECD Secretariat based on a specific questionnaire for supervisory bodies. (1) Note: the NPD is also a health and Safety supervisory agency.

ANNEX 3. Possibility of appeals after decisions led or instructed by selected Norwegian supervisory bodies

Name of the supervisory Agency	Decision taken by the Supervisory Body		Decision taken by the Minister after instruction led by the supervisory body		Judicial appeal	Civil Ombudsman
	Second examination	**Appeal**	**Second examination**	**Appeal**		
Economic general						
Norwegian Competition Authority (NCA)	*tilsyn*	Minister +			Yes	Yes
Communications						
Post and Telecommunications Authority (PT)	*tilsyn*	Special Appeal body (ST), but the Minister remains for matters of political nature or fundamental importance			Yes	Yes
Energy						
Norwegian Water Resources and Energy Directorate (NVE)	*tilsyn*	Minister			Yes	Yes
Norwegian Petroleum Directorate (NPD)		Ministry of Labour and Government Administration or Oil Ministry			Yes	Yes
Transport						
The Norwegian Railway Inspectorate (NRI)	*tilsyn*	Minister			Yes	Yes
The Civil Aviation Authority Norway CAAN	*tilsyn*	Minister			Yes	Yes
The Directorate of Public Roads (DPR)	*tilsyn*	Minister			Yes	Yes
Finance						
The Banking, Insurance and Securities Commission of Norway BISC	tilsyn	Minister	Minister	King in Council	Yes	Yes
Health, Safety, Environment						
The Norwegian Data Inspectorate NDI	*tilsyn*	Special appeal body, Privacy Appeal Board			Yes	Yes
Norwegian Board of Health (NBH)	*tilsyn*	Special appeal body			Yes	Yes
Norwegian Pollution Control Authority (NPCA)	*tilsyn*	Special appeal body			Yes	Yes

Source: OECD Secretariat based on a specific questionnaire addressed to supervisory bodies. (1) Note: the NPD is also a health and Safety supervisory agency.

ANNEX 4. A comparative overview of competition institutions

	Competition policy agency staff	Separate from government	Board or individual[c]
Australia	540	Y	B
Canada	383	Y	B, I
Czech Republic	110	Y	I
Denmark	89	Y	B, I
Finland	57	Y	B (Market Court), I (FCA)
France		Y	B
Germany	297 (empl.)	Y	B
Greece	25	Y	B
Hungary	116	Y	B
Ireland	24	Y	B
Italy	180	Y	B
Japan	607	Y	B
Korea	416	Y	B
Mexico	195	Y	B
Netherlands	255 (2002)		I
New Zealand	107		B
Norway	Over 100	Y	I
Poland	188		I
Slovak Republic	75	Y	I
Spain	98	Y	B
Sweden	110	Y	I
Switzerland	38	Y	B
Turkey	318	Y	B
United Kingdom	232	Y	B, I
United States	1165	Y	B, I
European Union	570		B

Note: Blank entries indicate no information available.

a) Public resources for enforcement and for development of general competition policy. These may include ministry policy office resources of public prosecutors that are applied to competition enforcement as well as the enforcement office or agency. Full-time equivalent, unless otherwise indicated.

b) Whether there is a public competition enforcement agency that is separate and independent from the government (or there is a first-instance decision maker, such as a court, that is independent from the government), with tenure or other guarantees.

c) Whether the first-instance decision-maker is an individual official (or judge), or a multi-member board or commission.

Source: OECD Secretariat.

ANNEX 5. Independence of regulatory institutions: the case of telecommunications

Country/Regulator	Regulator appointed by	Term of office	Financing Source	Reports to	Decisions can be overturned by[a]
Australia: Australian Communications Authority (ACA) and Australian Commission and Competition Commission (ACCC)	The Governor-General	Not more than 5 years	Budgetary	Department of Communications and the Arts	None
Austria: Telecom Control (TKC)	The Government	5 years	Industry fees	Legislature (and Federal Ministry for Science and Transport)	None
Belgium: Belgian Institute for Postal Service and Telecommunications (BIPT)	The Minister of Telecommunications	6 years	Fees	No reporting responsibility except publishing an annual report	None
Canada: Canadian Radio Television and Telecommunications Commission (CRTC)	The Governor in Council	5 years	Fees	Department Industry Canada (and the Legislature)	The Governor in Council
Czech Republic: Czech Telecommunications Office (CTO): as a part of the Ministry of Transport and Communications	The Minister of Transport and Communications	Indefinite	Budgetary	Ministry of Transport and Communications	None
Denmark: National Telecom Agency (NTA)	The Minister of Research and Information Technology	Indefinite	Fees and budgetary	Ministry of Research and Information Technology	Telecommunications Complaints Board and Telecommunications Consumer Board
Finland: Telecommunications Administration Centre (TAC)	The President	Indefinite	Industry fees	Ministry of Transport and Communications	None
France: Autorité de la régulation des Télécommunications *(ART)*	The President (commissioners are appointed by the President and the Legislature)	6 years	Budgetary	Annual report to the Government and the Legislature	None
Germany: Regulatory Authority for Telecommunications and Post (Teg TP)	The President	5 years	Industry fees and budgetary	Legislature every two years	None
Greece: National Post and Telecommunications Commission (EETT)	The Minister of Transport and Communications	5 years	Industry fees	Ministry of Transport and Communications	None
Hungary: Communications Authority	The Minister of Transport, Communications and Water Management	Indefinite	Industry fees	Ministry of Transport, Communications and Water Management	The Minister
Ireland: Director of Telecommunications Regulation (ODTR)	The Minister of Public Enterprise	Indefinite (can only be removed by the Parliament)	Industry fees[b]	Ministry of Public Enterprise	None
Italy: Autorita Garante nelle Communicazioni (AGC)	The Prime Minister (commissioners are appointed by the legislature)	7 years	Budgetary (plan to collect industry fees)	No reporting responsibility except publishing an annual report.	None
Japan: Ministry of Posts and Telecom (MPT)	–	–	Budgetary	–	None
Korea: Korea Communications Commission (KCC) (a semi-independent body in the Ministry of Information and Communication – MIC)	The President	3 years	Budgetary	–	None
Mexico: Commission Federal de	The President (by the advice of	Indefinite	Budgetary	No reporting responsibility except	The Minister or a

Country/Regulator	Regulator appointed by	Term of office	Financing Source	Reports to	Decisions can be overturned by[a]
Telecommunications (Cofetel) in the Ministry of Communications and Transportation	the Minister of Communications and Transportation)			publishing an annual report.	representative designated by the Minister
Netherlands: Independent Post and Telecommunications Authority (OPTA)	The Minister of Transport, Public Works and Water Management	4 years	Industry fees	Annual report to the Ministry of Transport, Public Works and Water Management	None
New Zealand: Commerce Commission (competition authority)	The Minister of Commerce		Budgetary	(Outcomes monitored by the Government)	None
Norway: Norwegian Post and Telecommunications Authority (NPT)	The Government	Indefinite	Industry fees	Ministry of Transport and Communications	The Norwegian Telecommunications Appeals and Advisory Board. Ministry of Transport and Communication (matters of political or fundamental importance)
Poland: Ministry of Post and Telecommunications	–	–	Budgetary	–	None
Portugal: Instituto das Comunicacoes de Portugal (ICP)	The Council of Ministers	3 years	Industry fees	Ministry of Equipment	The Minister
Spain: Comision del Telecomunicaciones (CMT)	The Government. Needs approval from the Parliament.	5 years	Industry fees[c]	Ministry for Development (General Secretariat for Communications)	None
Sweden: National Post and Telecom Agency (NPTA)	The Government	6 years	Industry fees[c]	Annual report to the Ministry of Transport and Communications	None
Switzerland: Communications Commission (ComCom), and Federal Office for Communications (OFCOM)	ComCom: the Federal Council OFCOM: the Minister	4 years Indefinite	ComCom: Industry fees OFCOM: Industry fees and budgetary	ComCom: Annual report to the Federal Council (Confederation's executive). OFCOM provides information on its management of the sector to the Ministry of Environment and Transport	None
Turkey: Ministry of Transport and Communications	–	–	Budgetary	–	None
United Kingdom: Office of Telecommunications (OFTEL)	The Minister of Trade and Industry	5 years	Industry fees	Ministry of Trade and Industry	Monopolies and Mergers Commission
United States[d]: Federal Communications Commission (FCC)	The President. Needs to be confirmed by the Senate	5 years	Industry fees and budgetary	Legislature	None

Note: "–" indicates no information available.

a) In most countries, the independent regulator's decision can be overruled through a court decision. However, in many countries, while the court can nullify the decisions of the independent regulator, it cannot impose a new decision on the issue.

b) Periodical contribution by operators.

c) Periodical contribution by operators based on turnover.

d) Entries for the United States only reflect telecommunications regulation at the federal level.

Source: Gönenç *et al.* (2001). STI DSTI/ICCP/TISP(99)15/Final.

ANNEX 6. An overview of the independent regulatory agencies in the Electricity Supply Industry (ESI)

	Scope	Board Members	Length of appointment (Years)	Possibility of renewal	Staff approx. (1999)	Budget (1)	Main Source of Financing	Main functions
Australia	Energy, Telecoms and Airports	7	Up to five years	Yes	370 (of these 11 deal with electricity)	31.5	Treasury's Budget	Network regulation; Wholesale market rules; Antitrust
Canada	Electricity, Gas and Oil	9	7	Yes	280	19	Annual fees paid by the regulated companies (based on the volume of regulated activity)	Regulation of electricity exports
Finland	Electricity	1	Indefinite	-	10	0.9	Supervision and permit fees on network activities	Licensing of network activities; network price regulation (ex post)
France	Electricity	6	6	No	80	3.	Main budget: Budget proposed to the Ministry of Energy by the regulator.	Grid and distribution Network access,
Ireland	Electricity	1 (could increase up to 3)	Up to 7	Yes, one time	Na	Na	Paid by electricity undertakings (to be determined)	Network regulation, Access and pricing of the grid, Licensing, Advise on purchase of external electricity producers
Italy	Electricity and Gas	3	7	No	80	9.7	Tax on utilities revenue not to exceed 1 per thousand of regulated industry income	End user tariffs; network regulation
Norway	Water and energy (electricity)	1	6 years	Yes	400 (60 electricity regulation)	35	Public Funds	Issues regulations, licences and monitors the energy market, and monopoly operations of energy companies.
Portugal	Electricity	3	5	Yes	42	3.1	Surcharge on transmission tariffs	End user tariffs
Spain	Electricity, Gas and Oil	9	6	Yes, one time	118	6.5	Surcharge on consumption not to exceed 0.5 per thousand of electricity revenue	Approves Mergers and Acquisitions of transmission and distribution companies
Sweden	Electricity	1	Indefinite	-	(2)	(2)	(2)	End user tariffs; licensing
United Kingdom	Electricity and gas	1	5	Yes, one time	233 (97)	21	Charge on the income of the regulated parties	End user Tariffs, licensing
United States (FERC)	Electricity, Gas and Oil	5	5	Yes	1377 (97), ESI only 470	154	Fees for services (e.g. filing fees) and annual charges on utilities	Rules for interstate electricity sales and transmission:; transmission and wholesale tariffs; overseeing Mergers

(1) (approx., Million USD, Year 1997). (2) Integrated within the Swedish National Energy Administration which employs about 160 staff and has an annual turnover of about 1 Million SEK
Source: Adapted from IEA, Regulatory Institutions in Liberalised Electricity Markets (2002). Data as collected by the IEA in 2000-2001 and released in the report. Updated by the Secretariat for France and Norway.

ANNEX 7. Telecommunication regulators: regulations on universal services

Country	Universal service framework	Existence of funding mechanism	Cost Finding	Cost allocation	Notes
Australia	Yes	Yes	R	M	The costs of the USO are shared in proportion to the carriers' shares of 'eligible revenue'. After obtaining the consent of participating carriers, the Minister may specify another cost-sharing mechanism.
Austria	Yes	Yes			
Belgium	Yes	Yes	R	R	
Canada	R	R	R	R	
Czech Republic	No	-	-	-	
Denmark	Yes	Yes	R	R	If it is proved that a deficit exists in the provision of universal service, the NTA will collect a contribution from fixed voice telephony service providers on the basis of the amount of turnover.
Finland	No	-	-	-	
France	Yes	Yes	M (R)	M (R)	ART proposes the assessment of the cost of the universal service and the level of operators' individual contributions to the Ministry.
Germany	Yes	Yes	R	R	While there is a legal provision for a universal service funding mechanism, it has not been applied yet.
Greece	Yes	Yes	M (R)	M (R)	Regulator implements Ministry's decision.
Hungary	No	-	-	-	No universal service regulation in the telecommunication law.
Iceland	Yes	No	-	-	Direct subsidy from government. Cross subsidy between services.
Ireland	No	-	-	-	
Italy	Yes	Yes	R	R	
Japan	Yes	No	-	-	According to the NTT law, NTT's voice telephony service is regulated as universal service.
Korea	Yes	Yes	M	M	
Luxembourg	Yes	Yes			
Mexico	Yes	No	-	-	Subsidy from access charges.
Netherlands	Yes	Yes	R	R	While there is a legal provision for a universal service funding mechanism, it has not yet been applied.
New Zealand	See note	-	-	-	The Kiwi Share Obligations are in effect a type of universal service requirement. Public disclosure of Kiwi Share costs are required from January 2000. Interconnection charges contribute to any such costs.
Norway	Yes	No	-	-	Incumbent bears USO based on its licence requirement.
Poland	Yes	No	-	-	Establishment of the universal service fund is predicted in the draft of new telecommunication law.
Portugal	Yes	Yes	R	R	The criteria for the division of the net costs of universal service between operators and providers that are obliged to contribute are defined and published by ICP.
Spain	Yes	Yes	R	R	Telefonica has been designated the dominant operator required to provide universal service until end 2005.
Sweden	Yes	No	-	-	Universal service being provided through a licence condition on dominant carrier.
Switzerland	Yes	Yes	-	-	Universal service licence granted on a periodic basis by tender. If a need for funding is noted, the granting authorities (ComCom/OFCOM) can impose a fee on companies with a licence.
Turkey	Yes	No	-	-	Cross subsidy between services.
United Kingdom	Yes	No	-	-	Universal service provision is an obligation on British Telecom and Kingston Telecom.
United States	Yes	Yes	R	R	Each telecommunications carrier that provides inter-state telecommunications services must contribute, on an equitable and non-discriminatory basis, to the provision of universal service.

Note: Countries where the Ministry holds both regulatory and policy functions in Japan, Korea Poland and Turkey. **M** – Ministry, **R** – Independent telecommunications regulator. *Source*: OECD.

ANNEX 8. Mission, Objectives and powers of selected Norwegian supervisory bodies (*tilsyn*) as of January 2003

Name of the supervisory Agency	Missions, Objectives	Powers
Economic general		
Norwegian Competition Authority (NCA)	Efficient utilisation of the society's resources, through providing necessary conditions for effective competition.	Evaluate public schemes and regulations, point out anticompetitive practices. Call attention to the restraining effects of public measures, submitting proposals aimed at increasing competition and facilitating entry for new competitors. Power to act against anticompetitive action. May intervene against mergers. Limitations of the act for electric power, gas, and water, transport (rail truck, bus air ship and barge), communications, broadcast, agriculture, professions, services banking and insurance.
Communications		
Post and Telecommunications Authority (PT)	To promote fulfilment of national needs for telecommunications and efficient utilisation of resources through effective competition, nationwide provision of basic telecommunications services on equal term (universal service), technical quality and security, access to public telecommunications networks and public telecommunications services, coordination of networks, consumer interests, protection of personal data and privacy.	Market open for new entrants. Only for certain frequency allocations, select between several applicants. Ensure that prices process for operators with market power are cost-oriented (access to network). Power of supervision. Management of scarce resources (frequencies, numbers). Intervention on own initiative or in case of disputes between firms, or between firms and consumers (except about payment of bills). Possibility of sanction and settling disputes between firms.
Energy		
Norwegian Water Resources and Energy Directorate (NVE)	Ensure environmentally sound management of water resources, promote an efficient energy market and cost efficient energy system; promote efficient use of energy Role in flood and accident control planning. Maintaining national power supply.	Issues regulations, licences and monitors the energy market, and monopoly operations of energy companies.
Norwegian Petroleum Directorate (NPD)(1)	The Norwegian Petroleum Directorate shall contribute to creating the highest possible values for society from oil and gas activities, founded on a sound management of resources, safety and environment.	to have the best possible knowledge concerning discovered and undiscovered petroleum resources on the Norwegian continental shelf, to carry out supervision to ensure that the licensees manage the resources in an efficient and prudent manner and to supervise regulatory compliance so that a responsible safety level and working environment are established, maintained and further developed. Influencing the industry to develop solutions which serve the best interests of society as a whole. Provide advice to supervising ministries, Authority to issue regulations and make decisions regarding consents, orders, deviations and approvals pursuant to the regulations.
Transport		
The Norwegian Railway Inspectorate (NRI)(	Main mission related to safety. No other general concerns.	Grant licences. Power of inspection and sanction if breaches the law. No intervention in pricing.
The Civil Aviation Authority Norway CAAN	Safety regulation and inspections. Economic and social goals, as well as environmental goals	Making and implementing of safety regulations, inspection sanction. Grant licenses: No intervention in relation to pricing
The Directorate of Public Roads (DPR)	Safety of road transport, quality of roads	Building and maintaining national and (county) roads Control of vehicles and driver licensing

Name of the supervisory Agency	Missions, Objectives	Powers
Finance		
The Banking, Insurance and Securities Commission of Norway (BICS)	That the sector is in accordance with law and provisions issues pursuant to law. That institutions and markets function in a safe and efficient manner. Financial stability for competitive market conditions.	Recommendation to the Ministry of finance for granting licenses, and for withdrawing. Only limited power to grant licenses for certain activities (investment firms, financing companies, investment brokers). No interventions in relation to pricing for bids or commissions. Possibility of sanction for forbidden behaviour (insider trading, market manipulation and unreasonable business methods. Receives complaints from consumers but cannot settle disputes.
Health, Safety, Environment		
The Norwegian Data Inspectorate (NDI)	The purpose of this Act is to protect persons from violation of their right to privacy through the processing of personal data. The Act shall help to ensure that personal data are processed in accordance with fundamental respect for the right to privacy, including the need to protect personal integrity and private life and ensure that personal data are of adequate quality.	Keep a systematic, public record of all processing that is reported or for which a licence has been granted, deal with applications for licences, receive notifications and assess whether orders shall be made in cases where this is authorized by law, verify that statutes and regulations which apply to the processing of personal data are complied with, and that errors or deficiencies are rectified, identify risks to protection of privacy, and provide advice on ways of avoiding or limiting such risks provide advice and guidance in matters relating to protection of privacy and the protection of personal data to persons who are planning to process personal data or develop systems for such processing, including assistance in drawing up codes of conduct for various sectors on request or on its own initiative give its opinion on matters relating to the processing of personal data
Norwegian Board of Health (NBH)	Responsible for promoting quality and legal safeguards within the Norwegian health sector	Supervision of all health services and all health personnel (internal control systems are a major instrument) Administrative tasks associated with supervision (e.g. complaints from consumers and patients) Advice and guidance on health matters to the Ministry of Health and Social Affairs, the health sector and the general public. The board has its own legal competence to perform audits, other control activities and to put into force certain coercive measures relating to health care providers and personnel
Norwegian Pollution Control Authority (NPCA)	The Pollution Control Act establishes the principle that pollution is prohibited unless special permission has been granted either by law, regulation or as an individual permit. The Product Control Act shall prevent products from causing damage to health or harming the environment, either as a result of the chemicals within products or of the process of making the products.	Exercising authority through regulations and control measures, assessing the degree to which the different sectors of society have achieved their environmental goals, instructing and guiding county governors, promoting Norwegian objectives in international environmental co-operation, helping to improve the efficiency of the environmental protection work of developing countries

Source: OECD Secretariat based on a specific questionnaire for supervisory bodies. (1) Note: the NPD is also a health and Safety supervisory agency.

ANNEX 9. Violation of competition laws: sanctions

	Financial sanctions					Penal or individual sanctions			
	Maximum possible[a]			Highest fine, horizontal price fixing[b]	Highest fine, abuse of dominance[c]	Maximum possible[d]		Maximum imposed[e]	
	US dollars (million)	Per cent of turnover	Other	Million US$		Fine ('000)	Prison (years)	Fine ('000)	Prison (years)
Australia	5.3			13.9		267.4		74.9	
Canada	6.4			16.1			5		0.5
Czech Republic	0.3	10		0.2					
Denmark	No max.			0.0					
Finland	0.6	10 (domestic)		1.4 (total, 3 respondents)	3.8				
France		5				1400			
Germany	0.5		3 x profit	137.8		1600	5 (collusive tendering)		
Greece		15				13.2			
Hungary		10		1.4	0.1				
Ireland	3.4	10					2		
Italy		10		325.2	54.0				
Japan		6 (up to 3 yrs)		50.9		3900 (firm) 38.6	3		
Korea	0.8	5 (affected)		93.5	3.1	200	3	100 (decision pending)	
Mexico			375 000 x min. wage	0.2		7500 x min. wage			
Netherlands	0.4	10		0.9	5.7				
New Zealand	4.4	10	3 x illegal gains			221.2			
Norway	TBD		100% gain from violation				6		
Poland	4.5	10							
Slovak Republic	0.2	10		0.0			5		

ANNEX 9. Violation of competition laws: sanctions (cont.)

	Financial sanctions					Penal or individual sanctions			
	Maximum possible[a]			Highest fine, horizontal price fixing[b]	Highest fine, abuse of dominance[c]	Maximum possible[d]		Maximum imposed[e]	
	US dollars (million)	Per cent of turnover	Other	Million US$		Fine ('000)	Prison (years)	Fine ('000)	Prison (years)
Spain	0.8	10		7.8		27 (against managers)			
Sweden	0.5	10							
Switzerland		10 (domestic)				61 or 12.2 (depending on the case)			
Turkey		10 (gross income)				10% of fine imposed on firm			
United Kingdom		10 (up to 3 yrs)							
United States	10.0		200% of the gain or harm	1 000 (all parties) 500 (single firm)		350 or 200 of the gain or harm	3	10 000	3 (10 years, including other violations); average sentence in 2001, 15 months
European Union		10		416 (single firm) 770 (all parties)	67.6 (single firm) 245.9 (all parties)				

Note: Blank entries indicate no information available.

a) Maximum amount that could be assessed applying the statutory provisions for financial sanctions (including, in some jurisdictions, "surcharges" that are not treated as fines). In case of multiple entries for countries, it is the highest sanction that applies.

b) Largest financial sanction that has actually been assessed for horizontal price fixing (or the equivalents, of bid rigging, market division, and boycott to enforce horizontal collusion); unless indicated, figure is total sanctions against all participants in a violation.

Largest financial sanction that has actually been assessed for monopolisation or abuse of dominance.

If there are provisions for penal sanctions against individuals, the maximum penalty (typically length of incarceration) provided for violation of the competition law.

The maximum sentence that has actually been imposed.

Source: OECD Secretariat.

ANNEX 10. Powers of the institutions in charge of telecommunications in OECD Countries.

	Institution in charge of telecommunications	Type of institution	Division of regulatory responsibilities for licensing by type of institution			Regulations on interconnection		Regulations on pricing	Regulations on service quality	Basis for the evaluation of the firm performance and costs
			Issuing licence	Oversight of licence requirements	Approval of Merger	Authorisation of interconnexion charges of operators with signifiant market power	Dispute resolution			
Australia	ACA (Australian Communications Authority) and ACCC (Australian Competition and Consumer Commission)	Independent tel. regulator Competition authority	X	X	X	X	X	X	X	Information provided by the regulated firm Information gathered by the regulatory authority using investigative powers Independent review is conducted at the end of each price cap period
Austria	TKC (Telecom Control)	Independent tel. Regulator	X	X		X	X	X	X	Information provided by the regulated firm Information gathered by the regulatory authority using investigative powers
Belgium	BIPT (Belgian Institute for Postal Service and Telecommunications)	Independent tel. Regulator Competition authority Ministry	X	X	X X	X X	X	X	X X	Information provided by the regulated firm Information gathered by the regulatory authority using investigative powers
Canada	CRTC (Canadian Radio Television and Telecom. Office)	Independent tel. Regulator Competition authority Ministry	X (fixed) X (mobile)	X (fixed) X (mobile)	X X	X	X	X	X	Information provided by the regulated firm Information gathered by the regulatory authority using investigative powers
Czech Republic	CTO (Czech Telecommunications Office)	Independent tel. Regulator Ministry Other	X	X	X	No authorization	X (technical aspect) X (price)	X X	X	Information provided by the regulated firm Information gathered by the regulatory authority using investigative powers
Denmark	NTA (National Telecom agency)	Independent tel. Regulator Competition authority	X (mobile)	X	X	X	X	X	X	Information provided by the regulated firm Information on comparative performance and costs of firms
Finland	TAC (Telecommunications Administration Centre)	Independent tel. Regulator Competition authority Ministry	X	X	X	X	X	X	X	Information provided by the regulated firm Information gathered by the regulatory authority using investigative powers
France	ART (Autorité de la régulation des Télécommunications)	Independent tel. Regulator Competition authority Ministry	X	X	X X	X	X	X	X	Information provided by the regulated firm and an independent audit
Germany	Teg TP (Regulatory Authority for Telecommunications and Posts)	Independent tel. Regulator Competition authority	X	X	X X	X	X	X	X	Information provided by the regulated firm and an independent audit Information gathered by the regulatory authority using investigative powers Information on comparative performance and costs of firms in the same sector/market. Other
Greece	EETT (National Post and Telecommunications Commission)	Independent tel. Regulator Competition authority Ministry	X	X	X	X	X	X	X	
Hungary	Communication Authority	Independent tel. Regulator Competition authority Ministry	X	X	X	X	X	X	X	Information provided by the regulated firm and an independent audit Information gathered by the regulatory authority using investigative powers

Source: DSTI/ICCP/TISP(99)15/Final, ECO/WKP(2000)24. Gonenc, Maher and Nicoletti (2000).

ANNEX 10. Powers of the institutions in charge of telecommunications in OECD Countries (cont)

	Institution in charge of telecommunications	Regulatory institutions	Division of regulatory responsibilities for licensing			Regulations on interconnection		Regulations on pricing	Regulations on service quality	Basis for the evaluation of the firm performance and costs
			Issuing licence	Oversight of licence requirements	Approval of Merger	Authorisation of interconnexion charges of operators with signifiant market power	Dispute resolution			
Iceland	PTA (Post and Telecommunication Administration)	Independent tel. Regulator	X	X			X	X	X	
		Other				No authorization				
Ireland	ODTR (Director of Telecommunications Regulation)	Independent tel. Regulator	X	X		X	X		X	Information provided by the regulated firm and an independent audit
		Competition authority			X					Information gathered by the regulatory authority using investigative powers
Italy	AGC (Autorita Garante nelle Communicazioni)	Independent tel. Regulator	X	X		X	X	X	X	Information on comparative performance and
		Competition authority			X					costs of firms in the same sector/market
Japan	MPT (Ministry of Post and Telecom)	Competition authority			X					Information provided by the regulated firm
		Ministry	X	X	X	X	X	X		Information gathered by the regulatory authority using investigative powers
		Other							No monitoring	Information on comparative performance and costs of firms in the same market
Korea	MIC (Ministry of Information and Communication)	Independent tel. Regulator					X			Information provided by the regulated firm and an independent audit
		Ministry	X	X	X	X		X	X	
Luxembourg	ILT (Institut Luxembourgeois de Telecommunications)	Independent tel. Regulator				X	X	X	X	
Mexico	Cofetel (Commission Federal de Telecommunications)	Independent tel. Regulator		X		X	X	X	X	Information provided by the regulated firm
		Competition authority			X					
		Ministry	X							
Netherlands	OPTA(Independent Post and Telecommunications Authority)	Independent tel. Regulator	X (fixed)	X		X	X	X	X	Information provided by the regulated firm and an independent audit
		Competition authority			X					Information gathered by the regulatory authority using investigative powers
		Ministry	X (mobile)							Information on comparative performance and costs of firms in the same sector/market
New Zealand	Commerce Commission : Competion authority	Competition authority			X					Information provided by the regulated firm
		Ministry						X	X	
		Other		.		No authorization	X			
Norway	NPT (Norwegian Post and Telecommunications Authority)	Independent tel. Regulator					X	X	X	Information provided by the regulated firm and an independent audit
		Competition authority			X					
		Ministry	X	X						
		Other				No authorization				
Poland	Ministry of Post and Telecommunication	Ministry	X	X	X	X	X	X	X	Information provided by the regulated firm
										Information gathered by the regulatory authority using investigative powers
										Information on comparative performance and costs of firms in the same market

Source: DSTI/ICCP/TISP(99)15/Final, ECO/WKP(2000)24. Gonenc, Maher and Nicoletti (2000).

ANNEX 10. Powers of the institutions in charge of telecommunications in OECD Countries (cont)

Institution in charge of telecommunications		Regulatory institutions	Division of regulatory responsibilities for licensing			Regulations on interconnection		Regulations on pricing	Regulations on service quality	Basis for the evaluation of the firm performance and costs
			Issuing licence	Oversight of licence requirements	Approval of Merger	Authorisation of interconnexion charges of operators with signifiant market power	Dispute resolution			
Portugal	ICP (Instituto das Comunicacoes de Portugal)	Independent tel. Regulator	X	X		X	X	X	X	Information provided by the regulated firm Information gathered by the regulatory authority using investigative powers Information on comparative performance and costs of firms in the same market
		Competition authority						X		
		Ministry			X			X		
Spain	CMT (Commision del Mercando de Telecomunicaaciones)	Independent tel. Regulator	X (fixed)	X		X	X	X		Information provided by the regulated firm and an independent audit Information gathered by the regulatory authority using investigative powers Information on comparative performance and costs of firms in the same sector/market
		Competition authority			X					
		Ministry	X (mobile)						X	
Sweden	NPTA (National Post and Telecom agency)	Independent tel. Regulator	X	X		X	X	X	X	Information provided by the regulated firm Information gathered by the regulatory authority using investigative powers
		Competition authority			X					
Switzeland	ComCom (Communications commission) and OFCOM (Federal Office for Communications)	Independent tel. Regulator	X	X			X		X	Information provided by the regulated firm and an independent audit Information gathered by the regulatory authority using investigative powers Information on comparative performance and costs of firms in the same sector/market
		Competition authority			X					
		Ministry						X		
		Other				No authorization				
Turkey	Ministry of Transport and Communications	Competition authority								Information provided by the regulated firm Information gathered by the regulatory authority using investigative powers
		Ministry	X	X			X	X		
		Other			.	No authorization			No monitoring	
United Kingdom	OFTEL (Office of telecommunications)	Independent tel. Regulator		X	X	X	X	X	X	Information provided by the regulated firm Information gathered by the regulatory authority using investigative powers Information on comparative performance and costs of firms in the same sectors. Other
		Competition authority			X					
		Ministry	X	X						
United States	FCC (Federal Communications Commission)	Independent tel. Regulator	X	X	X	X	X	X	X	Information provided by the regulated firm and an independent audit Information gathered by the regulatory authority using investigative powers Information on comparative performance and costs of firms in the same sector/market Rulemaking procedures
		Competition authority			X					
		Other				X	X			

Source: DSTI/ICCP/TISP(99)15/Final, ECO/WKP(2000)24. Gonenc, Maher and Nicoletti (2000).