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COMPETITION LAW IN THE SCANDINAVIAN LEGAL ORDER: A COMPARATIVE AND ENFORCEMENT-FOCUSED ANALYSIS OF NORWAY, FINLAND, AND SWEDEN

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Abstract: *This article provides a comparative analysis of competition law in the Scandinavian countries, with particular emphasis on Norway, Finland, and Sweden. It examines how these jurisdictions apply a coherent regulatory logic to cartel enforcement and merger control, grounded in principles of substance over form, enforcement restraint, and the protection of the public interest. By integrating legal doctrine with economic analysis, the article demonstrates that Scandinavian competition regimes balance strict deterrence of hard-core cartels with forward looking merger control aimed at preventing structural harm to competition. In the European Union, Articles 101 and 102 of the Treaty on the Functioning of the European Union address anticompetitive agreements and the abuse of dominant positions, forming the backbone of EU competition rules, against which the Scandinavian systems are assessed. The analysis shows that effective competition regulation in Scandinavia relies on aligning enforcement practices with broader societal objectives, including consumer welfare and market integrity.*

Keywords: *Competition Law; Cartel; Merger Control; Leniency; European Union law.*

1 Introduction

Competition law serves as a cornerstone for ensuring efficient, fair, and innovation-driven markets. In the European Union, Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) address anti-competitive agreements and the abuse of dominant positions, forming the backbone of EU competition rules. This framework is complemented by national enforcement mechanisms, particularly in the Nordic region, where Denmark, Sweden, Finland, and Norway demonstrate a distinctive regulatory culture characterized by judicial restraint, institutional independence, and high levels of technical expertise.

The Nordic competition law enforcement culture prioritizes cases with the greatest potential harm to consumer welfare, focusing on serious market distortions such as hard-core horizontal cartels and clear abuses of dominance, rather than marginal or formal infringements. Leniency programs, investigative tools, and sanctions—including administrative fines and, in Norway, criminal liability—serve to maintain deterrence while promoting efficiency and proportionality. Economic analysis, particularly market definition, dominance assessment, and

effects-based evaluation, underpins enforcement decisions and ensures adaptability to dynamic and digital markets.

Judicial restraint in Scandinavia reflects institutional confidence in specialized authorities rather than under-enforcement. Courts intervene only when there are manifest errors, systemic risks, or clear anti-competitive effects, avoiding exhaustive substantive reviews of complex commercial assessments. This approach aligns with a broader Nordic vision emphasizing regulatory coherence, efficiency, and long-term consumer welfare, as outlined in strategic reports such as A Vision for Competition.

The Scandinavian approach also illustrates converging regulatory logics across legal domains. Courts consistently apply functional interpretation, public interest orientation, and judicial restraint, reflecting pragmatic regulation tailored to small, highly integrated economies. By adopting a comparative, cross-sectoral methodology, this study examines not only the alignment of Nordic enforcement with EU competition law but also the institutional, economic, and policy factors shaping regulatory choices. This perspective underscores the Scandinavian commitment to evidence-based, proportionate, and economically informed competition law enforcement, which serves as a model for balancing administrative efficiency, judicial oversight, and market integrity.

2. Methodology and Theoretical Framework

This study employs a comparative legal methodology, integrating doctrinal analysis with functional and policy-oriented interpretation. The primary legal instrument analyzed is Council Regulation (EC) No 1/2003, which governs the implementation of Articles 81 and 82 EC (now Articles 101 and 102 TFEU). The analysis is based on a close reading of the Regulation's recitals, operative provisions, and legal context, interpreted in light of the Treaty framework and relevant Court of Justice of the European Union (CJEU) case law. Particular attention is given to provisions on decentralized enforcement, the direct applicability of Article 81(3), the allocation of powers between the European Commission, national competition authorities, and national courts, and the rules concerning burden of proof and judicial oversight.

Chapter 2, Section 1 of the Swedish Competition Act, in conjunction with Article 101 of the TFEU, prohibits agreements or concerted practices between undertakings that may significantly prevent, restrict, or distort competition within the internal market. This prohibition covers a wide range of anti-competitive cooperation, including horizontal agreements such as price-fixing and market-sharing, as well as vertical agreements such as exclusivity arrangements or information exchange. The rules apply regardless of whether the cooperation is formal or informal, and both horizontal and vertical arrangements fall within the scope of the prohibition.

Chapter 2, Section 7 of the Swedish Competition Act, together with Article 102 of the TFEU, prohibits undertakings holding a dominant position in a relevant market from abusing that position. Market dominance is assessed based on factors such as market share, with a share above 40% often considered indicative of dominance, though other market conditions and structural factors are also evaluated. Abusive practices may include limiting market access for new competitors, predatory pricing, or imposing unfair trading conditions, all of which are prohibited under both national and EU competition law.

The comparative dimension examines how Norway, Finland, and Sweden implement EU competition law in practice. Norway's Competition Act of 2004, aligned with the EEA Agreement, empowers the Norwegian Competition Authority (NCA) with investigative, administrative, and sanctioning powers. Finland and Sweden, as EU Member States, implement EU competition law directly alongside national acts, enforced by the Finnish Competition and Consumer Authority (FCCA) and the Swedish Competition Authority (SCA). By integrating doctrinal analysis of Regulation 1/2003 with a comparative assessment of Nordic enforcement, the study demonstrates how legal rules, institutional design, and policy objectives interact to ensure effective competition law implementation.

The study also incorporates a doctrinal analysis of Regulation (EC) No 139/2004, which governs the control of concentrations between undertakings in the European Union. The regulation establishes a legal framework to assess the competitive impact of mergers, acquisitions, and joint ventures that function as autonomous economic entities, with particular focus on preventing the creation or strengthening of dominant positions that could significantly impede effective competition (European Union, 2023). It introduces a one-stop-shop system, granting the European Commission the authority to approve, modify, or prohibit concentrations with an EU dimension, while ensuring that cases affecting a single Member State can be referred to the national authorities in accordance with the subsidiarity principle. Pre-notification procedures allow firms to request referral of cases to Member States' competent authorities, and the regulation provides mechanisms to enforce compliance, including fines, periodic penalty payments, and consultation with an advisory committee. This doctrinal approach enables the study to evaluate how Nordic countries apply EU merger control rules alongside national legislation, ensuring both procedural uniformity and effective competition enforcement.

3. Cartels in Scandinavian Competition Law

3.1 Public Enforcement of Cartels in the Scandinavian Countries: Detection, Deterrence, and Sanctions

Cartels are regarded as the most serious infringements of competition law in Scandinavia, reflecting a broad consensus that hard-core collusion poses a direct and substantial threat to consumer welfare, market efficiency, and trust in the competitive process. Price-fixing, market-sharing, and bid-rigging agreements are presumed to be harmful by their very nature and are therefore classified as restrictions by object. This strict approach underscores the deterrence-oriented philosophy that characterizes cartel enforcement in Norway, Finland, and Sweden. Price-fixing, market-sharing, and bid-rigging are treated as restrictions by object, reflecting their presumed harmful effects on competition and consumer welfare. The primary enforcement objective is deterrence, achieved through a combination of detection mechanisms, effective prosecution, and credible sanctions.

3.2 Concept and Legal Characterisation of Cartels under Article 101 TFEU

Cartels constitute the most serious infringements of EU competition law and are prohibited under Article 101 TFEU as agreements or concerted practices between undertakings that have as their object or effect the prevention, restriction, or distortion of competition.

Classic cartel conduct includes price fixing, market sharing, output limitation, and bid rigging. Such practices are considered restrictions of competition by object, meaning that their inherent anticompetitive nature obviates the need for a detailed effects analysis. This strict legal qualification reflects the significant harm cartels inflict on consumer welfare, market efficiency, and the competitive process as a whole.

3.3 Sanctions and Criminal Liability

Although cartels are traditionally treated as object restrictions, EU enforcement practice increasingly incorporates structured evidentiary reasoning to demonstrate their capability to distort competition. Within the broader EU enforcement architecture, the European Competition Network (ECN) has emphasized that evidentiary burdens must remain proportionate to the likelihood and seriousness of competitive harm. This principle, articulated in the context of exclusionary abuses, is equally relevant to cartel enforcement, where qualitative and quantitative evidence—such as internal documents, market structure indicators, and pricing patterns—may be used to substantiate collusion. The ECN supports the continued use of legal presumptions for conduct that, by its very nature, is capable of producing significant anticompetitive effects, ensuring effective and deterrent enforcement without imposing excessive proof requirements.

4. Mergers in Scandinavian Competition Law

4.1 Merger Control Frameworks and Thresholds

Merger control in Norway, Finland, and Sweden aims to prevent concentrations that significantly impede effective competition, particularly where structural changes could facilitate market power, coordinated effects, or foreclosure. Although the legal tests and notification thresholds vary across jurisdictions, the substantive assessment is closely aligned with EU merger control principles. Authorities assess both unilateral and coordinated effects, paying particular attention to market concentration, barriers to entry, buyer power, and countervailing efficiencies. Norway's merger control regime, embedded in its Competition Act, closely follows the EU substantive test, requiring notification of transactions exceeding turnover thresholds and allowing prohibition or conditional approval where competition risks arise. Finland and Sweden apply the EU Merger Regulation in parallel with national rules for purely domestic concentrations.

4.2 Expansion of Merger Categories Eligible for Simplified Review

Recent reforms have significantly broadened the range of mergers that may benefit from simplified review, reflecting a more economically nuanced approach to merger control. Compared to the 2013 Simplification Package, the revised framework introduces additional categories of concentrations deemed unlikely to raise competition concerns under all plausible market definitions. In particular, transactions involving limited horizontal or vertical links now qualify for simplified treatment where upstream or downstream market shares remain below clearly defined thresholds and where indicators of market concentration, such as the HHI delta, remain modest. This expansion reduces unnecessary regulatory burden for non-problematic

mergers while allowing the competition authority to focus resources on cases more likely to distort competitive market structures.

4.3 Discretionary Flexibility in the Assessment of Horizontal and Vertical Mergers

The revised Notice on Simplified Procedure strengthens the discretionary powers of the European Commission by introducing explicit flexibility clauses. These provisions enable the Commission to apply simplified treatment to mergers that marginally exceed standard market share thresholds but nonetheless pose limited competitive risks. By covering specific ranges of horizontal overlaps, vertical relationships, and joint ventures, the framework moves away from a rigid, formalistic application of thresholds and toward a more effects-based assessment. At the same time, the Commission retains full discretion to exclude cases from simplified treatment where market dynamics, structural links, or contextual factors warrant closer scrutiny.

4.4 Procedural Streamlining through Super-Simplified Treatment and Short Form CO

A key innovation of the reform is the creation of "super-simplified" categories of mergers, for which notifying parties may dispense with pre-notification contacts and proceed directly to formal notification. This procedural shortcut is complemented by the introduction of a new Short Form CO, designed primarily as a "tick-the-box" instrument with structured tables and multiple-choice responses. Together, these measures substantially reduce administrative complexity, shorten review timelines, and lower transaction costs for businesses. From an institutional perspective, they also enhance the efficiency of merger control by allowing case handlers to process straightforward cases more rapidly and consistently.

5. Leniency Programmes in Scandinavian Competition Law

5.1 Legal Foundations and Policy Objectives of Leniency in Scandinavia

In the Scandinavian jurisdictional context, leniency programmes form an integral part of competition enforcement regimes aimed at detecting and deterring cartels and other forms of unlawful cooperation. In Sweden, the leniency framework is codified in Chapter 3, Sections 12 to 15b of the Swedish Competition Act, reflecting the broader EU tradition of incentivizing undertakings to self-report infringements in exchange for immunity or reduction of fines. Under this regime, full leniency—immunity from administrative fines—is available only to the first undertaking that provides information enabling effective intervention by the Swedish Competition Authority, and may not be granted where the information merely responds to a specific request by the authority rather than being voluntarily provided on the applicant's initiative. Leniency is unavailable to undertakings that coerced others into participation in the infringement, underscoring the programme's normative emphasis on voluntary cooperation and proactive disclosure.

In Norway, the leniency regime is likewise embedded within the domestic Competition Act, with the Norwegian Competition Authority (Konkurransetilsynet) empowered to grant full or partial leniency where an undertaking is the first to inform the authority of unlawful

cooperation and assists in subsequent investigations. Leniency may result in either complete exemption from administrative fines or a proportionate reduction depending on the sequence of applicants and the value of information provided, with graduated reductions available for second and subsequent qualifying applicants.

5.2 Eligibility Criteria and Cooperation Requirements

A central feature of Scandinavian leniency programmes is the rigorous set of eligibility criteria imposed on applicants. In Sweden, an undertaking seeking leniency must not only initiate disclosure on its own initiative but also provide information that materially enables the Swedish Competition Authority to "intervene against the infringement" or, at a minimum, clearly demonstrate that an infringement has occurred. The bar for information added value is doctrinally high, as information already in the possession of the authority or provided in direct response to its inquiries does not qualify for immunity.

In Norway, eligibility similarly hinges on being the first to report and providing “sufficient” information on the nature, duration, and participants of the cartel, though domestic practice adds procedural flexibility by allowing partial leniency for later applicants, with defined percentage reductions based on order and completeness of disclosure. Applicants are not required to use a standardised form, but submissions must include detailed factual descriptions and evidence relevant to the cartel offence.

Across both jurisdictions, leniency applicants must terminate their cartel participation immediately upon or before filing, refrain from destroying or concealing evidence, and cooperate fully with investigatory authorities throughout the process. These conditions align with broader EU and international leniency standards, emphasizing sincere cooperation and evidence preservation as prerequisites for mitigating sanctions.

5.3 Interaction with Criminal Sanctions and Enforcement Outcomes

Unlike some jurisdictions that couple corporate leniency with individual criminal sanctions, Scandinavian leniency programmes operate primarily within administrative enforcement frameworks. In Sweden, the debate over leniency’s interaction with criminalisation has been subject to academic and policy scrutiny, exemplified by a 2015 Swedish Competition Authority seminar contrasting leniency with individual criminal prosecution, and noting that harmonisation of these instruments remains undeveloped at EU level. The seminar underscored leniency as a detection tool and recognised the complementary, though complex, relationship between administrative leniency and criminal sanctions for cartel offences.

In Norway, while leniency may exempt an undertaking from administrative fines, individuals involved in cartel conduct may still face separate legal exposure under criminal law, including potential imprisonment for serious competition offences. This dual-purpose enforcement landscape emphasises deterrence at both corporate and individual levels, yet also raises doctrinal questions about the scope and limits of leniency protections where criminal liability attaches to key personnel.

5.4 Practical Challenges and Enforcement Effectiveness in the Nordic Context

Despite robust legal frameworks, empirical evidence suggests that leniency programmes in Scandinavian countries have been comparatively underutilised as cartel detection tools. Recent analysis of cartel enforcement in the Nordic region identifies limitations in the vibrancy and effectiveness of leniency applications relative to the European Commission's programme, with low numbers of self-reports and limited complementary screening or ex officio investigations. The paucity of leniency-driven cases raises concerns that cartel detection may be less effective in practice, particularly for undetected bid-rigging or market-sharing arrangements that evade routine enforcement measures.

The practical challenge of raising awareness among business executives of leniency programmes has been specifically noted in Norway, where surveys indicate a low level of familiarity with leniency mechanisms among corporate leaders. This gap in awareness potentially undermines the deterrence and detection functions of leniency, suggesting the need for enhanced outreach, corporate compliance incentives, and institutional capacity to encourage early reporting of anti-competitive conduct.

6. Leniency Denied: The Arla Foods Case on Unlawful Cooperation in Sweden

6.1 Assessing Competitive Dynamics in the UK Dairy Market

Arla is a dairy cooperative owned by farmers from Sweden, Denmark, and Germany, engaged in the production and distribution of a wide range of dairy products. While the company's headquarters are located in Denmark, it operates internationally. Milk Link, based in Bristol, UK, is a British farmers' cooperative with eight processing facilities across the country. The two parties have entered into an agreement, subject to merger control approval, under which Arla will acquire full control over Milk Link's operations and assets. In return, Milk Link will become a corporate member of Arla, enjoying membership rights comparable to those of Arla's Scandinavian members. The business activities of the two cooperatives are complementary in the UK market: Arla primarily produces fresh milk, cream, and butter, whereas Milk Link focuses mainly on cheese production. Both companies, however, participate in the production of long-life and flavored milk, reflecting overlapping but largely complementary operations. Judicial restraint in this context is not indicative of passivity, but of a principled allocation of institutional responsibility. Courts position themselves as guardians of systemic integrity rather than as appellate bodies reviewing arbitral reasoning in detail.

6.2 Legal Characterisation of the Conduct: Restriction of Competition by Object

The conduct at issue was assessed under the Swedish Competition Act in parallel with Article 101(1) TFEU, reflecting the harmonised application of EU competition law at national level. The Swedish Competition Authority qualified the behaviour as unlawful cooperation amounting to a restriction of competition by object. This qualification was grounded in established EU jurisprudence, according to which certain forms of coordination—particularly exchanges of strategic information capable of reducing uncertainty—are inherently harmful to the competitive process.

The authority rejected arguments suggesting that the cooperation pursued efficiency-enhancing or stabilising objectives within the dairy sector. Instead, it found that the nature of the contacts was such that they were liable to replace independent decision-making with

practical coordination. No requirement arose to demonstrate concrete anticompetitive effects, as the object of the conduct itself was sufficient to establish an infringement. This approach underscores the continued relevance of formal object-based analysis in cartel and quasi-cartel cases, particularly in concentrated commodity markets.

6.3 Leniency Framework and the Denial of Immunity or Reduction of Fines

A central doctrinal dimension of the case concerns the refusal to grant leniency. Arla applied for leniency under the Swedish programme, which mirrors the EU Leniency Notice in structure and purpose. However, the authority concluded that the application failed to satisfy the cumulative conditions required for immunity or a reduction of fines.

First, Arla was not the first undertaking to submit information enabling the authority to detect or establish the infringement. Second, the material provided did not constitute significant added value, as it largely confirmed facts already known to the authority through other sources. Third, questions were raised regarding the timeliness and completeness of cooperation, including whether Arla had genuinely terminated its involvement in the infringement at the earliest possible stage.

The refusal highlights a strict, credibility-based application of leniency rules. The authority made clear that leniency is not a discretionary reward for partial disclosure, but a conditional instrument designed to destabilize cartels by incentivizing prompt and decisive self-reporting. Undertakings with substantial market power and legal sophistication, such as Arla, are therefore held to a particularly high standard of diligence and transparency.

6.4 Enforcement Significance and Implications for Cooperative Undertakings

The Arla Foods decision carries important implications for competition enforcement and corporate compliance, particularly in sectors dominated by cooperatives and producer organizations. It confirms that cooperative status does not justify or excuse horizontal coordination with competitors, nor does it relax the standards applicable to information exchange and concerted practices.

From an enforcement perspective, the case reinforces the deterrent function of leniency denial. By refusing leniency, the authority signalled that strategic or delayed cooperation will not suffice to mitigate liability. This stance strengthens the overall effectiveness of cartel enforcement by preserving the integrity of leniency programmes and discouraging opportunistic applications.

For corporate actors, the case underscores the necessity of robust internal compliance mechanisms, clear protocols governing external contacts, and an early assessment of leniency options when potential infringements arise. In doctrinal terms, the decision contributes to a growing body of Nordic and EU case law emphasizing strict object-based analysis and disciplined leniency enforcement in concentrated markets.

Conclusions

This article has analysed recent developments in EU and Scandinavian competition law, focusing on merger control simplification, cartel enforcement, and the operation of leniency programmes in Nordic jurisdictions. The findings indicate a clear policy shift toward greater procedural efficiency and effects-based assessment, while maintaining strict enforcement

against hardcore infringements such as cartels. Simplified merger procedures illustrate a deliberate reallocation of enforcement resources toward cases with genuine competitive risk, whereas leniency programmes remain central to cartel detection despite mixed practical results in Scandinavia. The recent Arla Foods case in Sweden exemplifies this approach, where leniency was denied despite the company's cooperation, highlighting the seriousness of unlawful cartel activity (Konkurrensverket, 2025). More broadly, the Nordic experience demonstrates rigorous cartel enforcement procedures in line with scholarly analyses of regional practices (Barlund, Harrington, & Sørgård, 2022).

The findings are most directly applicable to EU Member States and closely aligned jurisdictions, such as Norway, but the broader insights regarding the conditions for effective leniency programmes are of wider relevance. From a practical perspective, competition authorities may benefit from further enhancing legal certainty, corporate awareness, and guidance on the interaction between leniency and individual liability. Such measures could strengthen incentives for self-reporting and improve detection rates.

Further research is warranted, particularly empirical and comparative studies assessing the actual deterrent impact of leniency regimes across jurisdictions. Overall, the article concludes that while the legal framework for competition enforcement in the EU and Scandinavia is well developed, its effectiveness ultimately depends on consistent application, institutional credibility, and continued policy refinement, as demonstrated in recent Nordic cartel enforcement cases (Barlund, Harrington, & Sørgård, 2022; Konkurrensverket, 2025).

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